

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

J.R.C., a minor child,

Case No. 26-1469

Petitioner,

**VERIFIED
PETITION FOR A
WRIT OF HABEAS
CORPUS
PURSUANT TO 28
U.S.C. § 2241 OR
ORDER TO
SHOW CAUSE
WITHIN THREE
DAYS**

v.

ANGIE SALAZAR, in her official capacity as Acting Director of the Office of Refugee Resettlement; **CRISTINA MARQUEZ**, in her official capacity as Facility Director of the El Paso ORR Upbring Facility; **MARKWAYNE MULLIN**, in his official capacity as U.S. Secretary of Homeland Security; **TODD BLANCHE**, in his official capacity as Acting Attorney General of the U.S.; **DAREN K. MARGOLIN**, in his official capacity as Director of the Executive Office for Immigration Review; **U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; U.S. OFFICE OF REFUGEE RESETTLEMENT,**

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 OR ORDER TO
SHOW CAUSE WITHIN THREE DAYS

I. INTRODUCTION

1. Petitioner J.R.C. is an 11-year-old boy whom ICE decided to arrest without a warrant in front of his family's home and separate from his family. He is currently detained in ORR custody in El Paso, Texas despite his family in that same city being willing, able, and anxious to reunify with him. He holds valid TPS, which proscribes detention.
2. When J.R.C. entered the United States in 2023, the government released him on his own recognizance, finding that this young boy was not a flight risk or a danger to the community. The Fifth Amendment's procedural due process protections thus necessitate J.R.C.'s release for two reasons. First, Respondents' *re*-detention of J.R.C. after his release, without a *pre*-deprivation hearing, violates J.R.C.'s due process rights. *See Mendoza v. Noem*, No. 5:26-CV-0728-JKP (W.D. Tex. Feb. 26, 2026) (attached) (granting relief in same set of circumstances); *see also Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025). Accordingly, J.R.C. should be released. Second, Respondents' detention of J.R.C. without the procedural protection of a *post*-deprivation hearing likewise violates procedural due process. *See Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025). The remedy for such a violation is release. *See Mendoza*, No. 5:26-CV-0728-JKP at p. 15.
3. J.R.C.'s detention in ORR custody also violates his substantive due process rights under the Fifth Amendment, because this minor child is neither a flight risk nor a danger and because his detention infringes on his constitutional right to family unity and familial association. "[T]he interest in being free from physical detention" by the state is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). A child's interest in being free from confinement is no narrower than that of an adult. *In re Gault*, 387 U.S. 1, 13 (1967)

(“neither the Fourteenth Amendment nor the Bill of Rights is for adults alone”); *see also* *Reno v. Flores*, 507 U.S. 292, 316 (1993) (O’Connor, J. and Souter, J., concurring). Additionally, children and parents also have a well-elaborated constitutional right to live together without government interference. *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

4. ICE’s senseless, warrantless arrest of 11-year-old J.R.C. on April 28, 2026 also violated the Fourth Amendment, the 8 U.S.C. § 1357(a)(2) statute, and the agency’s own procedures under ICE Directive 11064.4 that ICE must follow when attempting to detain a minor child.
5. Further, the TPS statute provides that “[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien’s immigration status in the United States.” 8 U.S.C. § 1254a(d)(4) (emphasis added); *see also* *Sanchez Puentes v. Garite*, 780 F. Supp. 3d 682, 697–98 (W.D. Tex. 2025) (finding confinement of TPS holders unlawful under the statute). DHS detained J.R.C. in contravention of the statute and transferred him to the custody of ORR, where he is suffering greatly from the forced and needless separation from his family. Because of this prohibition on detention of TPS holders, J.R.C.’s ORR custody violates his substantive due process rights because such detention does not serve any legitimate governmental purpose and is therefore unconstitutionally arbitrary and punitive in violation of the Due Process Clause.
6. While former DHS Secretary Kristi Noem purported to rescind TPS for Venezuela, for the purposes of this habeas petition, J.R.C.’s TPS status must be deemed valid. On December 10, 2025, the federal district court of the Northern District of California granted declaratory relief and declared unlawful Respondent Noem’s vacatur of the January 17, 2025 extension of TPS for Venezuela and subsequent termination of Venezuela’s 2023 designation in a case brought by the membership organization National TPS Alliance. *Nat’l TPS All. v. Noem*, No. 25-cv-

01766-EMC, 2025 WL 3539156 at *3 (N.D. Cal. Dec. 10, 2025) (hereinafter “NTPSA” and “December 10 Order”). The December 10 Order in NTPSA has not been stayed by any court and remains in full effect. Accordingly, the December 10 Order has preclusive effect in Petitioner’s habeas case, controlling the legal question of whether members of the National TPS Alliance (NTPSA), such as Petitioner, retain their TPS status. This Court must thus find Petitioner’s detention unlawful and order his release.

7. J.R.C. has now been detained by the government for almost a month despite the unambiguous statutory command that TPS holders may not be detained.
8. J.R.C. respectfully requests this Court grant him a Writ of Habeas Corpus and order Respondents to immediately release him from the government’s custody. He is seeking habeas relief under 28 U.S.C. § 2241, and asking the Court to “award the writ or issue an order directing the respondent[s] to show cause why the writ should not be granted,” within *three days*, as prescribed by statute, 28 U.S.C. § 2243.

II. CUSTODY

9. Petitioner-child J.R.C. is in the physical custody of Respondents. He is detained in an Office of Refugee Resettlement facility in El Paso, Texas. He is under the direct control of Respondents and their agents.

III. JURISDICTION AND VENUE

10. Jurisdiction is proper under 28 U.S.C. §§ 1331, 2241, and the Suspension Clause, U.S. Const. art. I, § 9, clause 2.
11. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who challenge the lawfulness of their detention under federal law. *Demore v.*

Kim, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687; *Maldonado v. Macias*, 150 F. Supp. 3d 788, 794 (W.D. Tex. 2015).

12. Venue is proper in the United States District Court for the Western District of Texas because at least one Respondent is in this District, the Petitioner is detained in this District, and the Petitioner's immediate physical custodian is in this District. 28 U.S.C. § 1391(b).

IV. PARTIES

13. Petitioner J.R.C. is an eleven-year-old boy and national of Venezuela. Petitioner-child J.R.C. is currently detained in the custody of Respondents at the Upbring ORR facility in El Paso, Texas.
14. Respondent Angie Salazar is sued in her official capacity as Acting Director of the Office of Refugee Resettlement, which has jurisdiction over the El Paso ORR Upbring Facility. Respondent Salazar is a legal custodian of J.R.C..
15. Respondent Cristina Marquez is sued in her official capacity as Facility Director of the El Paso ORR Upbring Facility, where J.R.C. is detained. Respondent Marquez is a legal custodian of J.R.C.
16. Respondent Markwayne Mullin is sued in his official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security, the agency tasked with enforcing immigration laws, Respondent Mullin is J.R.C.'s ultimate legal custodian.
17. Respondent Todd Blanche is sued in his official capacity as Acting Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review ("EOIR"), Respondent Blanche is responsible for the administration of the immigration laws as exercised by EOIR and is legally responsible

for the pursuit of J.R.C.'s detention and removal. In that capacity, Respondent Blanche is a legal custodian of J.R.C.

18. Respondent Darren K. Margolin is sued in his official capacity as Director of EOIR. In that capacity, Respondent Margolin is responsible for administration of the immigration laws pursuant to 8 U.S.C. § 1103(g) and is legally responsible for the pursuit of J.R.C.'s detention and removal. Respondent Margolin is a legal custodian of J.R.C.
19. Respondent Department of Health and Human Services is the federal agency that houses the Administration for Children & Families, within which the Office of Refugee Resettlement sits. In that capacity, Respondent DHHS is a legal custodian of J.R.C.
20. Respondent Department of Homeland Security is the federal agency responsible for implementing and enforcing many provisions of the INA, including those involving the detention and physical removal of noncitizens.
21. Respondent Immigration and Customs Enforcement is the agency within DHS responsible for the detention and physical removal of noncitizens.
22. Respondent Executive Office for Immigration Review is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including in bond hearings.
23. Respondent Office of Refugee Resettlement is the agency within DHHS responsible for the detention of unaccompanied noncitizen children.

