

Bryan Wolin (BW8339)
Kilpatrick Townsend & Stockton LLP
3 Times Square
New York, NY 10036
Telephone: (212) 775-8735
Facsimile: (646) 304-2293
Email: BWolin@ktslaw.com
Pro Bono Counsel for Petitioner

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

D.T.M.P., a minor, by and through her
Next Friend, Rochelle Kiam-Abraham,

Petitioner/Plaintiff,

v.

Robert F. KENNEDY, JR., in his official
capacity as Secretary of Health and
Human Services; Angie SALAZAR, in
her official capacity as Acting Director
of the Office of Refugee Resettlement;
Luzaury COTTO, in her official capacity
as Federal Field Specialist, Office of
Refugee Resettlement; Walter J. JOSEPH,
in his official capacity as Executive Director and
Chief Executive Officer of the Children's Home of
Poughkeepsie; Todd BLANCHE, Attorney General
of the United States; Markwayne MULLIN,
Secretary of Homeland Security; and David
VENTURELLA, Acting Director, U.S. Immigration
and Customs Enforcement,

Respondents/Defendants.

Civil Case No.: 1:26-cv-7335

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

D.T.M.P., a minor, by and through her Next Friend, Rochelle Kiam-Abraham, petitions this Court for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241 and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*, to remedy her continued unlawful detention by Respondents. Petitioner requests that she be immediately released on her 18th birthday on August 30, 2026. Should the Court determine that a hearing is necessary before issuing such an order, Petitioner requests that such hearing be scheduled promptly. In support of this Petition, Petitioner alleges as follows:

INTRODUCTION

1. Petitioner D.T.M.P. is 17 years old, will turn eighteen on August 30, 2026, and is a rising twelfth grader at [REDACTED] in Dover, New Jersey, where, at the time of her arrest, she was on track to [REDACTED] a valued participant in sports like wrestling and dance. Petitioner has a strong passion for academics, attends part-time classes at the [REDACTED], and is the recipient of the [REDACTED] scholarship and a member of the [REDACTED] program (an educational partnership between the [REDACTED] [REDACTED] designed to help motivated, low-income, first-generation students secure a clear path to higher education), both of which have awarded her two years of free college tuition. At the [REDACTED] Petitioner completed classes in the fields of medical terminology, healthcare careers, first aid, and biology with the goal of becoming a doctor specializing in anesthesiology. In the evenings and on weekends, Petitioner attended church services at Centro Biblico La Hermosa, a church in Passaic, New Jersey, where she served as a youth leader. Petitioner has also worked at [REDACTED] three days per week since September 2025.

2. Petitioner D.T.M.P. was viciously detained by the Department of Homeland Security (“DHS”) on June 29, 2026, while she was driving with her mother to go grocery shopping in their community. Four Immigration and Customs Enforcement (“ICE”) vehicles surrounded the car while Petitioner was behind the wheel. Masked ICE officers pointed a gun at her, a 17-year-old child, dragged her from the vehicle, and handcuffed her hands and feet—all without a warrant. D.T.M.P. was subsequently forcibly separated from her mother and transferred to the custody of the Office of Refugee Resettlement (“ORR”).

3. D.T.M.P. is currently detained in the custody of ORR at the Children’s Home of Poughkeepsie, 10 Childrens Way, Poughkeepsie, New York 12601. She has been in ORR custody since late June 2026—approximately eight weeks. She is separated from her family and community in New Jersey. Her detention has caused her to miss school, where she thrives and excels, and to endure ongoing emotional distress and anxiety during a critical time in her life as she approaches her eighteenth birthday on August 30, 2026.

4. D.T.M.P.’s unlawful prolonged detention violates ORR’s statutory and regulatory responsibility to “promptly” place her “in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. §§ 410.1003(f), 410.1205(b). Indeed, to fulfill its mandate, ORR releases most unaccompanied children in ORR custody to their parents or other relatives in the United States. ORR may also release the child to an adult individual or entity “when it appears that there is no other likely alternative to long term custody, and family unification does not appear to be a reasonable possibility”. 45 C.F.R. § 410.1201(a)(6).

