UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Adrian Conejo Arias,

L.C.R., *a minor child by and through his parent and guardian Adrian Conejo Arias,*

Petitioners,

v.

KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, PAMELA BONDI, in her official capacity as Attorney General of the United States, TODD LYONS, in his official capacity as Acting Director, United States Immigration and Customs Enforcement, DAREN MARGOLIN, in his official capacity as Acting Director of the Executive Office of Immigration Review, and JOHN DOES, in his official capacity as the Warden of the Dilley Immigration Processing Center in Dilley, Texas,

Respondents.

Court File No. 5:26-cv-00415

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

Expedited Handling Requested

INTRODUCTION

1. Petitioners Adrian Conejo Arias and L.C.R.—a five-year-old boy—were detained by officers of Respondents on January 20, 2026 near their home in Minnesota. Shortly thereafter, they were transferred to this District. Petitioners' detention is unlawful under the Fifth Amendment, Fourth Amendment, the Immigration and Nationality Act, the Administrative Procedure Act, the *Accardi* doctrine, and applicable law. Because

Respondents violated Petitioners' constitutional and statutory rights, this Court should grant this Petition, immediately release Petitioners during the pendency of this proceeding, and, in three days or less, order Respondents to show cause as to why this Court should not order Petitioners' permanent release.

2. Petitioners both have a protected liberty interest in the release from custody, and due process requires they be released on humanitarian parole just as they were released and permitted to enter this country on December 14, 2024. *See Osuna Benitez v. Hermosillo,* 2:25-cv-02535-BAT, 2025 WL 3763932, at *5 (W.D. Wash. Dec. 30, 2025). Additionally, urgent judicial intervention is necessary to protect Petitioner-child L.C.R. *See, e.g., Elvis Joel T.E. & C.R.T.V. v. Bondi, et al.*, Case No. 26:CV:00561 (KMM-JFD), ECF No. 7, Order Granting Emergency Relief at 1–2 ("The Court is granting this relief [of release] as a temporary restraining order due to the irreparable harm potentially caused by the detention of a two-year-old.").

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); U.S. Const. art. I, § 9, cl. 2 (the Suspension Clause); 5 U.S.C. § 701 *et seq.* (the Administrative Procedure Act), and 5 U.S.C. § 702 (waiver of sovereign immunity).

4. Further, an actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

5. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security ("DHS"). 28 U.S.C. § 2241; *see also Demore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 291–95(2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).

6. Venue is proper in this district pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Respondents are holding Petitioners at the Dilley Immigration Processing Center ("Dilley") in Dilley, Texas, which is within the jurisdiction of this District.

THE PARTIES

7. Petitioner Adrian Conejo Arias is a citizen of Ecuador. He entered the United States lawfully through the CBP One application and currently has a pending asylum application before the immigration court. Petitioner Conejo Arias is currently detained in the custody of Respondents at the Dilley Immigration Processing Center in Dilley, Texas.

8. Petitioner-child L.C.R. is a five-year-old boy and citizen of Ecuador. He entered the United States lawfully through the CBP One application and currently is a derivative of Petitioner Conejo Arias' pending asylum application before the immigration court. Petitioner-child L.C.R. is currently detained in the custody of Respondents at the Dilley Immigration Processing Center in Dilley, Texas.

9. Respondent Kristi Noem is sued in her official capacity as the Secretary of DHS. In this capacity, Noem is responsible for the implementation and enforcement of

the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq. She oversees Immigration and Customs Enforcement ("ICE") and Customs and Border Protection ("CBP"), the component agencies responsible for Petitioners' arrest, detention, and custody. Noem is a legal custodian of Petitioners and has authority to release them.

10. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioners and has authority to release them.

11. Respondent Daren Margolin is sued in his official capacity as Acting Director of the EOIR. Margolin is a legal custodian of Petitioners and has authority to release them.

12. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. Respondent Lyons is a legal custodian of Petitioners and has authority to release them.

