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8 **IN THE UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 **Lester Bladimir Eguigure Avila,**

Case No. _____

11 **Petitioner,**

12 **v.**

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

13 Luis Rosas Jr., in his official capacity
14 as the Warden of the
15 Florence Correctional Center

16 Christopher D. McGregor, in his
17 official capacity as Phoenix Field
18 Office Director for U.S. Immigration
19 and Customs Enforcement;

20 Todd Lyons, in his official capacity as
21 Acting Director of U.S. Immigration
22 and Customs Enforcement;

23 Markwayne Mullin, in his official
24 capacity as Secretary of the
25 Department of Homeland Security;
26 and

27 Todd Blanche, in his official capacity
28 as Acting Attorney General of the
United States,

Respondents.

I. INTRODUCTION

1. Petitioner Lester Bladimir Eguigure Avila entered the United States as an Unaccompanied Child and was granted Special Immigrant Juvenile Status (“SIJS”), a visa for abused, abandoned, or neglected youth. The U.S. Citizenship and Immigration Services (“USCIS”) has exclusive jurisdiction over SIJS and Petitioner’s application to Adjust Status to Legal Permanent Resident (“AOS”), which has been pending for two years. The Department of Homeland Security (“DHS”) released Petitioner on parole when he turned 18, and he has been living in Phoenix for over six years while his applications progress in USCIS. This status was reviewed and approved several times by the Immigration Court and DHS.
2. On February 12, 2026, Petitioner was arbitrarily re-detained. While detained, an Immigration Judge (“IJ”) terminated Petitioner’s removal proceedings so that he could be released and continue to pursue his AOS application with USCIS. DHS appealed the IJ’s decision, preventing Petitioner’s release. Petitioner is now detained indefinitely in the Florence Correctional Center.
3. Petitioner remains in immigration detention in violation of the Fourth and Fifth Amendments, and the Immigration and Nationality Act (“INA”) and its implementing regulations.
4. Because his arrest and continued detention are unlawful, Petitioner seeks a writ of habeas corpus ordering his immediate release and return to the status quo ante.

II. PARTIES

5. Petitioner Lester Bladimir Eguigure Avila is a young man from Honduras who is being detained at the Florence Correctional Center in Florence, Arizona. He is in custody of and under direct control of Respondents and their agents.
6. Respondent Luis Rosas Jr. is the Warden of the Florence Correctional Center, which detains individuals suspected of civil immigration violations pursuant to a contract with Immigration and Customs Enforcement ("ICE"). Respondent Rosas is the immediate physical custodian responsible for the detention of Petitioner. He is named in his official capacity.
7. Respondent Christopher D. McGregor is the director of ICE's Phoenix Field Office, which is responsible for ICE activities in Arizona and is responsible for the Florence Correctional Center. Respondent McGregor's place of business is in the District of Arizona, and he is an immediate legal custodian responsible for Petitioner's detention. He is named in his official capacity.
8. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to detention of immigrants during the removal process. He is named in his official capacity.
9. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security. He is named in his official capacity. In that capacity,

Respondent Mullin is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

10. Respondent Todd Blanche is the Acting Attorney General of the United States. He is named in his official capacity.

III. JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this Petition arises under the Constitution and laws of the United States, namely, the detention provisions of the Immigration and Nationality Act; the habeas corpus statute, 28 U.S.C. § 2241; the Due Process Clause of the Fifth Amendment; and the Fourth Amendment.

12. This Court may grant relief pursuant to the Habeas Corpus Act, 28 U.S.C. § 2241, *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedures Act (“APA”), 5 U.S.C. §§ 701–706; and the Court’s inherent equitable powers. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

13. Venue is proper in this district pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because at the time of filing Petitioner was detained in the Florence Correctional Center in Florence, Arizona, within the jurisdiction of this Court. A substantial part of the events and omissions giving rise to the claim

1 occurred in this district by officers of the United States acting in their official
2 capacity.