5. D.T.M.P. will turn eighteen on August 30, 2026—just days from the date of this filing—at which point ORR will have no legal authority to detain her. Her continued detention pending that date violates ORR’s obligation to place her in the least restrictive setting available.

6. Moreover, D.T.M.P.'s warrantless arrest was unlawful under 8 U.S.C. § 1357(a)(2) because there was no reason to believe she was likely to escape before a warrant could be obtained. D.T.M.P. has lived in the United States for over seven years. She has an approved Special Immigrant Juvenile Status ("SIJS") petition with a priority date of October 10, 2022, which is now current. In fact, at a hearing earlier today – August 28, 2026 – Petitioner's request for lawful permanent resident status (Form I-485) was granted – making her continued detention even more unjustifiable. She has no criminal history, is an excellent student, and a role model in her community. She poses no flight risk whatsoever, and has no desire to leave the United States, which she considers her home, as she is deeply intertwined in her community through her participation in advanced college-level courses, her role as a youth leader at her church, and her service at her job, which she has held consistently since September 2025.

7. Petitioner respectfully requests her release on or immediately after August 30, 2026, when she turns eighteen. Because Petitioner will be an adult on that date, no sponsor is required for her release. Petitioner is prepared to remain in ORR custody until her eighteenth birthday if necessary to accommodate procedural requirements, but her detention beyond that date would be without legal authority. She can live independently and has deep community ties in New Jersey.

8. Accordingly, Petitioner brings this petition seeking release on or immediately after August 30, 2026, when she turns eighteen. Petitioner also asks this Court to enjoin her transfer outside this District during the pendency of this proceeding. *Loc. 1814, Int'l Longshoremen's Ass'n, AFL-CIO v. N.Y. Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, 'the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that

jurisdiction” (alteration in original) (citation omitted)). Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner’s detention violates federal law and (2) order her expeditious release.

JURISDICTION AND VENUE

9. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require . . .”).

10. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. § 701 (the Administrative Procedure Act).

11. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

12. This Court has additional remedial authority under 28 U.S.C. §§ 2201 and 2202 (the Declaratory Judgment Act) and Fed. R. Civ. P. 65 to grant declaratory and injunctive relief.

13. Venue is proper in the Southern District of New York because a substantial part of the events giving rise to these claims occurred and continue to occur in this district. D.T.M.P. is detained at the Children's Home of Poughkeepsie, which is located within this district.

14. Venue is also proper under 28 U.S.C. § 2241 because D.T.M.P. is detained within this district. *See Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494–95 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

15. Federal district courts have jurisdiction to hear habeas corpus petitions by noncitizens challenging the lawfulness or constitutionality of their detention. *See, e.g., Demore*, 538 U.S. at 516–17; *Zadvydas*, 533 U.S. at 687.

PARTIES

16. Petitioner D.T.M.P. is a 17-year-old unaccompanied child in the federal custody of the Office of Refugee Resettlement. She is detained at the Children's Home of Poughkeepsie in Poughkeepsie, New York. She has lived in the United States since June 2019. She will turn eighteen on August 30, 2026. She has deep ties with her community in New Jersey and seeks release from ORR custody.

17. Rochelle Kiam-Abraham is the Next Friend of Petitioner D.T.M.P. Ms. Kiam-Abraham is D.T.M.P.'s immigration attorney at Kiam and Abraham LLC, PO Box 93, Chester, NJ 07930. D.T.M.P. is a minor and her mother was transferred to ICE custody in another state at the time of their arrest and, upon information and belief, then removed from the United States, and as such, is unable to serve as D.T.M.P.'s representative in this action pursuant to Fed. R. Civ. P. 17(c)(1). Accordingly, Ms. Kiam-Abraham acts as D.T.M.P.'s Next Friend. Petitioner D.T.M.P. appears by and through Rochelle Kiam-Abraham.