13. Respondent John Doe is the Warden of Dilley who has immediate physical custody of Petitioners pursuant to the facility's contract with ICE to detain noncitizens and is a legal custodian of Petitioners. Respondent Doe is a legal custodian of Petitioners.

STATEMENT OF FACTS

14. Petitioners are son and father who entered the United States on or around December 14, 2024, through the CBP One application. *See* Ex. A. Following their appointment, they were served a Notice to Appear, placing them in Section 240 removal proceedings. *See* Ex. B.

15. Petitioners were paroled to the United States on December 14, 2024, through 8 U.S.C. § 1182(d)(5)(A). They both have an I-94 Arrival Record. *See* Ex. A.

16. Petitioner Conejo Arias filed an asylum application on or around November 12, 2025, in Immigration Court, listing Petitioner-child L.C.R. as one of the derivatives of this application. This application remains pending.

17. Until Respondents unlawfully arrested and detained Petitioner Conejo Arias, he worked as an independent contractor in Minnesota. Petitioner Conejo Arias has no criminal record. He is a husband and a father of two.

18. Until Respondents unlawfully arrested and detained Petitioner-child L.C.R., he attended pre-kindergarten in the Columbia Heights Public School district in Minnesota.

19. On January 20, 2026, ICE arrested and detained both Petitioners.

20. At around 2:10 p.m. on January 20, 2026, Petitioner-child L.C.R. was picked up from school by Petitioner Conejo Arias. When they arrived at their house, Petitioner Conejo Arias saw Respondents' officers outside. Petitioner Conejo Arias continued to drive a few houses ahead and stopped the car.

21. Petitioner Conejo Arias got out of the car and began shouting for help. Petitioner-child L.C.R. remained in the running car while his father, Petitioner Conejo Arias, was immediately outside the vehicle. Officers of Respondents approached Petitioner Conejo Arias, who did not run away or resist. Rather, Petitioner Conejo Arias stopped yelling and complied as the officers approached him.

22. Officers grabbed Petitioner Conejo Arias and put him in their vehicle. Petitioner Conejo Arias did not abandon Petitioner-child L.C.R. or run away from the vehicle where Petitioner-child L.C.R. was sitting—he was moved away from his child by Respondents' officers. Once inside Respondents' vehicle, the officers informed Petitioner Conejo Arias that they were looking for a different person, a female who they believed was the owner of the car he was driving. Officers advised that they were not looking for Petitioner-child L.C.R. or Petitioner Conejo Arias.

23. Petitioner Conejo Arias told the agents he was looking for someone to take Petitioner-child L.C.R. and that he did not want Petitioner-child L.C.R. to be taken by the officers.

24. Respondents' officers removed Petitioner-child L.C.R. from the vehicle in which he sat. Respondents' officers walked Petitioner-child L.C.R. to the front door of his house and attempted to use him to compel the individuals inside the house to open the door. Upon information and belief, the officers were attempting to use the open door to arrest and detain the occupants of the house. Upon information and belief, the individuals inside the house did not open the door out of fear of the officers' intentions and conduct.

25. Numerous community members and other individuals were present at the scene and offered to care for Petitioner-child L.C.R., including someone who lived with Petitioners' family.

26. Contrary to the express wishes of Petitioner Conejo Arias, and despite the presence of other adult community members known to Petitioners' family who could have assumed custody of Petitioner-child L.C.R., Respondents' officers placed Petitioner-child L.C.R. in the officers' vehicle:

27. The vehicle did not have a car seat. Petitioner-child L.C.R. was placed in the back seat with an adult seat belt.[1]

28. For approximately one hour, Respondents' officers drove Petitioners around in the car, in the snow, with no car seat for Petitioner-child L.C.R. That day, the average temperature in the Twin Cities was 6 degrees Fahrenheit, with two inches of snow on the ground and wind speeds up to 13 miles per hour.[2] The distance from the location of the unlawful arrest to the Whipple Federal Building is approximately 17 miles, using a direct route. Upon information and belief, Respondents' officers drove to other locations before the Whipple Building.