V. STATEMENT OF FACTS

A. Petitioner-Child's Facts

Background

24. J.R.C. is 11 years old. He is a national of Venezuela. He entered the United States in the summer of 2023 alongside his father and uncle.

25. Since coming to the United States in 2023, J.R.C. and his father have established a life in El Paso, Texas. J.R.C. has attended elementary school in El Paso for over two years and is currently in the third grade. Prior to his unlawful arrest and detention, J.R.C. was living with his father, his stepmother, and his nine-month-old U.S. citizen brother in a residential neighborhood in El Paso.
26. J.R.C. has experienced numerous challenges in his young life that his loving family and stable home environment helped him weather prior to his detention. At age 8, J.R.C. experienced a fraught journey to the United States when his family fled persecution in Venezuela. Since then, J.R.C. has been afraid of sleeping alone and frequently wakes up shouting in the night, reaching out to his father to calm him down.
27. J.R.C. also previously had serious difficulties in reading and writing and needed to get special educational services at school. His teachers also recommended therapy to address his challenges in the classroom, which he received and is now able to read and write. Both J.R.C.'s father and stepmother frequently spend time at home helping J.R.C. improve his reading skills.
28. Additionally, J.R.C. has physical health problems that have landed him in the hospital more than once. He suffers from asthma attacks and was hospitalized with a fever soon after entering the United States in the summer of 2023. J.R.C. was also hospitalized in December 2025 with a serious fever that caused him to experience seizures, hallucinations, and chills.
29. J.R.C. is very close with his father, stepmother, and infant brother. J.R.C.'s father made sure to spend time with J.R.C. even while working hard to support the family as the sole breadwinner, and would often take his son to the park to play on the weekends, to church, or out to eat. J.R.C.'s stepmother treated J.R.C. like her own son, dropping him off and picking

him up from school, taking care of him at home, and patiently teaching him how to read. J.R.C. also loves to spend time playing with his 9-month-old brother.

Procedural History

30. On July 10, 2023, DHS issued J.R.C. a Notice to Appear charging J.R.C. as subject to removal under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act [8 U.S.C. § 1182(a)(6)(i)] as a noncitizen who was not admitted or paroled after inspection by an immigration officer. *See* Ex. A.
31. DHS also released J.R.C. on his own recognizance on July 10, 2023, alongside his father. *See* Ex. A.
32. On April 18, 2024, an Immigration Judge dismissed J.R.C. and his father's immigration proceedings on DHS's motion because they had applied for TPS. *See* Ex. B.
33. J.R.C. and his father were initially granted TPS in 2024 pursuant to the 2023 designation of TPS for Venezuela. *See* Ex. C. They applied to renew their TPS by the re-registration deadline in 2025, extending their TPS by at least an additional 18 months until October 2, 2026. *See* Exs.D, E (ordering the government to extend the USCIS re-registration past the September 10, 2025 deadline because of problems with the online portal).
34. J.R.C. and his father are members of the National TPS Alliance, a membership organization for TPS holders. *See* Ex. F. J.R.C. and his father joined the National TPS Alliance voluntarily.
35. On April 28, 2026, ICE arrested and detained both J.R.C. and his father.
36. In the afternoon of April 28, 2026, J.R.C.'s father walked out of the front door of his ground-floor apartment to go to work. His car was parked at the curb directly in front of the

apartment. J.R.C.'s father unlocked the car and sat down in the driver's seat, turning on the car.

37. Suddenly, several ICE agents pulled their vehicles up next to his father's car while he was still parked. Their uniforms had the words ICE and POLICE on them. An ICE agent opened the door on the driver's side and handcuffed him.
38. J.R.C.'s father asked the ICE agents why they were arresting him and whether they had a warrant from a judge. He told the agents he had TPS. The agents did not show him any document, a warrant or otherwise.
39. J.R.C.'s stepmother opened the front door and ran out with the 9-month-old baby in her arms and J.R.C. by her side. After speaking with the agents and J.R.C.'s father, his stepmother ran back inside to get the TPS documentation. Although she had the TPS documentation with her when she ran back out, the agents did not look at it. She also asked them if they had a warrant from a judge.
40. An ICE agent put J.R.C.'s handcuffed father in the agent's vehicle. At this point, J.R.C. was standing in front of the family's home. When J.R.C.'s father indicated that J.R.C. was his son, an ICE agent picked up J.R.C. and physically put him in the vehicle next to his father, despite his stepmother being present.
41. ICE agents then drove J.R.C. and his father to a detention center in El Paso and placed them in a cell. On information and belief, that detention center was the El Paso Service Processing Center. J.R.C. and his father then spent approximately ten hours in that cell.
42. Around midnight, several officials entered the cell. J.R.C.'s father was holding J.R.C., but when he saw the officials put on gloves and they told him that they were physically going to

take J.R.C. from him, he let go so that J.R.C. would not get hurt by them taking him forcefully. J.R.C. was crying as the officials took him away from his father.

43. On or around April 29, 2026, DHS or its agents took J.R.C. to a hotel room without his father or any other family member. Separately, J.R.C.'s father was transported to ERO El Paso Camp East Montana, where he has remained ever since.
44. On information and belief, J.R.C. was held in a series of hotel rooms in DHS custody and was not placed in an ORR facility within 72 hours after being detained.
45. On or around May 3, 2026, DHS or its agents brought J.R.C. to the Upbring ORR facility in El Paso, Texas and transferred him into ORR custody. J.R.C. has been detained at the Upbring ORR facility in El Paso ever since.
46. Eleven-year-old J.R.C. should not have been designated as an unaccompanied child because he was encountered together with his father and his stepmother; nonetheless, DHS and ORR appear to be treating him as if he were an unaccompanied child after DHS separated him from his family.

B. Temporary Protected Status for Venezuelans

47. On the last day of his first term, President Trump designated Venezuela for Deferred Enforced Departure—a form of nationality-based, discretionary relief from deportation—because Venezuela was experiencing “the worst humanitarian crisis in the Western Hemisphere in recent memory.” 86 Fed. Reg. 6,845, 6,845 (Jan. 19, 2021). President Trump’s action permitted approximately 300,000 Venezuelan refugees to live and work here for 18 months. Memorandum re Deferred Enforced Departure for Certain Venezuelans, 86 Fed. Reg. 6845 (Jan. 19, 2021).

48. Shortly thereafter, on March 9, 2021, then-DHS Secretary Mayorkas designated Venezuela for TPS, allowing Venezuelans residing in the U.S. since March 8, 2021 to apply for protection. 86 Fed. Reg. 13,574 (Mar. 9, 2021). He did so again on October 3, 2023, allowing more recently arrived Venezuelans to apply. 88 Fed. Reg. 68,130 (Oct. 3, 2023).
49. DHS twice extended the 2021 designation of TPS for Venezuela, providing protections through September 10, 2025 to TPS holders who initially registered in 2021. 87 Fed. Reg. 55,024 (Sept. 8, 2022); 88 Fed. Reg. at 68,130.
50. On January 17, 2025, the DHS Secretary extended the 2023 Venezuela Designation by 18 months, through October 2, 2026. 90 Fed. Reg. 5,961 (“January 2025 Extension”). DHS cited Venezuela’s ongoing “complex, serious and multidimensional humanitarian crisis,” which has “disrupted every aspect of life,” and concluded that the “extraordinary and temporary conditions supporting Venezuela’s TPS designation remain.” *Id.* at 5,963 (citation omitted).
51. In the extension order, DHS also streamlined the registration process for TPS holders by consolidating them into a single track, “allow[ing] existing beneficiaries of either the 2021 or 2023 TPS designation to seek an 18-month extension of status through October 2, 2026.” *Id.* at 5,962.
52. On February 3, 2025, just days after she took office, Respondent Secretary Noem purported to “vacate” DHS’ January 17 extension of TPS for Venezuela. 90 Fed. Reg. 8805 (Feb. 3, 2025). That decision was the first vacatur of a TPS extension in the 35-year history of the TPS statute.
53. On February 5, 2025, DHS published a notice in the Federal Register purporting to terminate the 2023 Venezuela Designation. 90 Fed. Reg. 9040 (Feb. 5, 2025).

54. On September 8, 2025, DHS published a notice in the Federal Register purporting to terminate the 2021 designation of TPS for Venezuela.¹ 90 Fed. Reg. 43225 (Sept. 8, 2025).