3 14. Exhaustion of administrative remedies is not required in this case because no
4 administrative remedies are available for claims based on violations of the
5 Constitution. Furthermore, exhaustion under these circumstances – where an IJ’s
6 Termination Order has been appealed by DHS, and where jurisdiction over the
7 underlying immigration claim lies with USCIS and Petitioner cannot pursue that
8 relief while detained – would be futile.
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11 **IV. FACTS AND PROCEDURAL HISTORY**

12 15. Petitioner is a young man from Honduras who presented himself at a port of entry
13 on or about April 9, 2019. Authorities determined him to be an unaccompanied
14 child and placed him in the custody of the Office of Refugee Resettlement
15 (“ORR”) under the statutory provisions of the INA governing the detention
16 of immigrant children encountered at the border, the Trafficking Victims
17 Protection and Reauthorization Act (“TVPRA”).
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20 16. On April 10, 2019, DHS issued a Notice to Appear (“NTA”) charging that
21 Petitioner was subject to removal under 8 U.S.C. § 1182(a)(7)(A)(i)(I) as an
22 immigrant who at the time of application for admission lacked a valid visa or
23 entry document. Exh. A.
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26 17. Attorneys from the Florence Immigrant and Refugee Rights Project have been
27 representing Petitioner since shortly after he was placed in ORR custody.
28

1 18. In 2019, Petitioner was declared a ward of the state in dependency
2 proceedings and has been diligently pursuing SIJS and AOS since then.

3 19. In 2020, USCIS granted Petitioner's SIJS application, also granting him Deferred
4 Action, Exh. B, meaning that DHS has determined he is a lower priority for
5 removal from the United States.¹
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7 20. While a minor, Petitioner also applied for asylum. This application remains
8 pending.
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10 21. Petitioner remained in ORR custody until he turned 18, when he was transferred
11 to adult custody. Two days later, after determining that he was not a flight risk or
12 a danger to the community, DHS released Petitioner on parole. Exh. C. There
13 were no conditions on his release.
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15 22. In 2022, the Immigration Court administratively closed Petitioner's removal
16 proceedings to allow him to seek relief in USCIS. The Department did not oppose.
17 Exh. D.
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19 23. In 2024, after his Priority Date became current, Petitioner filed a SIJS-based AOS
20 petition with USCIS. As a SIJS recipient, Petitioner is considered paroled into the
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22 ¹ Deferred Action is an act of discretion whereby DHS considers a noncitizen, here SIJ
23 recipients waiting to adjust status, to be lawfully present in the United States for the
24 period deferred action is in effect. PA-2022-10: Special Immigrant Juvenile
25 Classification and Deferred Action, *available*
26 *at* [www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-](http://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf)
27 [SIJAndDeferredAction.pdf](http://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf). Deferred Action prevents immigration authorities from
28 physically removing a recipient from the United States, unless that status is
formally terminated. *Id.*