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[1] Because Petitioner-child L.C.R. is five years old and has not outgrown a forward-facing child passenger restraint system with an internal harness, he was required to be placed in a car seat under Minnesota law. Minn. Stat. § 169.685, subd. 4a. DHS does not qualify for the limited exception under Minnesota law for peace officers transporting a child in performance of official duties when a child restraint system is not available. Minn. Stat. § 169.685, subd. 6(a)(2).

[2] National Weather Service, Preliminary Local Climatological Data, Twin Cities MN, https://www.weather.gov/media/mpx/Climate/MSP/jan2026.pdf (last accessed Jan. 24, 2026).

29. Petitioners arrived at the Whipple Federal Building in Minneapolis at approximately 3:30 p.m. Respondents did not ask for any information other than their names and dates of birth and reviewed no documentation. Petitioner-child L.C.R. was the only child at Whipple, surrounded by adults.

30. Several hours later, Petitioners were placed in another vehicle and driven around to several locations, including a convenience store. Ultimately, they were taken to a hotel overnight where they were forced to share a hotel room with two ICE officers.

31. Early in the morning of January 21, agents of Respondent transported Petitioners to the MSP airport, where they were boarded onto an airplane.

32. The airplane carrying Petitioners then arrived in Texas. After being held for several hours, they were transported to Dilley Immigration Processing Center.

33. After Petitioners' detention, Respondents made several public statements claiming that Petitioner Conejo Arias ran away from officers or "abandoned" Petitioner-child L.C.R.[3] Such statements are inaccurate. Petitioner Conejo Arias parked the car a few houses up and began shouting for help until he was taken by Respondents' officers. He did not attempt to flee from the officers or abandon his child. Respondents' officers removed Petitioner-child L.C.R. from the car, used him to try to get individuals

[3] *See, e.g.*, Homeland Security, X, (Jan. 22, 2026 at 7:02 a.m.), https://x.com/dhsgov/status/2014322865848406370?s=46&t=Su4BjUkyoA25AmRM4RlgOg (last visited Jan. 24. 2026); Homeland Security, X, (Jan. 23, 2026 at 8:08 a.m.), https://x.com/dhsgov/status/2014322865848406370?s=46&t=Su4BjUkyoA25AmRM4RlgOg (last visited Jan. 24, 2026); U.S. Immigration and Customs Enforcement, X, (Jan. 23, 2026 at 8:32 a.m.), https://x.com/ICEgov/status/2014707753412133169 (last visited Jan. 24, 2026).

inside his home to open their door, and ultimately placed him in their car with Petitioner Conejo Arias.

34. Months before Petitioners' arrest and detention, on July 2, 2025, ICE released Directive 11064.4: Detention and Removal of Alien Parents and Legal Guardians of Minor Children. *See* Ex. C. This Directive is clear: "ICE personnel **should not,** under **any circumstances,** take custody of or transport the minor child(ren)." *See* Ex. C, at 5 (emphasis added). "ICE should remain on the scene with the Covered Individual until the designated third party, or the local child welfare authority or law enforcement agency assumes physical custody of the minor child(ren)." *Id.* Respondents also publicly confirmed that their policy is to ask parents "if they want to be removed with their children, or ICE will place the children with a safe person the parent designates." Homeland Security (@DHSgov), X (Jan. 22, 2026 at 7:02 AM), https://x.com/dhsgov/status/2014322865848406370?s=46&t=Su4BjUkyoA25AmRM4RlgOg (last visited Jan. 24, 2026).[4] Respondents did not follow these policies in connection with the detention of Petitioner-child L.C.R.

35. Since they arrested and detained Petitioners, Respondents have presented Petitioner Conejo Arias with a notice of voluntary departure and asked him to sign it. Such conduct has continued through the date of the filing of this petition, January 24, 2026. This, in and of itself, is a concession that Respondents do not have the legal

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authority to deport Petitioners because they have not been ordered removable by any immigration court.