18. Respondent Angie Salazar is the Acting Director of ORR, the subagency of the U.S. Department of Health and Human Services (“HHS”) responsible for overseeing the care and custody of unaccompanied minors. ORR is the government entity directly responsible for the detention of D.T.M.P. As the Acting Director of ORR, Respondent Salazar is a custodian of Petitioner, with authority to produce and release her. Respondent Salazar is sued in her official capacity.

19. Respondent Robert F. Kennedy, Jr. is the Secretary of HHS, a cabinet-level department of the United States Government. ORR is a component of HHS. As the Secretary of HHS, Respondent Kennedy is a custodian of Petitioner, with authority to produce and release her. Respondent Kennedy is sued in his official capacity.

20. Respondent Luzaury Cotto is an ORR Federal Field Specialist. Federal Field Specialist Luzaury Cotto is the government official responsible for the care and custody of children whom ORR has placed in the Children's Home of Poughkeepsie. In this role, Federal Field Specialist Luzaury Cotto is responsible for determining D.T.M.P.'s placement and has authority to approve her release from ORR custody. Accordingly, Respondent Luzaury Cotto is a custodian of Petitioner, with authority to produce and release her. Respondent Luzaury Cotto is sued in her official capacity.

21. Respondent Walter J. Joseph is the Director of the Children's Home of Poughkeepsie, where D.T.M.P. is being held at the time of this petition. As Director of the Children's Home of Poughkeepsie, Respondent Walter J. Joseph is a custodian of Petitioner, with authority to produce her. Respondent Walter J. Joseph is sued in his official capacity.

22. Respondent TODD BLANCHE is named in his official capacity as the Attorney General of the United States. He is responsible for the policies and operations of the DOJ.

23. Respondent MARKWAYNE MULLIN is named in his official capacity as the Secretary of DHS. He directs each of the component agencies within DHS, including ICE.

24. Respondent DAVID VENTURELLA is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

EXHAUSTION

25. Petitioner is not required to exhaust administrative remedies because doing so would be futile.

26. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18-CV-2640(RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

27. Such exhaustion may be excused when any of the following apply: “(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (citation omitted).

28. Petitioner’s case meets every requirement. Not only will she face irreparable injury if her detention continues, and not only does her petition raise substantial constitutional questions, but intervening events have rendered custody redetermination and bond relief through the immigration court or administrative appeal futile, as she would be unable to afford even the minimum bond amount as a minor, and there is no administrative appeal at the time as she is on the verge of adjusting to residency, and such a redetermination is unable to provide a genuine opportunity for adequate relief.

LEGAL FRAMEWORK

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

A. Statutory and Regulatory Framework

29. 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.

30. 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 85-4544-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).¹

31. In 2002, Congress passed the Homeland Security Act (“HAS”), 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.

32. Congress's 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

¹ Following the promulgation of the Foundational Rule, the *Flores* Settlement Agreement was partially terminated as to HHS. *Flores v. Garland*, No. CV 85-4544-DMG (AGRx), 2024 WL 3467715 (C.D. Cal. June 28, 2024).

enforcement were incompatible roles for a single agency.² Within HHS, ORR is responsible for children's safety and welfare and is explicitly not a law enforcement agency. *See* Foundational Rule, 89 Fed. Reg. at 34399, 34423 (“it is not a law enforcement agency, unlike the former INS”), 34591.

33. 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 DHS, both in detention and in immigration proceedings. 8 U.S.C. § 1232 *et seq.*

34. 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 ex rel. A.H. 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).

35. Neither the HSA nor the TVPRA make any mention of a sponsor's potential immigration status as a prerequisite to receive an unaccompanied child into their custody.

² *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. S9670 (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.”).

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.

36. 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.*).

37. 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.*

38. 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). As required by the regulation, sponsor suitability assessments must include various investigations and background checks. *Id.* § 410.1201(c). Furthermore, "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).