1 United States for purposes of AOS. 8 U.S.C. §1255(h). USCIS is now actively
2 processing this application, as evidenced by a Request for Evidence recently
3 received by counsel.
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5 24. USCIS has exclusive jurisdiction over both SIJS and Petitioner's SIJS-based
6 AOS; These applications cannot be adjudicated in EOIR. 8 CFR § 204.11(h),
7 8 CFR § 1245.2 (a)(1)(ii).
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9 25. USCIS cannot adjudicate Petitioner's application while he is detained. The
10 USCIS Policy Manual says that USCIS cannot process a SIJS-based AOS
11 application if the applicant is in removal proceedings. 6 USCIS Policy Manual pt.
12 J, ch. 4 n.2 ("If a [noncitizen with special immigrant juvenile classification] is in
13 removal proceedings, the immigration court must terminate the proceedings
14 before USCIS can adjudicate the adjustment application."). This USCIS policy
15 was also cited by the Attorney General in *Matter of Coronado Acevedo* as
16 justifying termination or dismissal of removal proceedings where necessary for
17 the respondent to be eligible to seek immigration relief with USCIS. 28 I. & N.
18 Dec. 648, 649 (2022). Additionally, under a new policy, ICE will not facilitate a
19 USCIS biometrics appointment for detained applicants and USCIS's policy is that
20 this may result in the application being deemed abandoned. *See* USCIS Updates
21 Policy on Biometrics for Detainees, Release Date 12/05/2025, *available at*
22 [https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-on-biometrics-for-](https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-on-biometrics-for-detainees)
23 [detainees](https://www.uscis.gov/newsroom/alerts/uscis-updates-policy-on-biometrics-for-detainees). Petitioner missed a biometrics appointment during his current detention.
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1 26. In 2024, Petitioner was convicted of Accessory After the Fact to Enter the United
2 States at an Improper Time and Place, a petty offense, and served a 30-day
3 sentence in the Florence Correctional Center. Exh. E. Upon his release from
4 criminal detention, ICE chose not to place him in immigration detention.
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6 27. In 2025, DHS asked the Immigration Court to revoke administrative closure and
7 reopen removal proceedings. The IJ denied this request. Exh. F.
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9 28. On February 12, 2026, Petitioner was stopped by immigration authorities as he
10 arrived at work in the morning. He was surrounded by five or six officers, who
11 had arrived in three unmarked cars. One officer pointed a handgun at his face,
12 ordered him out of the car, and kept the gun pointed at his face until he was in
13 handcuffs. At no point did Petitioner resist or attempt to flee, which he insists he
14 would not do because he knows his immigration case is in order. The officers did
15 not know Petitioner's name, called him a "p*** inmigrante," or "f***ing
16 immigrant," told him he was from Venezuela (he isn't), and that he had missed
17 court in 2022 (he didn't). The officers did not allow Petitioner to show his
18 identification or the proof of the status of his immigration proceedings. Despite
19 the scene officers made in front of his place of employment, his employer has
20 written a letter saying they will continue to employ him upon his release from
21 detention.
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26 29. Petitioner obtained a copy of the arrest warrant in this matter; It appears that
27 officers filled it out after Petitioner's arrest. Exh. G. Additionally, the Notice of
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1 Custody Determination and the form cataloging Petitioner's alleged phone call
2 with family after his arrest were not signed by the Petitioner. Exh. H. Each form
3 has a "Signature of Alien" or "Detainee's Signature" line with a signature. That is
4 not Petitioner's signature. Petitioner was not permitted to call his family.
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6 30. Petitioner was therefore re-detained without notice or hearing, and without the
7 arresting agents knowing who he was, where he was from, or why they were
8 detaining him. He was not charged with additional grounds of removability or
9 inadmissibility and was not alleged to pose a danger or be a flight risk. DHS now
10 claims Petitioner's detention is justified by Petitioner's 2024 petty conviction, but
11 that conviction predates two determinations that his release was appropriate.
12 There are no changed circumstances since Petitioner was released from FCC after
13 serving his 30-day sentence in 2024, or since the IJ rejected DHS's request to
14 reopen removal proceedings in 2025.
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18 31. Furthermore, the 2024 conviction does not by law meet the definition of
19 "smuggling," 8 USC § 1182(a)(6)(E), as claimed by DHS, and does not trigger
20 the ground of inadmissibility that they cite, 8 USC § 1182(a)(6)(E)(i).² Counsel
21 argued this in the 2026 proceedings before the IJ concluded that this was not a
22 question for the Immigration Court but rather USCIS, who has exclusive
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26 ² See *Matter of I-M-*, 7 I&N Dec 389 (BIA 1957), *Aguilar-Gonzales*, 534 F.3d 1204 (9th
27 Cir. 2008), *U.S. v Lopez*, 484 F.3d 1186 (9th Cir. 2007), *Flores-Blanco*, 623 F.3d 912
28 (9th Cir. 2010), *Altamirano v. Gonzales*, 427 F.3d 586, 591-96 (9th Cir. 2005).

jurisdiction. As further support for the IJ's conclusion, even if USCIS were to find that the 2024 case triggered a ground of inadmissibility, as a SIJS recipient, Petitioner has a waiver available under 8 USC § 1255 (h)(2)(B). USCIS has exclusive jurisdiction over this question as well.