LEGAL FRAMEWORK

Due Process

36. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or federal law. 28 U.S.C. § 2241.

37. "[T]he Due Process Clause applies to all 'persons' within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation omitted).

38. Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is detained]" so that it is "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.* at 683; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). "Retribution and deterrence are not legitimate nonpunitive governmental objectives." *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979).

The Fourth Amendment and Immigration Stops and Seizures

39. An immigration officer's authority to make a warrantless arrest of a noncitizen is limited. 8 U.S.C. § 1357(a); *Arizona v. United States,* 567 U.S. 387, 408 (2012). An immigration officer may only make a warrantless arrest when the officer

"'has reason to believe that the individual 'is in the United States in violation of [the immigration laws]' and 'is likely to escape before a warrant can be obtained for his arrest.'" *Ramirez Ovando v. Noem,* --- F. Supp. 3d ---, 2025 WL 3293467, at *2 (D. Colo. Nov. 25, 2025) (citing 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii)). "[R]eason to believe" is "the equivalent of the constitutional requirement of probable cause." *Id.* (collecting cases).

40. "The Fourth Amendment requires that immigration stops must be based on reasonable suspicion of illegal presence, stops must be brief, arrests must be based on probable cause, and officers must not employ excessive force." *Trump v. Illinois*, 607 U.S. ---, No. 25A443, 2025 WL 3715211, at *9 n. 4 (Dec. 23, 2025) (Kavanaugh, J., concurring in the judgment). "Moreover, the officers must not make interior immigration stops or arrests based on race or ethnicity." *Id.* An arrest in violation of the Fourth Amendment is grounds for habeas relief. *See Garrison G., v. Bondi, et al.*, No. 26-CV-172 (JMB/DJF), 2026 WL 157677, at *4 (D. Minn. Jan. 17, 2026) (citations omitted).

The *Accardi* Doctrine And Internal Agency Rules

41. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow

their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

42. *Accardi* is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton*, 415 U.S. at 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

Asylum and Immigration Detention Framework

43. Congress created asylum as a domestic protection remedy. By statute, only a noncitizen who is "physically present in the United States or who arrives in the United States … irrespective of such alien's status" may apply. 8 U.S.C. § 1158(a)(1). There is no statutory mechanism for a person who remains outside the United States to file an affirmative asylum application with USCIS or to invoke the jurisdiction of an immigration court. A person fleeing persecution cannot apply for asylum at a United States consulate.

44. The INA therefore reflects a deliberate congressional design: individuals who fear persecution may reach the United States or its border—*even without prior authorization*—to invoke the asylum process. The statute does not require lawful entry as a prerequisite. To the contrary, it expressly provides that eligibility exists "irrespective of status." 8 U.S.C. § 1158(a)(1).

45. Section 1226 applies to the detention of noncitizens who are already in the country pending the outcome of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). It is the "default rule" applicable to noncitizens already in the country. *Id.* at 288. Under this default rule, an immigration officer initially determines to either detain or release the noncitizen. If detained, the noncitizen may request a bond hearing before an immigration judge. 8 C.F.R. § 1236.1(c)(8), (d)(1). It is the rule that applies to individuals who are in the country, and apply for asylum.

46. In contrast, Section 1225 applies to non-citizens upon entry or individuals present without admission. Under Section 1225(b)(2), detention is considered mandatory and detained individuals are not entitled to a bond hearing unless they are paroled " 'for urgent humanitarian reasons or significant public benefit' pursuant to 8 U.S.C. § 1182(d)(5)(A)." *Lepe v. Andrews*, 801 F. Supp.3d 1104, 1111 (E.D. Cal. 2025) (alteration in original) (*citing Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025). "Other than this limited exception[,]...detention under § 1225(b)(2) is considered mandatory...[and] [i]ndividuals detained under § 1225 are not entitled to a bond hearing." *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 484, (S.D.N.Y. 2025).