39. ORR's subregulatory framework is laid out in the UC Policy Guide. The UC Policy Guide was first published publicly in 2015 and is available on ORR's website. Office of Refugee Resettlement, *Unaccompanied Alien Children Bureau Policy Guide* (2026) ("Policy Guide"), <https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide>. The Policy Guide governs the placement, care, and release of unaccompanied children in ORR custody, consistent with ORR's legal authorities. Policy Guide, Introduction. Section 2 of the guide sets out ORR's policies with respect to securing "[s]afe and timely release" of unaccompanied children "to parents, guardians, relatives, or individuals designated by the child's parents, referred to as 'sponsors.'"

B. Legal and Factual Background of Prolonged Detention of Unaccompanied Immigrant Children

1. Constitutional Protections for Unaccompanied Children

40. 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*, 533 U.S. at 690 ("[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 and citation omitted)); *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).

41. “[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), (“[The Supreme Court] consistently ha[s] rejected the assertion that ‘a child, unlike an adult, has a right not to liberty but to custody.’” (quoting *Gault*, 387 U.S. at 17)). 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*, No. CV 18-5741-DMG (PLAx), 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).

42. The serious harm of prolonged detention of unaccompanied children [caused by unnecessary/arbitrary additional vetting requirements] 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*, 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).

43. The then-Assistant Secretary for the Administration for Children and Families later conceded that the policy did not “add[] anything to the protection or the safety of the children.”³ Extended lengths of stay in ORR custody harmed children’s mental health and wellbeing. *See, e.g.*, HHS OIG Report, 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.”).

44. 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. Cent. Hanover Bank & Tr.*, 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.*, 2022

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

WL 2177454, at *27 (alterations in original) (quoting *Santos v. Smith*, 260 F. Supp. 3d 598, 613–14 (W.D. Va. 2017)).

45. In accordance with these procedural safeguards, ORR has a statutory and regulatory responsibility to promptly place D.T.M.P. in the least restrictive setting available without unnecessary delay. Based on the facts provided below, D.T.M.P.'s continued detention is unlawful. She will turn eighteen on August 30, 2026, at which point ORR will have no legal authority to detain her. Her warrantless arrest was unlawful, and her continued detention pending her imminent eighteenth birthday serves no legitimate governmental purpose.

II. Legal Framework – Adults

A. Immigration Detention Framework

46. Petitioner is a minor and her petition is currently governed by standards applicable to minors. However, Petitioner's 18th birthday is imminent. Accordingly, Petitioner submits the following additional legal background information pertinent to adults.

47. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

48. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

49. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

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

51. This case will concern the detention provisions at §§ 1226(a) and 1225(b)(2).

52. Detention under Section 1226(a) is discretionary, not mandatory; the government “may release the [noncitizen] on—(A) [a] bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]” 8 U.S.C. § 1226(a)(2)(A)–(B).20.

53. Under the Section 1226 framework, release is appropriate where a noncitizen “demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8). *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination”); *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 493 (S.D.N.Y. 2025). If, after an individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. § 1003.19.

54. In contrast with Section 1226, which applies to “certain [noncitizens] already in the country,” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (i.e., “applicants for admission”). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

55. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, “if the examining immigration officer determines that a[] [noncitizen] *seeking*

admission is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

56. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection but who were already in the United States at the time of an ICE arrest were detained under § 1226(a) rather than § 1225(b)(2). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has made clear, “Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed from the United States.’” *Jennings*, 583 U.S. at 287-89 (citation omitted).

57. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy⁴ that rejected well-established understanding of the statutory framework and reversed decades of practice. The policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

58. Since ICE adopted this new policy, “over ninety percent of district court judges” have “rejected the government’s position.” *Barbosa da Cunha v. Freden*, 175 F.4th 61, 71 (2d Cir. 2026). *See also Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC, 2025 WL 2782499, at *1

⁴ *ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AILA Doc. No. 25071607 (July 8, 2025), <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

(W.D. Wash. Sep. 30, 2025) (collecting cases and noting that the majority of courts that have confronted this issue “ha[ve] concluded that the government’s [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice”), *subsequent determination*, 816 F. Supp. 3d 1234 (W.D. Wash. 2026), *aff’d*, No. 25-6842, 2026 WL 2196424 (9th Cir. July 30, 2026);⁵ *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (finding that the government cannot point to an Article III court that has adopted their expansive construction of § 1225(b)(2)); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same).

59. Courts have rejected DHS’s and EOIR’s new interpretation because it defies the INA. The government’s recently adopted position also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an “applicant for admission” as “[a noncitizen] present in the United States who has not been admitted or who arrives in the United States.” As the Second Circuit explained, “[t]he term ‘seeking’ is in the present participle form, which expresses present action.” *Cunha*, 175 F.4th at 74. The government’s interpretation that all inadmissible individuals are “seeking admission” within the meaning of § 1225(b)

⁵ *See, e.g., Lopez Benitez*, 795 F. Supp. 3d 475; *Salcedo Aceros v. Kaiser*, No. 25-cv-06924 EMC (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 805 F. Supp. 3d 1112 (D. Nev. 2025), *appeal filed*, No. 25-7288 (9th Cir. Nov. 19, 2025); *Romero v. Hyde*, 795 F. Supp. 3d 271 (D. Mass. 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Maldonado v. Olson*, 795 F. Supp. 3d 1134 (D. Minn. 2025); *Velasquez Salazar v. Dedos*, 806 F. Supp. 3d 1231 (D.N.M. 2025); *Beltran Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. 2025), *aff’d*, 175 F.4th 713 (6th Cir. 2026); *Jimenez v. FCI Berlin*, 799 F. Supp. 3d 59 (D.N.H. 2025); *Choglllo Chafila v. Scott*, 804 F. Supp. 3d 247 (D. Me. 2025), *appeal dismissed sub nom. Lema v. Scott*, No. 25-2061, 2025 WL 4704856 (1st Cir. Dec. 17, 2025), *and appeal dismissed sub nom. Tamay v. Scott*, No. 25-2060, 2025 WL 4710332 (1st Cir. Dec. 19, 2025), *and appeal dismissed*, No. 25-2059, 2026 WL 1230592 (1st Cir. Jan. 26, 2026).

renders the meaning of the term identical to the statutorily defined term “applicant for admission.” Such an interpretation violates the rule of surplusage and negates the plain meaning of text. *Id.* at 98.

60. The legislative history further shows that § 1226(a) was intended to “restate[] the [then-]current provisions in [section 242(a)(1)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[n alien] who is not lawfully in the United States.” *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after IIRIRA’s enactment, the former Immigration and Naturalization Service and the Executive Office for Immigration Review (“EOIR,” which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: “Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

61. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation “is powerful evidence that interpreting the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government interpretation and practice to reject government’s new proposed interpretation of the law at issue). As the Second Circuit noted, “the fact that the

Executive Branch has for nearly three decades acted inconsistently with the newfound interpretation strongly counsels against adopting it.” *Cunha*, 175 F.4th at 91.

62. The LRA amendments to § 1226 that occurred just this year, § 119, 139 Stat. 3, also confirmed widespread understanding that individuals not admitted or paroled were still detained pursuant to § 1226(a) if they were detained while already in the United States. Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely new provision in order to make those individual subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes. *See Cunha*, 175 F.4th at 87 (finding that the government’s reading would render this provision “superfluous”).

63. Petitioner was arrested after seven years of continuous presence in the United States, not while “seeking admission.” Further, her pending Special Immigrant Juvenile Status and forthcoming adjustment of status to resident and other forms of relief are not legally considered a process of “seeking admission.” *See Lopez Benitez*, 795 F. Supp. 3d at 488 n.7; *Garcia-Mendez v. Lynch*, 788 F.3d 1058 (9th Cir. 2015).

64. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. Her detention would be governed by § 1226(a), and her continued detention under § 1225(b)(2) would be in excess of statutory authority and *ultra vires*.

B. Noncitizens' Procedural Due Process Rights

65. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno*, 507 U.S. at 306. As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States “whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693 (citations omitted).

66. Stated simply, “while [DHS] might want to enforce this country’s immigration laws efficiently, it cannot do that at the expense of fairness and due process.” *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

67. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a “new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge constitutional rights.” *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 149 (W.D.N.Y. 2025).

68. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. These factors are: (i) “the private interest that will be affected by the official action”; (ii) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (iii) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (quoting *Mathews*, 424 U.S. 319).

69. In light of a noncitizen’s due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an individualized determination as to the noncitizen’s risk of flight and danger to the community. *See Velesaca*, 458 F. Supp. 3d at 235; *Lopez Benitez*, 795 F. Supp. 3d at 495; *Kelly v. Almodovar*, No. 25 Civ. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

70. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 795 F. Supp. 3d at 492 (“[Petitioner] invokes ‘the most significant liberty interest there is—the interest in being free from imprisonment.’” (quoting *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi*, 542 U.S. at 529))); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

71. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment’s guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025), *appeal dismissed*, Nos. 25-5067, 25-5068, 2025 WL 1772161 (D.C. Cir. June 24, 2025). Further, due process requires that “notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]” *Id.*

72. For the third *Mathews* factor, “the Attorney General’s discretion to detain individuals under [8 U.S.C.] § 1226(a) is valid where it advances a legitimate governmental purpose.” *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration detention are “ensuring the appearance of [noncitizens] at future immigration proceedings” and

“[p]reventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (second alteration in original). Absent evidence in the record that a noncitizen is dangerous, and in situations when the noncitizen has appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *See Lopez Benitez*, 795 F. Supp. 3d at 496; *Valdez v. Joyce*, 803 F. Supp. 3d 213, 218–19 (S.D.N.Y. 2025)

73. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. This is particularly clear where the government has already made determination that a petition is not a flight risk or a danger, and no change of circumstance justifies re-detention. *See, e.g., Lopez Benitez*, 795 F. Supp. 3d at 497 (“[G]iven the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents’ failure to conduct any kind of individualized assessment *before* detaining him—any post-deprivation review by an immigration judge would be inadequate.”); *see also Chipantiza-Sisalema v. Francis*, No. 25 Civ. 5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (finding bond “hearing is no substitute for the requirement that ICE engage in a ‘deliberative process prior to, or contemporaneous with,’ the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause” (citation modified)); *Kelly*, 2025 WL 2381591, at *3 (same).

74. As a result, courts have ordered a noncitizen’s immediate release where their pre-detention due process rights have been violated. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination

regarding Petitioner before summarily detaining her without a warrant while she was out driving with her mother. *Cuy Comes v. DeLeon*, No. 25 Civ. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner's first encounter with ICE was a detention without an individualized determination), *appeal filed*, No. 26-82 (2d Cir. Jan. 14, 2026); *Perez Velasquez v. Noem*, No. 25 Civ. 10338 (AT), 2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, No. 25-cv-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

FACTUAL BACKGROUND

I. D.T.M.P. is a child whose warrantless arrest and continued detention are unlawful.

75. D.T.M.P. is a seventeen-year-old citizen of Honduras. She entered the United States on June 2, 2019, at Hidalgo, Texas, with her mother. She was briefly detained at the border and then released on recognizance on June 7, 2019.