32. After several written motions and two hearings, on March 24, 2026, the Immigration Court terminated removal proceedings. Exh. I. In terminating, the IJ found that "his application is ripe for adjudication with USCIS." *Id.* The IJ noted that Petitioner is "detained at government expense," found Petitioner's reasoning for termination "persuasive," *id.*, and stated on the record that the Immigration Court does not have jurisdiction to resolve this matter. This is the third IJ to so find.

33. Termination of removal proceedings would have left Respondents with no statutory basis to continue Petitioner's detention. Petitioner has not been released because DHS filed a Notice of Appeal of the Termination Order,³ initiating a proceeding with no imminent resolution or predictable duration, prolonging Petitioner's detention indefinitely.

³ In the Department's Notice of Appeal, Exh. J, they emphasize that the hearing in Immigration Court lasted "four minutes," failing to mention that the short hearing was following up on a longer hearing held six days before. For the first hearing, DHS counsel had submitted invalid and outdated law and argument. DHS counsel apologized to the Court and the Court gave him five days to file an amended position, belying the Department's argument that the IJ "did not allow the Department to articulate its argument." *Id.* The IJ had in fact given them extra time to do so and ruled only after they did.

V. LEGAL FRAMEWORK AND ARGUMENT

A. Fifth Amendment Procedural and Substantive Due Process

34. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. These protections extend to noncitizens present in the United States. *See, e.g., Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) ("It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings," *quoting Reno v. Flores*, 507 U.S. 292, 306 (1993)).

35. Immigration detention is civil and must bear a "reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690; *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective), *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992), *Jones v. United States*, 463 U.S. 354, 361, 368 (1983), *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), *Jones v. Blanas*, 393 F.3d 918, 931 (2004). The Supreme Court has emphasized that "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). The Supreme Court has also repeatedly emphasized that due process generally requires a hearing

1 before the government deprives a person of liberty or property. *Zinerman v. Burch*,
2 494 U.S. 113, 127 (1990).

3 36. Courts have identified only two legitimate purposes for immigration detention:
4 mitigating flight risk pending removal and preventing danger to the community.
5 See *Zadvydas*, 533 U.S. at 690-91.

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7 37. By statute and regulation, DHS has the authority to re-arrest a noncitizen and
8 revoke their release pending the outcome of removal proceedings only when there
9 has been a change in circumstances since the individual's prior release. See
10 *Panosyan v. Mayorkas*, 854 Fed.Appx. 787, 788 (9th Cir. 2021) ("Thus, absent
11 changed circumstances ... ICE cannot redetain Panosyan."). Additionally, any
12 change in circumstances must be "material." *Saravia v. Sessions*, 280 F.Supp.3d
13 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905
14 F.3d 1137 (9th Cir. 2018).

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17 38. In immigration detention cases, courts balance the factors set forth in *Mathews v.*
18 *Eldridge* in determining the process due: (1) "the private interest that will be
19 affected by the official action;" (2) "the risk of an erroneous deprivation of such
20 interest through the procedures used, and the probable value, if any, of additional
21 or substitute procedural safeguards;" and (3) "the Government's interest,
22 including the function involved and the fiscal and administrative burdens that the
23 additional or substitute procedural requirement would entail." 424 U.S. 319, 335
24 (1976).
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1 39. Applying the *Mathews* framework, numerous federal district courts have found
2 that noncitizens have a substantial, protected liberty interest after being released
3 from custody pending the outcome of removal proceedings, and that due process
4 requires notice and a pre-deprivation hearing before re-arrest and re-detention.
5 See, e.g., *Lopez Sarmiento v. Perry*, No. 1:25-CV-01644, 2026 WL 131917 (E.D.
6 Va. Jan. 19, 2026); *Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014-CNS, 2026
7 WL 91470 (D. Colo. Jan. 13, 2026); *A.C.J. v. Hermosillo*, No. 2:25-CV-02486,
8 2026 WL 73857 (W.D. Wash. Jan. 9, 2026); *Sergio S.M. v. Noem*, 1:25-CV-
9 019731, 2025 WL 3768206 (E.D. Cal. Dec. 31, 2025); *Alvarez v. Rivas*, CV-25-
10 02943 (D. Ariz. Oct. 7, 2025); *Rosado v. Figueroa*, CV-25-02157 at 21 (D. Ariz.
11 Aug 11, 2025); *Sanchez-Hernandez v. Figueroa*, 2:25-CV-2351, Dkt. 33 (D. Ariz.
12 Aug. 5, 2025); *Mata Velasquez v. Kurzdorfer*, 25-CV-493, 2025 WL 1953796, at
13 *16 (W.D.N.Y. July 16, 2025); *Guillermo M. R. v. Kaiser*, 25-CV-05436, 2025
14 WL 1983677, at *4 (N.D. Cal. July 17, 2025); and *Ortega v. Bonnar*, 415 F. Supp.
15 3d 963, 970 (N.D. Cal. 2019). These courts found that the appropriate remedy is
16 immediate release and return to the status quo ante, i.e., the last uncontested status
17 that preceded the pending controversy. *Id.*