47. When immigrants are authorized to enter pursuant to 8 U.S.C. § 1182(d)(5)(A), they may enter and remain in the United States as a statutory exception to Section 1225 and its mandatory detention regime. Section 1182(d)(5)(A) provides that "[t]he Secretary of Homeland Security may... in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case

basis for urgent humanitarian reasons or significant public benefit any [non-citizen] applying for admission to the United States." *Id.* Parole under this provision may only be granted where the non-citizen "present[s] neither a security risk nor a risk of absconding." 8 C.F.R. § 212.5(b).

48. When individuals are allowed entry under parole, it is not a formal "admission," and the individuals therefore remain "applicants for admission" within the meaning of 8 U.S.C. §§ 1225(a)(1) and 1182(d)(5)(A). Because these individuals have already arrived, were inspected, paroled, physically entered the country, and remain in the country, they cannot be "arriving aliens" for the purposes of Section 1225(b). Such facts are not altered by the legal fiction that parole is not an "admission" within the meaning of 8 U.S.C. § 1225(a). *See Gonzales v. Ortega,* No. 25-CV-1156-JKP, 2025 WL 3471571, at *1, n.1 (W.D. Tex. Nov. 24, 2025) ("The Court recognizes … while the phrase 'mandatory detention' is often used to describe detention under 8 U.S.C. § 1225(b), the phrase is somewhat of a misnomer…")

49. Although the INA does not define the phrase "arriving aliens," Courts addressing this precise issue have held that "arriving aliens" refers to the discrete act of reaching the border or port of entry—not a perpetual legal status that follows a noncitizen long after entry. *See Qasemi v. Francis*, No. 25-CV-10029-LJL, 2025 WL 3654098, at *8 (S.D.N.Y. Dec. 17, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065-NJC, 2025 WL 3314420, at *19–21 (E.D.N.Y. Nov. 28, 2025); *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872-JMC, 2025 WL 2192986, at *27–28 (D.D.C. Aug. 1, 2025). Ordinary usage confirms this understanding: to "arrive" means "to reach a destination" or

"to come to the end of a journey." *Qasemi*, 2025 WL 3654098, at *8 (citing *Coal. for Humane Immigrant Rts.*, 2025 WL 2192986, at *28). Nothing in Section 1225 suggests Congress intended "arriving" to function as an indefinite status rather than a moment in time. *Id.* Thus, "Arriving alien" describes a temporary condition tied to the act of entry, while "applicant for admission" is a legal status that must persist until legal admission occurs. An asylum applicant may fall into the latter category but plainly does not fall into the former.

50. Courts in this district have recognized this distinction and granted habeas relief in similar contexts. *See, e.g., Smirnov v. Warden, El Paso Camp East Montana*, Cause No. EP-25-CV-669-KC, slip op. at 2 (W.D. Tex. Dec. 23, 2025) (Cardone, J.) (granting habeas petition based on due process violation when immigrant was paroled and released into the country); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668 (W.D. Tex. 2025) (granting habeas petition in part by ordering bond hearing or release based on procedural due process violation).

CLAIMS FOR RELIEF

COUNT ONE
Fifth Amendment to the United States Constitution – Due Process
Respondents are Confining Petitioner without A Valid Legal Basis or any Semblance of Due Process.

51. Petitioners reallege and incorporate by reference each and every allegation contained above.

52. The Constitution establishes due process rights for all "persons" within the United States, including noncitizens, whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas*, 533 U.S. at 693.

53. Even if this Court were to conclude that Petitioners are subject to mandatory detention under Section 1225, the inquiry does not end there. The Due Process Clause applies regardless of whether a noncitizen's presence is lawful, unlawful, temporary, or permanent—and regardless of whether detention is purportedly authorized by Sections 1225 or 1226. *Id.*; *Hernandez*, 872 F.3d at 990 ("[I]t is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority."). A noncitizen's interest in freedom from physical restraint is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