C. Legal Challenge to Venezuela’s TPS Termination

55. On February 19, 2025, the National TPS Alliance and seven individual Venezuelan TPS holders sued the federal government, alleging that the vacatur of the January 17, 2025 extension of TPS for Venezuela and subsequent termination of Venezuela’s 2023 TPS designation were contrary to the TPS statute in violation of the Administrative Procedure Act and unlawful under the Fifth Amendment. *Nat’l TPS All. v. Noem*, No. 25-CV-01766-EMC (N.D. Cal. filed Feb. 19, 2025).
56. On December 10, 2025, the district court in *NTPSA* issued a final judgment declaring the vacatur of the January 17, 2025 extension of TPS for Venezuela and termination of Venezuela’s 2023 TPS designation unlawful. *Nat’l TPS All. v. Noem*, No. 25-CV-01766-EMC, 2025 WL 3539156, at *3 (N.D. Cal. Dec. 10, 2025) (“*NTPSA* December 10 Order”). The court stayed its order for two weeks to permit the government to appeal and/or seek a stay. *Id.* The government did not seek a stay. Although the government has filed an appeal, unless or until the December 10 order is actually reversed on appeal, it remains in effect.²

¹ The termination of Venezuela’s 2021 designation is not at issue in this case because Petitioner-child held TPS under Venezuela’s 2023 designation.

² Even if the declaratory judgment *had* been stayed either by the Ninth Circuit or the Supreme Court (which it has not), that final judgment has preclusive effect as to the issue of the illegality of the termination of TPS for Venezuela as a final judgment retains its preclusive effect while on appeal, *even if stayed*. See *Huron Holding Corp. v. Lincoln Mine Operating Co.*, 312 U.S. 183, 189 (1941) (“[I]n the federal courts the general rule has long been recognized that while appeal with proper supersedeas stays execution of the judgment, it does not—until and unless reversed—detract from its decisiveness and finality.”); *Haas v. Howard*, 579 F.2d 654, 658 (1st Cir. 1978) (rejecting theory that Supreme Court stay pending appeal “somehow altered or reversed the [district court] judgment” so as to deprive it of preclusive effect); Restatement (Second) of

57. Pursuant to the NTPSA December 10 Order, J.R.C. retains TPS because Defendants' actions purporting to deprive them of that status—*i.e.*, the vacatur of the January 17, 2025 extension and the termination of Venezuela's 2023 designation—were unlawful.
58. The NTPSA December 10 Order controls as to the question of whether members of the National TPS Alliance—the lead plaintiff in NTPSA—retain their TPS status.
59. Numerous district courts have recently ordered the release of Venezuelan TPS holders based on the December 10, 2025 order. *Gonzalez v. Noem, et al.*, No. 5:26-cv-00357-JWH-AJR, 2026 WL 332223, at *2 (C.D. Cal. Feb. 2, 2026); *Leon v. Chestnut*, No. 1:26-cv-01080-DC-AC (HC), 2026 WL 523231, at *2 (E.D. Cal. Feb. 25, 2026); *Armada v. Chestnut*, No. 1:26-cv-01449-DC-CKD (HC), 2026 WL 555480, at *2 (E.D. Cal. Feb. 27, 2026); Order Granting Petitioner's *Ex Parte* Application for Temporary Restraining Order, *Camacho v. Chestnut*, No. 1:26-cv-01448-DC-CKD (HC) (E.D. Cal. Mar. 4, 2026); Order Granting Petitioner's *Ex Parte* Application for Temporary Restraining Order, *Alvarez v. Chestnut*, No. 1:26-cv-01293-DC-CKD (HC) (E.D. Cal. Mar. 4, 2026); *Oropeza et al. v. Noem*, No. 2:26-cv-01251-SH-JFM, Dkt. 26 (D. Ariz. May 21, 2026).
60. A declaratory judgment is a final judgment on the merits which defines the legal duties among the parties. *See* 28 U.S.C. 2201 ("Any such declaration shall have the force and effect of a final judgment[.]"); *Burlington Ins. Co. v. Oceanic Design & Constr., Inc.*, 383 F.3d 940, 952 (9th Cir. 2004) (cleaned up, citation omitted) ("A declaratory judgment is a binding

Judgments § 13 (1982) (database updated Oct. 2024) ("[F]inality is not affected by the fact that the taking of the appeal operates automatically as a stay or supersedeas of the judgment appealed from that prevents its execution or enforcement, *or by the fact that the appellant has actually obtained a stay or supersedeas pending appeal.*") (emphasis added).

adjudication that establishes the rights and other legal relations of the parties where those rights are in doubt.”).

61. A final merits judgment, including a declaratory judgment, has preclusive effect on future proceedings involving the same parties. *Haaland v. Brackeen*, 599 U.S. 255, 293 (2023) (“the point of a declaratory judgment ‘is to establish a binding adjudication that enables the parties to enjoy the benefits of reliance and repose secured by res judicata,’” citing 18A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4446 (3d ed. Supp. 2022)).
62. “A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. [E]ven if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. Accordingly, [a] case pending appeal is res judicata and entitled to full faith and credit unless and until reversed on appeal.” *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460, 467 (5th Cir. 2013) (internal cites and quotations omitted); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003).

D. The Care, Custody, and Release of Unaccompanied Immigrant Children

63. The care and custody of unaccompanied immigrant children is governed by a legal framework consisting primarily of two statutes, a settlement agreement that is binding on the pertinent federal agencies, and federal regulations: the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act, the 1997 *Flores* Settlement Agreement, and the Foundational Rule.

64. Prior to 2002, the Office of Juvenile Affairs in the former INS was responsible for the custody of unaccompanied immigrant children in the United States. The *Flores* Settlement Agreement, originally signed by the INS in 1997, established national minimum standards for the treatment and placement of minors in immigration custody. Stipulated Settlement Agreement, *Flores v. Reno*, No. CV 84-4544-RJK(Px) (C.D. Cal. Jan. 17, 1997) (“*Flores* Settlement”). It remains under the supervision of U.S. District Judge Dolly M. Gee in the Central District of California. *Flores v. Bondi*, No. CV 85-4544-DMG (AGRx).³
65. In 2002, Congress passed the Homeland Security Act (“HSA”), transferring functions of the former INS to other government entities. Pub. L. No. 107-296, 116 Stat. 2153 (2002). Specifically, the HSA transferred authority over the care and custody of unaccompanied immigrant children from the INS to ORR, housed within HHS. 6 U.S.C. § 279.
66. Congress’ decision to transfer responsibility for the care and custody of unaccompanied children from the INS to ORR reflected Congress’ determination that caring for children who arrive to the United States without their parent or legal guardian and immigration enforcement were incompatible roles for a single agency.⁴ Within HHS, ORR is responsible for children’s safety and welfare and is explicitly not a law enforcement agency. *See*

³ Following the promulgation of the Foundational Rule, the *Flores* Settlement Agreement was partially terminated as to HHS. *Flores v. Garland*, 2024 WL 3467715 (C.D. Cal., June 28, 2024).

⁴ *See, e.g.*, 148 Cong. Rec. S11295 (Nov. 18, 2002) (statement of Sen. Feinstein); 148 Cong. Rec. S8189 (Sept. 4, 2002) (reprinting letter from Sens. Kennedy and Brownback). *See also* 148 Cong. Rec. S5960 (Oct. 1, 2002) (“As we transfer and reshape the INS in this legislation, it is imperative to relieve the agency of its responsibility of the care and custody of unaccompanied children. Doing so would accomplish two ends: one, it would permit the INS to focus its energies, efforts, and attention on its core missions; and two, it would transfer the care and custody of these children to the Office of Refugee Resettlement, ORR, an office that is better suited and much more experienced in handling the complexities of the children’s situations.”).

Foundational Rule, 89 Fed. Reg. at 34399, 34423 (“it is not a law enforcement agency, unlike the former INS...”), 34591.