18 40. Federal district courts have similarly found that a noncitizen's substantial liberty
19 interest in their release pending resolution of removal proceedings is further
20 strengthened when they were granted SIJS status and provided a lawful path for
21 remaining in the United States permanently. These individuals have a reasonable
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1 expectation of the ability to pursue such a path free from arbitrary arrest and
2 redetention. *See, e.g., Lopez Sarmiento, Alfaro Herrera and Sergio S.M., supra.*

3 **1. Petitioner's Detention Violates His Fifth Amendment Right to Procedural**
4 **Due Process.**

5 41. Petitioner was provided a substantial liberty interest when he was released from
6 detention in 2019 and again in 2024. This liberty interest was strengthened when
7 Petitioner was granted SIJS with Deferred Action and provided a lawful path to
8 remain permanently in the United States. It was further strengthened when his
9 removal proceedings were administratively closed in 2022, when that
10 administrative closure was reviewed and upheld in 2025, and again when removal
11 proceedings were terminated in 2026.
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14 42. Respondents justified Petitioner's recent arrest by checking boxes on a template
15 form titled "Warrant for Arrest of Alien." Exh G. This form is dated the same day
16 as Petitioner's arrest. Petitioner was arrested first thing in the morning as he
17 arrived at work, officers did not know who he was or why they were arresting him
18 (see above), suggesting the warrant was filled out after his arrest. No
19 individualized custody determination appears to have been made,⁴ Petitioner
20 received no notice, and the arrest warrant was not reviewed by an independent
21 adjudicator.
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26 ⁴ This is according to the documents Petitioner received through a FOIA request. These
27 documents are heavily redacted. If an individualized finding was made, it was not
28 disclosed to Petitioner.

1 43. Respondents failed to meet the requirements for procedural due process by
2 overriding their (and the Immigration Court's) earlier decisions regarding custody
3 and the appropriate path for Petitioner's case without notice, hearing or any form
4 of rational process. As a remedy for this unjust deprivation of liberty, Petitioner
5 should be immediately released.
6

7 44. In a recent case that is remarkably similar to Petitioner's, *Garcia Carias v. Rosas*,
8 this Court found that the Petitioners were deprived of procedural due process,
9 granted their Petition for Writ of Habeas Corpus and ordered their immediate
10 release. No. 2:26-CV-00672 (D. Ariz. Feb. 13, 2026). As in the instant case,
11 Petitioners' immigration proceedings had been terminated so they could pursue
12 SIJS and AOS, and they were later re-detained without appropriate process. *Id.* In
13 *Garcia Carias*, as in Petitioner's case, an IJ terminated removal proceedings and
14 DHS appealed the termination order. This did not prevent the District Court from
15 granting the Petition and ordering Petitioners' release from detention. *Id.*
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19 **2. Petitioner's Detention Violates His Fifth Amendment Rights to**
20 **Substantive Due Process.**