54. Where, as here, a noncitizen is initially released on parole and later re-detained, several Courts have repeatedly recognized that such individuals possess a protected liberty interest in remaining out of custody. *See Pinchi v. Noem*, 792 F. Supp. 3d 1015, 1025, 1032–33 (N.D. Cal. 2025) (collecting cases); *Tesara v. Wamsley*, No. C25-1723-KKE-TLF, 2025 WL 3288295, at *4 (W.D. Wash. Nov. 25, 2025) (holding that mandatory detention under § 1225(b), without consideration of noncitizens' deep financial, community, and familial ties, raises serious constitutional concerns) (citing *Salgado v. Mattos*, No. 2:25-cv-01872-RJB-EJY, 2025 WL 3205356, at *20 (D. Nev. Nov. 17, 2025)); *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *4 (S.D. Cal. Nov. 25, 2025) (explaining that where re-detention violates due process, the choice between Sections 1225 and 1226 is not before the court because detention is improper regardless of which statute applies).

55. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319, 334–35 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.*

56. Under this balancing framework, Petitioners' due process rights are violated by their summary re-detention.

57. First, Petitioners have a significant private interest at stake—the right to be free from physical confinement—that is weighty in the extreme. *Zadvydas*, 533 U.S. at 690; *Hamdi*, 542 U.S. at 529 (noting this interest is "the most elemental of liberty interests"). Petitioners' wrongful confinement directly attacks this interest. Petitioners' liberty interest is particularly acute. They presented themselves at a designated port of entry pursuant to a government-sanctioned CBP One appointment, were inspected, and were affirmatively paroled into the United States. They have lived here for over a year—building stability, relationships, and reliance on the government's own decision to release them—only to be seized and re-detained without warning and without any individualized explanation. Under these circumstances, Petitioners plainly possess a constitutionally protected interest in remaining free from arbitrary confinement.

58. Second, the risk of erroneous deprivation is extraordinarily high. Petitioners were re-detained without any individualized assessment, without notice, and without an

opportunity to be heard. Respondents' position treats parole as meaningless and permits liberty to be withdrawn at any moment based solely on shifting policy, rather than on facts particular to the individual. Courts have recognized that such regime creates an intolerable risk that people who pose no danger and no flight risk will be needlessly incarcerated. *See Tesara,* 2025 WL 3288295, at *4; *Pinchi*, 792 F. Supp. 3d at 1032–33.

59. Third, Respondents' interest in continued civil detention is minimal. Petitioners are already in removal proceedings, subject to the Immigration Court's jurisdiction, and fully available for supervision through less restrictive means. Respondents previously concluded that Petitioners could safely remain at liberty. Re-detaining them without individualized justification does not meaningfully advance any legitimate governmental objective; it merely imposes confinement for confinement's sake.

60. Accordingly, even assuming arguendo that Section 1225 governs, Petitioners' continued detention without individualized process violates the Due Process Clause. Mandatory detention cannot be wielded as a blunt instrument to extinguish liberty where the Constitution demands reasoned, person-specific justification.

61. Petitioners' detention also violates their right to due process because it does not further the two legitimate purposes for immigration detention. *Zadvydas*, 533 U.S. at 690 (finding that immigration detention is justified in two scenarios: (1) ensuring a noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

62. Petitioner Conejo Arias poses no flight risk and there is no evidence that he is a danger to the community. He has not violated any law nor been convicted of any crime. There is no legitimate purpose for his immigration detention.

63. Petitioner-child L.C.R. is a five-year old child who, prior to his arrest and detention, was in pre-kindergarten. He poses no flight risk and there is no evidence that he is a danger to the community. There is no legitimate purpose for his immigration detention.

64. Moreover, Petitioners' detention is punitive because it bears no "reasonable relation" to any legitimate government purpose. *Id.* at 690 (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, there is every indication that Petitioners' detention is not to facilitate removal, or protect against risk of flight or dangerousness, but for the purpose of "sending a message" to other immigrant families and parents to cooperate with ICE or self-deport instead of having their children detained or separated from them.

65. Due process demands, at a minimum, a lawful basis for detaining and continuing to detain any person, let alone a 5-year-old child. Because Respondents have no basis to continue to detain Petitioners, their continued detention violates the Fifth Amendment, and they should be released.