67. With strong bipartisan support, Congress then expanded protections for unaccompanied children in the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), reaffirming Congress’ intent to treat unaccompanied children differently than the manner in which adults are treated by the Department of Homeland Security (“DHS”), both in detention and in immigration proceedings. 8 U.S.C. § 1232 *et seq.*
68. The TVPRA requires federal officials who discover an unaccompanied child to transfer the child to the care and custody of HHS within 72 hours (absent exceptional circumstances). *Id.* § 1232(b)(3). The TVPRA also tasks ORR with ensuring that unaccompanied children are “promptly placed in the least restrictive setting that is in the best interest of the child.” *Id.* § 1232(c)(2)(A). This is usually with a sponsor. *See, e.g., Saravia v. Sessions*, 905 F.3d 1137, 1142–43 (9th Cir. 2018). Congress enacted the TVPRA specifically to facilitate the safe, speedy release and minimally restrictive placement of unaccompanied children. *See, e.g.,* 154 Cong. Rec. S10886 (daily ed. Dec. 10, 2008) (statement of Sen. Feinstein, sponsoring senator).
69. Neither the HSA nor the TVPRA makes any mention of a sponsor’s potential immigration status as a prerequisite to receive an unaccompanied child into their custody. Similarly, neither statute gives ORR authority to: (1) inquire into immigration status as a condition for sponsorship; (2) collect information about potential sponsors for immigration or law enforcement purposes; or (3) share potential sponsor’s immigration status with law enforcement or immigration enforcement entities.

70. In 2024, ORR promulgated regulations (“The Foundational Rule”) codifying the “policies, standards, and protections for [unaccompanied children], consistent with the HSA and TVPRA, and to implement the substantive requirements of the [*Flores* Settlement Agreement] as they pertain to ORR.” 89 Fed. Reg. at 34385 (promulgating 45 C.F.R. §§ 410.1000 *et seq.*).
71. The Foundational Rule includes “policies and procedures regarding release, without unnecessary delay, of an unaccompanied child from ORR custody to a vetted and approved sponsor.” 89 Fed. Reg. at 34439. The Foundational Rule is consistent with the agency’s “strong belief that, generally, placement with a vetted and approved family member or other vetted and approved sponsor, as opposed to placement in an ORR care provider facility . . . is in the best interests of unaccompanied children.” *Id.* In response to comments on their proposed regulations, ORR explained that “[t]he HSA and the TVPRA do not make any mention of a sponsor’s potential immigration status as a prerequisite to receive an unaccompanied child into their custody and do not imbue ORR with the authority to inquire into immigration status as a condition for sponsorship.” *Id.* at 34442.
72. The Foundational Rule establishes that “ORR shall release a child from its custody without unnecessary delay” to sponsors in a specific order of preference with parents and legal guardians taking first priority and other family members following. 45 C.F.R. § 410.1201(a). “ORR shall adjudicate the completed sponsor application of a parent or legal guardian; brother, sister, or grandparent; or other close relative who has been the child’s primary caregiver within 10 calendar days . . . absent an unexpected delay.” *Id.* § 410.1205(b). Other completed sponsor applications by close relatives who were not the child’s primary caregiver must be adjudicated within 14 days, absent unexpected delay. *Id.* § 410.1205(c).

E. Constitutional Protections for Children

73. The substantive component of due process forbids the Government from infringing in any way upon fundamental liberty interests unless the infringement is narrowly tailored to serve a compelling state interest. *United States v. Salerno*, 481 U.S. 739, 749 (1987). In the immigration context, whether the infringement is narrowly tailored to serve a compelling governmental interest is determined by evaluating whether the infringement on liberty: 1) is impermissible punishment or permissible regulation; and 2) is excessive in relation to the regulatory goal Congress sought to achieve. *See id.* at 747; *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“[G]overnment detention violates [the Due Process] Clause . . . [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.” (internal citations omitted.)); *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).
74. “[T]he interest in being free from physical detention” by the state is “the most elemental of liberty interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). A child’s interest in being free from confinement is no narrower than that of an adult. *In re Gault*, 387 U.S. 1, 13 (1967) (“neither the Fourteenth Amendment nor the Bill of Rights is for adults alone”); *see also Reno v. Flores*, 507 U.S. 292, 316 (1993) (O’Connor, J. and Souter, J., concurring), quoting *Gault*, 387 U.S. at 13 (“[The Supreme Court] ha[s] consistently [...] rejected the assertion that ‘a child, unlike an adult, has a right ‘not to liberty but to custody.’”). Further, “incarceration is rarely if ever a necessary condition for raising the living standards of those capable of surviving safely in freedom, on their own or with the help of family or friends.” *O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975). Therefore minors, like adults, have a

substantial liberty interest “in avoiding unjustified physical restraint.” *Lucas R. v. Becerra*, 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022). *See also, e.g., Parham v. J.R.*, 442 U.S. 584, 600 (1979).

75. The serious harm of prolonged detention of unaccompanied children is well documented. *See Lucas R.*, 2022 WL 2177454 at *17 (“Numerous child welfare experts have expounded on the harm that detention causes children, particularly young children” and “[i]t is undisputed that being separated from family members is inimical to a child’s well-being.”). In 2018 in similar circumstances, ORR policy changes caused unaccompanied children’s length of custody in ORR to increase significantly, with children spending months in congregate care designed to hold children for only a few weeks. *See, e.g., Dep’t of Health and Hum. Servs., Office of the Inspector Gen., Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, at 13 (Sept. 2019), <https://perma.cc/YLT7-R3HP> (“HHS OIG Report”) (“[C]hildren’s average length of stay in ORR custody increased markedly after ORR implemented the new fingerprinting policy in June 2018,” from 61 days in June 2018 to 93 days in November 2018 and then decreased after ORR ended fingerprinting requirements for adult household members and then for parents, reaching 48 days in April 2019).
76. The then-Assistant Secretary for the Administration for Children and Families later conceded that the policy did not “add[] anything to the protection and safety of the children.” Extended lengths of stay in ORR custody harmed children’s mental health and wellbeing.⁵ *See, e.g.,*

⁵ *See* John Burnett, *Several Thousand Migrant Children In U.S. Custody Could Be Released Before Christmas*, NPR (Dec. 18, 2018), available at <https://perma.cc/6WHS-BNR6>; *J.E.C.M. v. Lloyd*, 352 F. Supp. 3d 559, 583 (E.D. Va. 2018) (citing amicus brief filed by Human Trafficking Legal Center).

HHS OIG Report, at 13 (After implementing new restrictive reunification policies, “[ORR f]acilities reported that it became more difficult to identify sponsors willing to accept children after the new fingerprinting requirements were implemented, which delayed placing children with sponsors, adding further stress and uncertainty.”); *see also id.* at 12–13 (“According to facility staff, longer stays resulted in higher levels of defiance, hopelessness, and frustration among children, along with more instances of self-harm and suicidal ideation.”).

77. The constitutional “right to family integrity or to familial association is [also] well established.” *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1079 (9th Cir. 2011); *see also Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (holding that parents and children have a well-elaborated constitutional right to live together without government interference); *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013) (“The right to live with and not be separated from one’s immediate family is ‘a right that ranks high among the interests of the individual’ and that cannot be taken away without procedural due process.”); *D.B. v. Cardall*, 826 F.3d 721, 740 (4th Cir. 2016) (children “enjoy a familial right to be raised and nurtured by their parents”) (internal quotation marks omitted); *Beltran v. Cardall*, 222 F. Supp. 3d 476, 482 (E.D. Va. 2016) (“It is beyond dispute that [a mother’s] right to the care and custody of her son – and [a son’s] reciprocal right to his mother’s care . . . is deserving of the greatest solicitude.”) (internal quotation marks and citation omitted); *Jordan v. Jackson*, 15 F.3d 333, 343 (4th Cir. 1994); *see also Smith v. Org. of Foster Families for Equality & Reform*, 431 U.S. 816, 845 (1977) (“the liberty interest in family privacy has its source, and its contours are ordinarily to be sought...in intrinsic human rights.”); *Hodge v. Jones*, 31 F.3d 157, 163 (4th Cir. 1994) (the “sanctity of the family unit is a fundamental precept firmly ensconced in

the Constitution”); *Angelica S. v. U.S. Dep’t. of Health and Hum. Svcs.*, 786 F.Supp.3d 158, 175 (D.D.C. 2025) (“Courts have found that family separation and prolonged detention qualify as irreparable injury.”) (citing *Jacinto-Castanon de Nolasco v. ICE*, 319 F. Supp. 3d 491, 502 (D.D.C. 2018); *Andrieu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc)). See also *Ms. L. v. U.S. ICE*, 310 F.Supp.3d 1133 (S.D. Cal. June 26, 2018) (finding likely substantive due process violation stemming from “zero tolerance” policy of family separation). A child’s right to familial association is also not limited to biological parents. See, e.g., *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1006 (N.D. Ill. 1989) (children have “constitutionally protected right to associate with their siblings”); see *Smith*, 431 U.S. at 843 (“biological relationships are not [the] exclusive determina[nt] of the existence of a family”).