21 45. Respondents have not asserted that Petitioner poses a flight risk or a danger to
22 the community. Petitioner's detention is further unlawful because DHS has
23 already affirmatively consented to his continued presence in the United States. By
24 granting SIJS and deferred action, DHS necessarily concluded that Petitioner
25 merits humanitarian protection and that his presence is lawful pending AOS.
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1 USCIS policy states that “deferred action and related employment authorization
2 are intended to help to protect Special Immigrant Juveniles who cannot apply for
3 adjustment of status solely because they are waiting for a visa number to become
4 available. This process furthers congressional intent to provide humanitarian
5 protection for abused, neglected, or abandoned noncitizen children for whom a
6 juvenile court has determined that it is in their best interest to remain in the United
7 States.” USCIS Policy Alert 2022-10. Petitioner received a grant of deferred
8 action from the government for the purpose of protecting him as his case
9 progresses towards lawful permanent residence in the United States. In re-
10 detaining Petitioner, the government has again contradicted its own policy.
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14 46. Respondents attempt to justify Petitioner’s detention by citing his 2024 petty
15 conviction, which again predates subsequent DHS and IJ decisions that detention
16 was not appropriate. His recent arrest and continued detention under these
17 circumstances is arbitrary, punitive and unjustified. It is indefinite as well, as
18 Petitioner currently remains detained only because DHS appealed the IJ’s
19 termination order, and the duration of the appellate process is impossible to
20 predict.
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23 **B. The Fourth Amendment**

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25 47. The Fourth Amendment protects the right of the people to be secure in their
26 persons against unreasonable seizures. U.S. Const. Amend. IV. This “of course
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1 applies to arrest as well as search warrants.” *Aguilar v. Texas*, 378 U.S. 108, 112
2 n.3 (1964), *Ker v. California*, 374 U.S. 23, 32-33 (1963) (“Implicit in the Fourth
3 Amendment’s protection from unreasonable searches and seizures is its
4 recognition of individual freedom. That safeguard has been declared to be ‘as of
5 the very essence of constitutional liberty’”).

7 48. Any seizure must be supported by probable cause, which is “strictly tied to and
8 justified by the circumstances which rendered [the initiation of the seizure]
9 permissible.” *Terry v. Ohio*, 392 U.S. 1, 18 (1968). When the purpose of a seizure
10 is accomplished, “[f]urther seizure requires a court order or new cause” as “the
11 original probable cause determination is no justification.” *Williams v. Dart*, 967
12 F.3d 625, 634 (7th Cir. 2020). “When those purposes are spent, further seizure is
13 unreasonable.” *Id.*

16 49. This requirement “guards against precipitate rearrest” and applies to immigration
17 detention. *Carlson v. Landon*, 342 U.S. 524, 546-47 (1952) (Detention in civil
18 proceedings for deportation follows the same principles as detention in criminal
19 matters; “a warrant once executed is exhausted”). *Also see United States ex rel.*
20 *Heikkinen v. Gordon*, 190 F.2d 16, 19 (8th Cir. 1951) (rearrest without a change
21 of circumstances since the prior release was an abuse of discretion); *Saravia*, 280
22 F.Supp. 3d at 1176 (“Once a noncitizen has been released, the law prohibits
23 federal agents from re-arresting him merely because he is subject to removal
24 proceedings.”).

1 50. Furthermore, the manner of arrest must be objectively reasonable based on the
2 circumstances. *Terry v. Ohio*, 392 U.S. at 21, *Tennessee v. Garner*, 471 U.S. 1
3 (1985) (the reasonableness of a particular seizure depends on how it is carried
4 out), *Graham v. Connor*, 490 US 386, 396 (1989) (A reasonableness inquiry
5 requires careful attention to the facts and circumstances, including the severity of
6 the crime at issue, whether the suspect poses an immediate threat to the safety of
7 the officers or others, and whether he is actively resisting arrest or attempting to
8 evade arrest by flight). These standards apply equally to individuals suspected of
9 immigration offenses. *See United States v. Brignoni-Ponce*, 422 U. S. 873 (1975).