COUNT TWO

Fourth Amendment to the United States Constitution – Unlawful Seizure

Respondents Arrested Petitioner and Continue to Detain Him without A Valid Legal Basis

66. Petitioners reallege and incorporate by reference each and every allegation contained above.

67. "The Fourth Amendment requires that immigration stops must be based on reasonable suspicion of illegal presence, stops must be brief, arrests must be based on probable cause, and officers must not employ excessive force." *Trump*, 2025 WL 3715211, at *9 n.4. "Moreover, the officers must not make interior immigration stops or arrests based on race or ethnicity." *Id.*

68. Petitioners' detention violates their Fourth Amendment rights because the officers arresting them had no reasonable suspicion of illegal presence or probable cause for their arrest at the time. Respondents' agents claimed to be looking for a different individual—a woman named Jessica— and had no reasonable suspicion or probable cause to believe that either Petitioner Conejo Arias or five-year-old Petitioner-child L.C.R.—were in the country illegally.

69. Further, Petitioner Conejo Arias expressly advised that he did not want L.C.R. to be detained and transported with him by Respondents' officers. Although there were adult community and household members in the vicinity with whom Petitioner-child L.C.R. could have been safely placed, Respondents' officers ignored Petitioner-child's father's wishes and unlawfully arrested, transported, and detained Petitioner-child L.C.R.

70. Because Petitioners' arrest and detention was made in violation of their Fourth Amendment rights, they must be released immediately. *See Garrison G.*, 2026 WL 157677, at *4 (citations omitted).

COUNT THREE
Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B), & (D)
Detaining Petitioners Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225 violates the Administrative Procedure Act

71. Petitioners reallege and incorporate by reference each and every allegation contained above.

72. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B). The APA also requires a court to set aside and hold unlawful agency action that is "without observance of procedure required by law." *Id.* § 706(2)(D).

73. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

74. Respondents' detention of Petitioners while they are lawfully admitted through CBP One and properly filed their application for asylum was contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

75. Respondents' detention of Petitioners was also not in accordance with the INA and implementing regulations governing detention insofar as none of the statutes that authorize Respondents to detain non-citizens are implicated by the facts and circumstances of Petitioners' case.

76. An agency decision that "runs counter to the evidence before the agency" is arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). Respondents' decision to detain Petitioner ran counter to the evidence before the agency that Petitioner was a lawfully admitted minor child who had timely applied for asylum.

77. Accordingly, Petitioner's detention should be held unlawful and set aside because it was (1) arbitrary, capricious, and not otherwise in accordance with law, *see* 5 U.S.C. § 706(2)(A); (2) contrary to the agency's constitutional authority, *see id.* § 706(2)(B); and (3) not in accordance with the INA and implementing regulations, *see id.* § 706(2)(D).

COUNT FOUR
Violation of the *Accardi* Doctrine

78. Petitioners reallege and incorporate by reference each and every allegation contained above.

79. Under the *Accardi* doctrine, Petitioners have a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

80. Respondents violated ICE Directive 11064.4, Detention and Removal of Alien Parents and Legal Guardians of Minor Children, that specifically covers his situation and governs the procedures ICE must follow when attempting to detain a minor child.

81. Under *Accardi*, Respondents' actions should be set aside for violating agency procedures, rules, or instructions.

COUNT FIVE
Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)
Petitioners' Ongoing Detention Pursuant to 8 U.S.C. § 1225(b)(2) is Unlawful because Petitioners Are not Seeking Admission and therefore cannot be held under that Authority

82. Petitioners reallege and incorporate by reference each and every allegation contained above.

83. Respondents contend that Petitioners are presently detained under 8 U.S.C. § 1225 on the premise that they remain "arriving aliens," and are therefore subject to Section 1225's mandatory detention provisions.