78. Longstanding Supreme Court precedent establishes that when a government action deprives an individual of a fundamental constitutional interest, that individual is entitled to procedural due process consisting of notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Mullane v. Central Hanover Bank & Trust*, 339 U.S. 306 (1950). Furthermore, “‘significant’ and ‘unexplained delay[s] in responding to a [a proposed sponsor’s] unification request’ violate due process irrespective of other procedural defects.” *Lucas R. v. Becerra*, 2022 WL 2177454, at *27 (C.D. Cal. Mar. 11, 2022) (citing *Santos v. Smith*, 260 F. Supp. 3d 598, 613-14 (W.D. Va. 2017).

VI. LEGAL FRAMEWORK

A. Petitioner’s TPS prohibits detention.

79. The Court need only analyze only one statutory provision to resolve this habeas petition. The TPS statute unequivocally prohibits the detention of persons with valid TPS, and J.R.C. must be released. See 8 U.S.C. § 1254a(a)(1)(A), (d)(4) (“[a]n alien provided temporary protected

status under this section *shall not be detained* by the Attorney General”) (emphasis added); *see also Sanchez Puentes v. Garite*, 780 F. Supp. 3d 682, 697–98 (W.D. Tex. 2025) (finding confinement of TPS holders unlawful under the statute). It is hard to imagine a clearer statutory mandate proscribing detention.

80. Although the TPS statute refers to detention by the Attorney General, courts analyzing other immigration statutes have found that in the wake of the former INS functions being transferred to other government entities under the 2002 HSA, the detention function is now lodged in those transferee agencies. *See* Pub. L. No. 107-296, 116 Stat. 2153 (2002). As the Fourth Circuit explained:

By its terms, § 1226(a) of Title 8 lodges the power to detain aliens in the Attorney General, and not in either the Office or the DHS. The HSA, however, transferred alien detention functions from the INS, an agency of the Department of Justice, to the Office for UACs, and to the Under Secretary for Border and Transportation Security within the DHS for aliens who are not UACs. *See* 6 U.S.C. §§ 251(2), 279. Pursuant to the HSA’s savings provisions, the reference to the Attorney General in § 1226(a) with respect to the detention function must be “deemed to refer” to the appropriate officials of those transferee agencies. *See* 6 U.S.C. §§ 279(e)(1), 552(d), 557.

D.B. v. Cardall, 826 F.3d 721, 735 n.11 (4th Cir. 2016). Thus, as regards the detention of unaccompanied noncitizen children, “Attorney General” in the TPS statute effectively refers to the Office of Refugee Resettlement. Therefore, a noncitizen child granted TPS status “shall not be detained” by the Office of Refugee Resettlement. *See* 8 U.S.C. § 1254a(d)(4).

81. The Court need not delve further in an attempt to understand other aspects of J.R.C.’s immigration status, because TPS protection remains valid even if the TPS holder lacks other immigration status or has a final removal order. 8 U.S.C. § 1254a(a)(1)(A) (the government “shall not remove the alien from the United States during the period in which such [TPS] status is in effect.”). Indeed, individuals with a final order of removal are statutorily eligible

for TPS and may not be denied TPS if otherwise eligible on the basis of that removal order. 8 U.S.C. § 1254a(a)(5) (TPS statute provides no authority to “deny temporary protected status to an alien based on the alien’s immigration status”). *See also* 8 U.S.C. § 1254a(g) (TPS statute constitutes the exclusive authority for affording nationality-based protection to “otherwise deportable” non-citizens). For that reason alone, this Court should grant the writ and order J.R.C.’s immediate release. *See* 28 U.S.C. § 2241(c)(3) (authorizing writ for people detained in violation of federal law).

B. Petitioner’s detention violates his substantive and procedural due process rights.

82. Should the Court nonetheless choose to address constitutional questions, it should also find that J.R.C.’s detention violates the Due Process Clause of the Fifth Amendment. The Fifth Amendment’s Due Process Clause forbids the Government from “depriv[ing]” any “person . . . of . . . liberty . . . without due process of law.” U.S. Const. amend. V.
83. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693; *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[Noncitizens] who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.”).
84. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690.
85. The Supreme Court “repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection,” including

an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of individuals charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81–83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

86. Confinement for noncriminal purposes is only allowed “in narrow nonpunitive circumstances, where a special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotations and citations omitted). With respect to immigration confinement, the Supreme Court has recognized two special justifications: preventing danger to the community or flight from immigration enforcement. *See id.*
87. Respondents’ confinement of J.R.C. is wholly unjustified with respect to either justification. The Fifth Circuit’s decision in *Buenrostro-Mendez*, based on statutory interpretation of the INA, has no bearing on the constitutionality of J.R.C.’s detention. *See, e.g., Zamudio Sanchez v. Noem*, No. EP-25-CV-00403-DCG, 2026 WL 596133, at *8 (W.D. Tex. Mar. 2, 2026) (Guaderrama, J.); *Garcia Hernandez v. Anda-Ybarra*, No. EP-26-CV-318-KC, 2026 WL 560337, at *1–2 (W.D. Tex. Feb. 13, 2026) (Cardone, J.); *Longoria Mendoza v. Noem*, No. 5:26-cv-0728-JKP, 2026 WL 809441, at *4–6 (W.D. Tex. Feb. 26, 2026) (Pulliam, J.); *Ochoa v. Vergara*, No. 1:26-CV-266-RP, 2026 WL 482211, at *2 n.2 (W.D. Tex. Feb. 20, 2026) (Pitman, J.); *Guillen Fernandez v. Vergara*, No. 5:26-cv-00500-XR, Dkt. 8 at 6 & n.5 (W.D. Tex. Feb. 26, 2026) (Rodriguez, J.); *Gomez-Gonzalez v. Vergara*, No. 5:26-cv-598-DAE, 2026 WL 594364, at *3 n.3 (W.D. Tex. Feb. 27, 2026) (Ezra, J.).

88. Noncitizens thus have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or supporting a family in the interior of the United States. *See, e.g., Lopez Miranda v. Flores*, No. 25-cv-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178, at *4 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez v. Lyons*, No. 2:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025) (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”). Because that liberty interest flows from the Constitution, it applies no matter the statute under which a noncitizen is detained.
89. Moreover, even “[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *Salerno*, 481 U.S. at 746. The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government’s interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
90. There is a high risk of erroneous deprivation regardless of the statute under which a noncitizen is detained when there is no process for determining whether his detention bears a “reasonable relation” to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is

not impermissibly punitive. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring). The process afforded in removal proceedings does “not ameliorate the risk that [a noncitizen] will be erroneously deprived of his liberty while his removability is assessed.” *Erazo Rojas v. Noem*, No. EP-25-CV-443-KC, 2025 WL 3038262, at *3–4 (W.D. Tex. Oct. 30, 2025). Bond hearings that “conduct individualized custody determinations considering flight risk and dangerousness” are the precise “type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond.” *Id.* at *4.

91. Regardless of the government’s purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner’s “constitutional interest in his liberty exists above and apart from the INA.” *Erazo Rojas*, 2025 WL 3038262, at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025)). Further, while the government “has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” such interest “would be squarely addressed through a bond hearing.” *Id.* (citing *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)).
92. J.R.C.’s detention with no pre-deprivation or post-deprivation process whatsoever violates the Due Process Clause of the Fifth Amendment. *See, e.g., Vieira*, 806 F. Supp. 3d. at 701–02; *Chinchilla*, 2025 WL 3645178, at *4–5; *Erazo Rojas*, 2025 WL 3038262, at *2–3; *Parada-Hernandez v. Johnson*, No. 3:25-CV-2729-K-BN, 2025 WL 3465958, at *3–5 (N.D. Tex. Oct. 29, 2025), *report & recommendation adopted*, 2025 WL 3463682 (N.D. Tex. Dec. 2, 2025); *Hernandez-Fernandez*, 2025 WL 2976923, at *7–10; *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *6–13 (W.D. Tex. Oct. 2, 2025); *Gonzalez Martinez*

v. Noem, No. EP-25-CV-430-KC, 2025 WL 2965859, at *3–5 (W.D. Tex. Oct. 21, 2025); *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 681–88 (W.D. Tex. 2025).