12 **1. Petitioner's Detention Violates the Fourth Amendment.**

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14 51. Since his release from detention in 2019, Petitioner has made substantial
15 connections to the country and enjoys rights guaranteed by the Fourth
16 Amendment, which "applies as much to illegal aliens inside this country as it does
17 to citizens." *See Carcamo v. Holder*, 713 F.3d 916, 921 (8th Cir. 2013). Petitioner
18 holds lawful work authorization, possesses a valid driver's license, and is engaged
19 to a U.S. citizen. He has appeared for every court date and has met every
20 requirement of his proceedings in USCIS and EOIR. His presence at liberty in
21 this country has been reviewed and approved several times.

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24 52. Petitioner was re-arrested based on the same facts that existed before earlier
25 decisions to release him, without any intervening justification. Additionally, the
26 manner of Petitioner's arrest was disproportionate to the government's
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1 justification for that arrest and violated the basic principles of competent and
2 legitimate policing. The arrest was therefore unacceptable under the standards of
3 the Fourth Amendment.
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5 **C. The INA, its implementing regulations, and the APA**

6 53. The INA establishes the rules for detention, release and re-detention of
7 noncitizens. 8 USC § 1225 *et seq.* Title 8 of the Code of Federal Regulations
8 implements the INA. 8 C.F.R. § 241.4 states that ICE may revoke release only if
9 the noncitizen violates a condition of parole, lists the four narrow reasons ICE
10 may revoke release and re-detain a noncitizen, and details the process that must
11 be followed. 8 C.F.R. § 241.13 addresses prolonged detention and states that
12 continued detention is only authorized if removal is significantly likely in the
13 reasonably foreseeable future.
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16 54. Under the INA, DHS “at any time may revoke a bond or parole” issued pending
17 a removal decision and then “rearrest the alien under the original warrant.” 8 USC
18 § 1226(b). Notwithstanding the breadth of this statutory language, the BIA has
19 held and the 9th Circuit has affirmed that DHS’s authority is limited where a
20 previous release determination was made, and “any noncitizen released on bond
21 is entitled to this process.” *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1197 (N.D.
22 Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
23 2018).
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1 55. Federal courts can, through the APA, “hold unlawful and set aside agency action”
2 that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
3 accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable in habeas
4 proceedings. 5 U.S.C. § 703 (providing that judicial review of agency action
5 under the APA may proceed by “any applicable form of legal action, including
6 actions for declaratory judgments or writs of prohibitory or mandatory injunction
7 or habeas corpus”). The APA affords a right of review to a person who is
8 “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702. Respondent’s
9 arrest and continued detention of Petitioner justifies such review.
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13 **1. Petitioner’s Detention violates the INA and the regulations that implement**
14 **it, and the APA provides a remedy.**

15 56. Petitioner’s detention is in violation of the statutory detention provisions of the
16 INA, which further justifies his immediate release. DHS previously released the
17 Petitioner, twice, based on the standards of the INA. It released him from
18 immigration detention in 2019 and declined to detain him upon his release from
19 federal criminal detention in 2024.
20

21 57. The appropriateness of these custody determinations that resulted in Petitioner’s
22 ability to pursue immigration relief out of custody was affirmed by the
23 Immigration Court in 2022, 2025, and again in 2026.
24

25 58. By re-arresting and re-detaining Petitioner without applying the standards of the
26 INA and without following the procedures of the CFR, Respondents have
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1 unlawfully revoked the prior detention decision, and the APA justifies this
2 Court's intervention.

3 **VI. CLAIMS FOR RELIEF**

4 **FIRST CLAIM**

5 **Violation of the Due Process Clause of the Fifth Amendment to the U.S.**
6 **Constitution – Procedural Due Process**

7 59. Petitioner realleges and incorporates by reference the paragraphs above.

8
9 60. The government granted Petitioner a profound liberty interest by releasing him
10 from immigration custody, allowing him to live freely and pursue relief from
11 removal. There was no notice or showing that Petitioner's re-detention was
12 justified by a change in circumstances since his release from immigration
13 detention in 2019, since his release from criminal detention in 2024 and since the
14 several times his case was reviewed by an IJ between 2019 and 2026.
15

16
17 61. This violation of Petitioner's procedural due process rights has unlawfully
18 deprived Petitioner of his protected interest in liberty for over two months.
19

20 **SECOND CLAIM**

21 **Violation of the Due Process Clause of the Fifth Amendment to the U.S.**
22 **Constitution – Substantive Due Process**

23 62. Petitioner realleges and incorporates by reference the paragraphs above.