84. That position collapses two distinct statutory regimes into one. Section 1225 governs the threshold act of inspection—what happens at the border before a non-citizen is permitted to enter. Section 1226 governs custody *inside* the United States, after entry has occurred and removal proceedings are underway. Petitioners presented themselves to immigration officers at a designated point of entry pursuant to a government sanctioned CBP-One appointment, were formally paroled into the United States, and have lived in the country for over a year. Under these circumstances, any re-detention is governed by Section 1226, not Section 1225.

85. Respondents' theory converts the meaning of "arriving alien" from a description of a moment in time to some form of a permanent legal identity. The INA does not permit that transformation. "Arriving" is an event, not a lifelong condition. Once DHS exercised its discretion to parole Petitioners into the United States, the

border-processing function of Section 1225 was complete. There is no statutory mechanism for "un-arriving" a person who has already crossed the threshold and entered the country.

86. Although Petitioners' Notices to Appear label them as "arriving aliens," administrative nomenclature cannot override statutory structure or facts of their entry. Petitioners' records expressly list their class of admission as "DT," reflecting humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A). *See* Ex. A. Respondents authorized Petitioners to enter and remain in the United States as a statutory exception to Section 1225 and its mandatory detention requirements. An agency checkbox on a Notice to Appear cannot evade Congress's framework or Respondents' discretionary act.

87. Parol is not a hollow gesture. It is a substantive statutory determination that the individual may enter and remain in the United States and that the person presents neither a security risk nor a risk of flight. Those findings are fundamentally incompatible with the premise of mandatory detention. Respondents cannot conclude that Petitioners are appropriate for humanitarian parole and later assert that Congress commands their automatic detention as if they were still standing at the border. Such an approach would render parol under Section 1182(d)(5)(A) meaningless—granting presence one day while reserving the power to resurrect border detention at any time, long after entry. That result is incompatible with the INA's design, which contemplates a sequence: border processing under Section 1225; discretionary parole under Section 1182(d)(5)(A); and, once inside the country, custody governed by Section 1226 during Section 240 proceedings.

88. Petitioners' case illustrates how the system is supposed to function before the recent policy shift. Petitioners did not evade inspection or enter surreptitiously. They followed Respondents' own procedures, appeared at a designated port of entry pursuant to a scheduled CBP One appointment. Respondents exercised their discretion under 8 U.S.C. § 1182(d)(5)(A) to grant Petitioners temporary humanitarian parole into the United States—issuing an I-94 record and placing them into Section 240 removal proceedings. 8 U.S.C. § 1229a. Having crossed that statutory and factual line, Petitioners cannot be frozen forever at the border by legal fiction.

89. Petitioners are no longer "arriving" in any ordinary or statutory sense, Section 1225(b)(2)'s mandatory detention regime has no application here. Respondents' attempt to impose it is ultra vires and violates the Immigration and Nationality Act. Petitioners' continued detention is unlawful, and they should be released.

PRAYER FOR RELIEF

Wherefore, Petitioners respectfully requests this Court:

1. Assume jurisdiction over this matter;

2. Order Respondents to release Petitioners immediately during the pendency of these proceedings so that they do not have to await for this relief while in custody;

3. In the alternative, order Respondents to release minor L.C.R. to during the pendency of these proceedings so that he does not have to await for this relief while in custody given the irreparable harm caused by the detention of a five-year-old child;

2. In the alternative, immediately enjoin and restrain Respondents from transferring or removing Petitioners from the jurisdiction of this District pending these proceedings;

3. Issue an Order to Show Cause requiring Respondents to show cause as to why Petitioners should not be released within three days;

3. Declare that Petitioners' detention violates the Fourth Amendment, the Fifth Amendment, the Administrative Procedure Act § 706(2)(A), (B), & (D), the *Accardi* Doctrine, and 8 U.S.C. § 1225(b)(2);

4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioners;

5. Award Petitioners reasonable attorneys' fees and costs under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, *see Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025), and on any other basis justified under law; and

6. Grant any further relief this Court deems just and proper.

Dated: 24 January 2026 .

Respectfully submitted,

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