Pre-Deprivation Due Process Violation

93. Detention violates an individual’s substantive due process rights where the government released an individual on their own recognizance and offers “insufficient evidence of changed circumstances that might cause ICE to reconsider its parole determination.” *Voskanyan v. Bondi*, 2025 WL 4649293, at *6 (C.D. Cal. Dec. 8, 2025). This is because release on recognizance already “requires a finding that [the noncitizen] was neither a flight risk nor a danger to the community.” *Id.*; see also *Leiva Flores v. Albarran*, 2025 WL 3228306, at *5 (N.D. Cal. Nov. 19, 2025) (finding substantive due process violation where individual was released on their own recognizance and government offered no evidence of changed circumstances); *Gamez Lira*, 2025 WL 2581710, at *2–3 (finding noncitizen petitioner was likely to succeed on his substantive due process claim because the evidence showed he was not a flight risk).
94. J.R.C.’s substantive due process rights have been violated because the government released him on his own recognizance in 2023 and has offered no evidence of changed circumstances related to his flight risk or danger to the community. J.R.C., an 11-year-old boy, is not a flight risk or a danger to the community.
95. J.R.C.’s procedural due process rights have also been violated by Respondents’ failure to provide a pre-deprivation hearing.
 1. *Petitioner has a strong private interest in his liberty.*
96. Federal courts in Texas have found that noncitizens have a protected liberty interest in their freedom, regardless of citizenship status, when they have spent time living, working, or

supporting a family in the interior of the United States. *See, e.g., Lopez Miranda v. Flores*, No. EP-25-CV-584-KC, 2025 WL 3901908, at *3 (W.D. Tex. Dec. 10, 2025); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178 (W.D. Tex. Dec. 16, 2025) (finding noncitizen has protectable liberty interest because he was “living in the United States for over four years and attends his local church”); *Hernandez-Fernandez*, 2025 WL 2976923, at *9 (“Because he spent nearly three years at liberty in the United States, [petitioner] possesses a cognizable interest in his freedom from detention.”). J.R.C. spent nearly three years living at liberty in El Paso, Texas with his family, giving him a cognizable interest in his freedom.

97. “Even when the government has discretion to detain an individual, its subsequent decision to release the individual creates ‘an implicit promise’ that she will be re-detained only if she violates the conditions of her release.” *Pablo Sequen v. Albarran*, 806 F. Supp. 3d 1069, 1082 (N.D. Cal. 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)); *see also Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *11 (W.D. Tex. Oct. 2, 2025). Therefore, conditional release or release on recognizance falls within the protection of the Due Process Clause. *See Mendoza*, No. 5:26-CV-0728-JKP, at pp. 11-12.

2. *There is a high risk of erroneous deprivation without a pre-deprivation hearing.*

98. Under the second *Mathews* factor, the Court considers “whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Lopez-Arevalo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) (internal citation omitted).
99. “Our immigration law has long recognized that noncitizens have an interest in an individualized hearing prior to detention in connection with immigration proceedings.”

Rivera Oliva v. Bondi, 5:26-CV-00850-XR, Dkt. XX at 23 (W.D. Tex. Mar. 23, 2026) (citing *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903)) (attached).

100. This is because “[w]ithout an individualized hearing, there is substantial risk that noncitizens with a substantial presence in the United States who pose neither flight risk nor danger to the community will be detained.” *Rivera Oliva*, 5:26-CV-00850-XR, Dkt. XX at 23. Whereas, an individualized assessment necessarily reduces that risk by confirming whether there is merit to the redetention. *Id.* This is especially true, because by previously releasing J.R.C. into the interior, the government has already concluded that this boy is neither a flight risk nor a danger to the community.

3. ***The Government does not have a strong interest in keeping the Petitioner detained, and in fact, has a stronger interest in seeing Petitioner released.***

101. While the government has an interest in ensuring people appear for their immigration hearings, that interest is minimal in situations like the present case, where the government already decided that the individual was not a flight risk when they ordered them released. And the provision of a pre-deprivation hearing would alleviate that risk. *See Rivera Oliva*, 5:26-CV-00850-XR, Dkt. XX at 23. Further, the government can fully continue the immigration proceedings against J.R.C., and so, the decision to release the individual hardly inhibits the enforcement of immigration laws.

4. ***Release is the proper remedy.***

102. The proper remedy for J.R.C.’s continued detention without a pre-deprivation hearing is release, which is the “typical remedy” to challenges to the lawfulness of detention. *Medina Santaurio v. Noem*, No. 26-CV-00381-DAE, Dkt. XX at 14 (W.D. Tex. Mar. 2, 2026) (attached). This is because habeas challenges the underlying detention that lacks the constitutionally necessary procedural protections. *See Mendoza*, No. 5:26-CV-0728-JKP, at

11–12 (“[T]he significant violation of Petitioner’s due process rights and other prudential concerns weigh in favor of ordering Petitioner’s immediate release.”).

103. Accordingly, J.R.C.’s detention is illegal because it lacks constitutionally sufficient pre-deprivation process, and therefore, this Court should order J.R.C. released.

Post-Deprivation Due Process Violation

104. Petitioner J.R.C. is detained under a mandatory detention policy that the Administration has adopted purporting to place people who allegedly entered without inspection under 8 U.S.C. § 1225(b)(2)(A). Mandatory detention means that the administration does not provide a *post-deprivation* bond hearing after it detains the individual. However, as applied to this minor child, the mandatory detention policy is unconstitutional because it lacks that post-deprivation protection. This would be true regardless of whether the child had been released on his own recognizance. And the *Mathews* factors elucidate the unconstitutionality of this detention without procedural protections.

5. *Again, Petitioner has a strong private interest in his liberty.*

105. As previously stated, “[t]he interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Given the fundamental nature of the liberty interest, the first *Mathews* factor weighs greatly in J.R.C.’s favor.

6. *There is a high risk of erroneous deprivation of liberty if Petitioner is detained without individualized post-deprivation consideration for release.*

106. The government’s refusal to provide bond hearings creates a high risk of erroneous deprivation, since the process afforded in removal proceedings does “not ameliorate the risk

that [a petitioner] will be erroneously deprived of his liberty while his removability is assessed.” *See Rojas*, 2025 WL 3038262 at *3–4. Bond hearings that “conduct individualized custody determinations considering flight risk and dangerousness” are the precise “type of proceeding that would give [a noncitizen] an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond.” *Id.* at *4.

7. *The Government has a minimal interest in detaining Petitioner without a post-deprivation bond hearing.*

107. Regardless of the government’s purported interest in enforcing its interpretation of the immigration detention statutes, a habeas petitioner’s “constitutional interest in his liberty exists above and apart from the INA.” *Rojas*, 2025 WL 3038262 at *4 (citing *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) (“[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”)). Further, while the government “has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community,” such interest “would be squarely addressed through a bond hearing.” *Id.* (citing *Martinez v. Noem*, 2025 WL 2598379 at *4 (W.D. Tex. Sep. 8, 2025)).

8. *Again, the proper remedy is release.*

108. Because Petitioners’ detention without access to post-deprivation process is illegal, the proper remedy is release. Just as with the pre-deprivation due process violation, “the significant violation of Petitioner’s due process rights and other prudential concerns weigh in favor of ordering Petitioner’s immediate release.” *Mendoza*, No. 5:26-CV-0728-JKP, at pp. 11-12.

C. *Petitioner contends that he should not be subject to mandatory detention as a statutory matter, making this claim purely to preserve it post-Buenrostro-Mendez.*

109. 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings. *See*

8 U.S.C. § 1229a. People subject to detention under section 1226 are generally entitled to bond hearing, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), unless they have been arrested for, charged with, or convicted of certain crimes. 8 U.S.C. § 1226(c). *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).