24
25 63. Respondents have failed to show a legitimate purpose for Petitioner's detention.
26 Respondents have also failed to show that the indefinite nature of this detention –
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1 as the JJ's termination order is reviewed by appellate courts – is justified. This
2 detention is arbitrary and excessive and violates Petitioner's substantive due
3 process rights.
4

5 **THIRD CLAIM**

6 **Violation of the Fourth Amendment to the U.S. Constitution – Unlawful** 7 **Arrest**

8 64. Petitioner realleges and incorporates by reference the paragraphs above.

9 65. The manner of Petitioner's arrest detailed above – detain first, justify later –
10 violates the Fourth Amendment's prohibition against arbitrary search and seizure,
11 especially in light of the fact that the justification claimed later (the 2024 petty
12 conviction) had already been reviewed and found not to justify Petitioner's
13 detention. No new or exigent circumstances justified Petitioner's re-arrest and re-
14 detention. Additionally, the way agents executed the arrest was grossly
15 disproportionate to the justification.
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18 **FOURTH CLAIM**

19 **Violation of the INA and its implementing regulations**

20 66. Petitioner realleges and incorporates by reference the paragraphs above.

21 67. Petitioner's detention is in violation of the INA and the regulations that
22 implement it, and the APA allows for this Court's review.
23

24 68. ICE has deviated from its own regulations by re-detaining Petitioner without
25 materially changed circumstances and by continuing to detain Petitioner after an
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1 IJ terminated his removal proceedings. This agency decision is arbitrary,
2 capricious, and contrary to law, and Petitioner asks this Court to declare it
3 unlawful and set it aside.

4
5 **VII. REQUEST FOR RELIEF**

6 WHEREFORE, Petitioner respectfully requests that this Court:

- 7 a. Assume jurisdiction over this matter;
- 8 b. Enjoin Respondents from transferring Petitioner away from the
9 jurisdiction of this District pending these proceedings;
- 10 c. Order Respondents to show cause why the writ should not be granted
11 within three days, and set a hearing on this Petition within five days of the return, as
12 required by 28 U.S.C. § 2243;
- 13 d. Declare that Petitioner's re-arrest and re-detention violates the
14 Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and
15 the Fourth Amendment;
- 16 e. Issue a Writ of Habeas Corpus ordering Respondents to immediately
17 release Petitioner from custody and return him to Phoenix, Arizona, at Respondents'
18 expense; under the same conditions that existed prior to his unlawful re-arrest and re-
19 detention;
- 20 g. Order that Respondents cannot re-detain Petitioner without notice
21 and a pre-deprivation hearing before a neutral adjudicator where the government bears
22 the burden of justifying re-detention by clear and convincing evidence;
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1 h. Order the immediate return of all of Petitioner's property seized
2 upon his detention;

3 i. Award reasonable attorney's fees and costs pursuant to the Equal
4 Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
5

6 j. Grant such further relief as this Court deems just and proper.
7

8 Dated: April 16, 2026

Respectfully submitted,

9 /s/ Amanda Hammond
10

11 Amanda Hammond, 030366
12 Florence Immigrant and Refugee Rights Project
13 P.O. Box 32670
14 Phoenix, AZ 85064
15 ahammond@firrp.org
16 (602) 760-5184
17

18 **VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF**
19 **PURSUANT TO 28 U.S.C. § 2242**

20 I am submitting this verification on behalf of the Petitioner because I am
21 Petitioner's attorney. I hereby verify that the statements made in the attached Petition
22 for Writ of Habeas Corpus are true and correct to the best of my knowledge.

23 Dated: April 16, 2026

Respectfully submitted,

24 /s/ Amanda Hammond
25
26
27
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