110. Second, 8 U.S.C. § 1225 governs detention of noncitizens subject to expedited removal under section 1225(b)(1) and detention of other recent arrivals who are both “applicant[s] for admission” and “seeking admission” under section 1225(b)(2)(A). 8 U.S.C. § 1225(a)(3), (b)(2)(A). People detained under section 1225(b)(2)(A) are subject to mandatory detention.
111. Petitioner J.R.C. is properly detained under § 1226(a) and not § 1225(b)(2)(A) because he is not an “applicant for admission” *who is “seeking admission.”* 8 U.S.C. § 1225(b)(2)(A) (emphasis added). J.R.C. had already been living in the United States for nearly three years at the time of his arrest and therefore is not “seeking admission.” *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025). Numerous courts outside of our circuit have expressly rejected that J.R.C. is detained under § 1225(b)(2)(A). *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rivera Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Campos Leon v. Forestal*, No. 1:25-CV-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Barrajas v. Noem*, No. 4:25-CV-00322-SHLHCA, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Giron Reyes v. Lyons*, No. C25- 4048-LTS-MAR, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rodriguez v. Bostock*, 779 F. Supp.

3d 1239 (W.D. Wash. 2025); *Salazar v. Dedos*, No. 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lopez v. Hardin*, No. 2:25-CV-830-KCD-NPM, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025). Indeed, the weight of authority outside of the Fifth Circuit supports the view that Petitioner J.R.C. is detained under § 1226(a), despite the three-judge panel in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), finding otherwise in a split decision.

D. Respondents’ warrantless arrest of J.R.C. in front of his home violated his rights under the Fourth Amendment and exceeded Respondents’ statutory authority.

112. An immigration officer’s authority to make a warrantless arrest of a noncitizen is limited by statute and by the constitutional floor of the Fourth Amendment. 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*, 810 F.Supp.3d 1209, 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).
113. “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).

114. Similarly, the Fourth Amendment requires a neutral, judicial determination of probable cause either before the arrest, in the form of a warrant, or shortly after the arrest, in the form of a prompt judicial probable cause determination. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).
115. Several federal courts have ordered release from detention on the grounds that an immigrant's Fourth Amendment rights were violated during their arrest. *See, e.g., Aslamov v. Bradford*, No. 4:25-cv-04299, Dkt. 12 at 4, 12 (S.D. Tex. Oct. 22, 2025) (finding warrantless arrest in violation of 8 U.S.C. § 1357(a)(2) meant petitioner's detention was unlawful), Dkt. 16 at 1 (S.D. Tex. Oct. 30, 2025) (later granting habeas petition and ordering immediate release); *Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025) (recommending immediate release because petitioner's "current detention violates her constitutional rights because her arrest was in violation of her Fourth Amendment rights"), R. & R. adopted sub nom. *Rocha Rosado v. Figueroa*, No. 25-cv-02157, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Munoz Materano v. Arteta*, No. 25-cv-6137, 804 F. Supp. 3d 395, 423, 426 (S.D.N.Y. 2025) (finding a violation of the Fourth Amendment where the government lacked justification for arrest); *A.B.D. v. Wamsley*, No. 25-cv-02014, 2026 WL 178306, at *11 (D. Or. Jan. 22, 2026) (finding warrantless arrest violated § 1357(a)(2)); *see also Gamez Lira v. Noem*, No. 25-cv-00855, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025) (finding petitioner substantially likely to prevail on Fourth Amendment warrantless arrest claim); *Urquilla-Ramos v. Trump*, No. 2:26-cv-00066, 2026 WL 475069, at *5–16 (S.D.W.V. Feb. 19, 2026) (finding petitioner's Fourth Amendment rights were violated when he was arrested by a group of masked agents and ordering release).

116. Respondents' warrantless arrest of J.R.C. in the curtilage of his home—to wit, the area immediately between the sidewalk and his apartment's front door—did not comply with either prong of 8 U.S.C. § 1357(a)(2). First, ICE agents did not have probable cause to believe that J.R.C. was “in the United States in violation of [the immigration laws]” because his father informed them about having TPS and his stepmother offered to show them the TPS documentation. *Id.* § 1357(a)(2). Second, ICE agents did not have probable cause to believe that J.R.C. was “likely to escape before a warrant can be obtained for his arrest” because he was a minor child in the care of the two adults there—his father and stepmother—and was encountered directly in front of his home, which the agents could clearly identify.
117. Additionally, the home and its curtilage are “first among equals” for Fourth Amendment purposes. *Florida v. Jardines*, 569 U.S. 1, 6 (2013). J.R.C.'s warrantless arrest in the curtilage of his home is thus constitutionally suspect in addition to violative of the statute.
118. As other courts have done, this Court should restore J.R.C. “to the position [he] would have occupied but for ICE's unlawful conduct” and order his release. *Ramirez Ovando*, 810 F.Supp.3d at 1240; *Garrison G.*, 2026 WL 157677, at *4.

E. Respondents' re-arrest of J.R.C. in the absence of changed circumstances violated his rights under the Fourth Amendment.

119. “[T]he ultimate touchstone of the Fourth Amendment is reasonableness.” *Riley v. California*, 573 U.S. 373, 381 (2014). And because “[i]t is axiomatic that seizures have purposes[,] [w]hen those purposes are spent, further seizure is unreasonable.” *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020). In the immigration context, these principles mean that “[o]nce a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings.” *Saravia v. Sessions*, 280 F.Supp.3d 1168, 1177 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.

2018). And “to be lawful,” such a re-arrest “must be based on evidence that the circumstances relevant to th[e] original release decision have changed. *Id.* at 1196.

120. The government previously released J.R.C. on his own recognizance in 2023 and has offered no evidence of changed circumstances related to his flight risk or danger to the community.

Nor could it. J.R.C., an 11-year-old boy, poses no flight risk or danger to the community.

Accordingly, the government’s re-arrest of J.R.C., in the absence of any changed circumstances justifying such re-arrest, violated the Fourth Amendment.

F. Petitioner’s arrest and forcible separation from his family violate DHS’s internal rules, which the agency is required to follow under the *Accardi* doctrine.

121. 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.”).

122. *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 v. Ruiz*, 415 U.S. 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).

123. On July 2, 2025, ICE released Directive 11064.4: Detention and Removal of Alien Parents and Legal Guardians of Minor Children. *See* Ex. XX. This Directive is clear: “ICE personnel *should not, under any circumstances*, take custody of or transport the minor child(ren).” *See* Ex. XX 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 May 13, 2026). Respondents did not follow these policies in connection with the detention of Petitioner-child J.R.C.
124. This guidance is not only instructive, it binds the agency in its interactions with noncitizens because internal policies, including ones memorialized by Directives, bind the agency where individual rights are affected. *See Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (citing *Morton v. Ruiz*, 415 U.S. 199, 1974). This is true even when the policy includes a disclaimer to not provide any individuals rights as this one does. *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337-38 (D.D.C. 2018) (disclaimer does not bar application of *Accardi* doctrine); Ex. XX at 11. The court concluded that agencies “cannot avoid application of *Accardi* by simply disclaiming any binding effect in the [D]irective itself,” because “[t]o find otherwise would render the teachings of *Accardi* and its progeny meaningless.” *Damus*, 313 F. Supp. 3d at 338 (quoting *Abdi v. Duke*, 280 F. Supp. 3d 373, 389 (W.D.N.Y. 2017)). The directive challenged in *Damus*, to which *Accardi* applied, was a parole directive that also directed the

Agency to release certain individuals applying for asylum. *Id.* The Court in *Damus* found that the Respondents had violated their parole policy in the detention of asylum seekers- even as the statutory authority arguably allowed such detention. As established by *Morton v. Ruiz*, 415 U.S. 199, 235 (1974), when a policy not only affects individual rights, but seems intended to benefit individuals- such as relieving them from being forced to be detained and placed for removal- then the policy is binding, “even where [they] are possibly more rigorous than otherwise be required.” *Id.*

VII. CLAIMS FOR RELIEF

COUNT ONE

Violation of the Immigration and Nationality Act – 8 U.S.C. § 1254a

125. Petitioner J.R.C. realleges and incorporates by reference each allegation contained above.
126. Section 1254a of Title 8 of the U.S. Code governs the treatment of TPS holders, including their detention and removal under federal immigration law.
127. Section 1254a(d)(4) states “[a]n alien provided temporary protected status under this section *shall not be detained* by the Attorney General on the basis of the alien’s immigration status in the United States.” (emphasis added). There is no exception to this rule provided in the statute.
128. Thus, Petitioner’s detention violates Section 1254a, and he is entitled to immediate release from custody.

COUNT TWO

Violation of Fifth Amendment Procedural Due Process: Pre-Deprivation

129. Petitioner J.R.C. realleges and incorporates by reference each allegation contained above.

130. To determine what process is required to deprive a person of a constitutionally protected interest, courts examine three factors outlined in *Mathews v. Eldridge*, 424 U.S. 319 (1976): 1) “the private interest that will be affected by the official action,” 2) “the risk of 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, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.
131. Petitioner easily passes the *Mathews* test. Where, as here, noncitizens who have a substantial presence in the United States have not received an individualized assessment of flight risk or dangerousness, each of the *Mathews* factors supports “finding that the noncitizen has been denied due process.” *Mendoza v. Noem*, No. 5:26-CV-0728-JKP, Dkt. XX at 13 (W.D. Tex. Feb. 26, 2026). The “freedom from physical detention is one of the most sacred and elemental of liberty interests.” *Id.* at 14. When, as here, a noncitizen was previously released, this “reflects a determination that the individual is neither a flight risk nor a danger to the community,” so “there is ‘a very high risk of erroneous deprivation of liberty’ absent an individualized custody determination.” *Id.* (quoting *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *7 (S.D. Tex. Feb. 3, 2026)). Further, the government interest in detaining Petitioner is small, and is likely outweighed by its own interest in avoiding unnecessary detention. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021).
132. Because Petitioner’s detention violates his Fifth Amendment procedural due process rights to adequate pre-deprivation process, the appropriate remedy is release.

COUNT THREE

Violation of Fifth Amendment Procedural Due Process: Post-Deprivation

133. Petitioner J.R.C. realleges and incorporates by reference each allegation contained above.

134. Petitioner has due process rights as a person residing within the United States. *Zadvydas*, 533 U.S. at 693.
135. All three factors from the *Mathews* test favor giving Petitioner additional post-deprivation process.
136. First, Petitioner has a significant private interest at stake. A person's interest in freedom from physical detention is "the most elemental of liberty interests." *Hamdi*, 542 U.S. at 529; *see also Zadvydas*, 533 U.S. at 690 ("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."). Second, Petitioner will continue to be deprived of this interest if the current procedure (detaining Petitioner without a hearing) is followed. Lastly, the Government has no legitimate interest in detaining Petitioner without an opportunity for him to demonstrate he is not a flight risk or danger. Releasing Petitioner, or holding a hearing to release Petitioner on bond, would in fact save the government the resources and expense of continuing to imprison Petitioner.
137. The placement of Petitioner in detention in ORR custody pending the resolution of his immigration proceedings violates his constitutional rights to due process guaranteed by the Fifth Amendment.

COUNT FOUR

Violation of Fifth Amendment Substantive Due Process

138. Petitioner J.R.C. realleges and incorporates by reference each allegation contained above.
139. Petitioner has a fundamental interest in his liberty that is protected by the Fifth Amendment's Due Process Clause. *See Zadvydas*, 533 U.S. at 692–93.
140. Additionally, Petitioner has a protected constitutional interest in his family unity and familial association. *See Rosenbaum*, 663 F.3d at 1079; *Ms. L.*, 310 F.Supp.3d 1133 (finding likely

substantive due process violation stemming from “zero tolerance” policy of family separation).

141. Civil immigration detention violates due process if it is not reasonably related to its statutory purpose. *Id.* at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).
142. Because Petitioner is not being provided a bond hearing, the government is not taking any steps to effectuate its substantive obligation to ensure that immigration detention bears a “reasonable relation” to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).
143. The only legitimate purpose for placing Petitioner in civil detention is if he is a flight risk or danger to the community. However, he is neither. Petitioner is an 11-year-old boy with no criminal history and poses no threat to the safety of the community. This minor child also does not constitute a flight risk, especially given his strong family and community ties in El Paso.
144. Additionally, J.R.C.’s detention is a violation of substantive due process because, as a TPS holder, he cannot be removed. Under 8 U.S.C. § 1254a(a)(1)(A), once a noncitizen has received TPS, the government “shall not remove the [noncitizen] from the United States during the period in which such status is in effect.” Because the government cannot remove J.R.C., and because he poses no danger or flight risk, his detention has no purpose and is impermissibly punitive in violation of his substantive due process rights. *See Zadvydas*, 533 U.S. at 690.
145. Therefore, Petitioner’s continued detention violates his substantive due process rights.

COUNT FIVE

**Violation of the Immigration and Nationality Act –
8 U.S.C. § 1226 and Associated Regulations**

146. Petitioner J.R.C. realleges and incorporates by reference each allegation contained above.
147. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a).
148. Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)–(f).
149. Respondents have not provided Petitioner with an individualized bond hearing as required by law.
150. Petitioner’s continuing detention is therefore unlawful.
151. Although the Fifth Circuit held in *Buenrostro-Mendez* that noncitizens in Petitioner’s position are detained under 8 U.S.C. § 1225, Petitioner believes that conclusion to be erroneous and preserves the argument that he is entitled to relief on the basis that his detention violates the INA and associated regulations.

COUNT SIX

**Violation of the Fourth Amendment:
Unlawful Seizure**

152. Petitioner J.R.C. repeats and realleges each allegation of this petition here.
153. The Fourth Amendment protects the right of all persons present in the United States to be free from unreasonable seizures by government officials. As a corollary to that right, the Fourth Amendment prohibits re-arrest on the same charge without a material change in circumstances.
154. Additionally, “[t]he 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.*

155. Petitioner’s detention violates the Fourth Amendment because he was re-arrested on the same charge without a material change in circumstances. His re-arrest therefore violated the Fourth Amendment.

156. Petitioner’s detention also violates his Fourth Amendment rights because Respondents’ agents had no reasonable suspicion of illegal presence or probable cause for his arrest at the time, nor probable cause to believe he was likely to escape prior to a warrant being obtained. *See* 8 U.S.C. § 1357(a)(2)

157. Because Petitioner’s re-arrest and detention were made in violation of his Fourth Amendment rights, he must be released immediately. *See Garrison G.*, 2026 WL 157677, at *4 (citations omitted).

COUNT SEVEN

Violation of the *Accardi* Doctrine

158. Petitioner J.R.C. repeats and realleges each allegation of this petition here.

159. Under the *Accardi* doctrine, J.R.C. has 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”).

160. 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. Although there was an adult household member in the vicinity with whom Petitioner-child J.R.C. could have been

safely placed—to wit, his stepmother—Respondents’ agents unlawfully arrested, transported, and detained Petitioner-child J.R.C.

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

VIII. PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

- A. Assume jurisdiction over this matter;
- B. Issue a temporary restraining order and preliminary injunction for his release, or in the alternative, for him to pay a bond set by the court, or in the alternative, to hold an immediate bond hearing within 24 hours before an Immigration Judge;
- C. Issue an order to show cause to be returned within three days;
- D. Declare Petitioner’s detention to be unlawful and unconstitutional;
- E. Order the immediate release of Petitioner;
- F. In the alternative, if the Court does not release the Petitioner, order Petitioner’s release on a bond set by the Court or Respondents to provide Petitioner with a bond hearing expeditiously;
- G. Enjoin Respondents from transferring Petitioner outside of this judicial district pending litigation of this matter;
- H. Award Petitioner reasonable costs and attorneys’ fees; and
- I. Grant any other relief that this Court deems just and proper.

Dated: May 26, 2026

/s/ Kristin Etter
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Texas Immigration Law Council

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

I am submitting this verification on behalf of Petitioner and as their counsel. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Kristin Etter
Kristin Etter

CERTIFICATE OF SERVICE

Under penalties as provided by law, the undersigned certifies that true and correct copies of this Petitioner's Petition for a Writ of Habeas Corpus will be served upon all counsel of record via email on May 26, 2026.

Date: May 26, 2026

/s/ Kristin Etter
Kristin Etter