76. Since her release in 2019, D.T.M.P. has lived continuously in the United States for over seven years. She resided in Dover, New Jersey, where she has been an excellent student with no criminal history. She has deep community ties and has built her life in this country during her formative years. On track to graduate as the salutatorian of her high school class at [REDACTED], Petitioner has a strong passion for academics, attends part-time classes at the [REDACTED], and is the recipient of the [REDACTED] scholarship and a member of the [REDACTED] program, both of which have awarded her two years of free college tuition. At the [REDACTED] Petitioner completed classes in the fields of medical terminology, healthcare careers, first aid, and biology with the goal of becoming a doctor specializing in anesthesiology. In the evenings and on weekends, Petitioner attended church services at Centro Biblico La Hermosa, a church in Passaic, New Jersey, where

she served as a youth leader. Petitioner has also worked at  three days per week since September 2025 and has paid taxes on those wages. Attached hereto as **Exhibit 1** is a collection of letters of support reflecting Petitioner D.T.M.P.'s valuable position in her community.

77. On or about October 10, 2022, the United States Citizenship and Immigration Services ("USCIS") approved D.T.M.P.'s petition for Special Immigrant Juvenile Status (Form I-360), with a priority date of October 10, 2022, and a notice date of April 22, 2023. USCIS granted D.T.M.P. deferred action in connection with her SIJS approval. D.T.M.P.'s visa priority date is now current.

78. D.T.M.P.'s removal proceedings have been pending since 2019. In addition to her approved SIJS status, she has a pending asylum application and has been actively engaged with the immigration court process throughout.

79. D.T.M.P. has filed an application for adjustment of status (Form I-485) with the immigration court. On August 11, 2026, Immigration Judge Lisa W. Ling scheduled D.T.M.P.'s case for an individual hearing on August 28, 2026, to adjudicate the I-485. That application was granted, and D.T.M.P. will become a lawful permanent resident of the United States as soon as USCIS implements that grant of D.T.M.P.'s petition. Her continued detention by ORR after she has been approved to become a lawful permanent resident serves no legitimate governmental purpose and is causing irreparable harm to a child who has been living in this country for over seven years.

80. On June 29, 2026, D.T.M.P. was driving with her mother while grocery shopping in their community. Her mother had a prior order of removal. Without warning, four ICE vehicles surrounded D.T.M.P.'s car. Masked ICE officers pointed firearms at this seventeen-

year-old child while she was driving. D.T.M.P. was terrified. She had never had any interaction with law enforcement before, and she did not know who the masked men were or what was happening. D.T.M.P. was so frightened and disoriented that she took her hands off the steering wheel without realizing the car was still in drive; the vehicle made contact with an ICE vehicle. The officers violently dragged D.T.M.P. from the vehicle and handcuffed her in the street. D.T.M.P., a child, was treated like a violent criminal—surrounded by armed, masked men, forcibly extracted from a car at gunpoint, and restrained—for no reason other than being in the presence of her mother. The experience was deeply traumatic and continues to cause D.T.M.P. significant emotional distress.

81. The arrest was conducted without a warrant. Upon information and belief, no warrant had been issued for D.T.M.P.'s arrest prior to her apprehension on June 29, 2026. The officers did not present any warrant to D.T.M.P. at the time of the arrest. D.T.M.P. is a seventeen-year-old child with SIJS status and deferred action who has been living in the United States for seven years, attending school, and complying with all legal obligations. There was no reason to believe she was likely to escape before a warrant could be obtained.

82. Both D.T.M.P. and her mother were taken to Delaney Hall Detention Center in Newark, New Jersey. The following day, her mother was transferred to another state. D.T.M.P.—a minor—was left alone with adults at Delaney Hall before being transferred to ORR custody. She was subsequently placed at the Children's Home of Poughkeepsie, New York, where she remains detained.

II. D.T.M.P.'s continued detention is unlawful and serves no legitimate purpose.

83. D.T.M.P. will turn eighteen on August 30, 2026. Upon turning eighteen, she will no longer meet the definition of an “unaccompanied alien child” under 6 U.S.C. § 279(g)(2), and

ORR will have no legal authority to detain her. No sponsor is required for the release of an adult from government custody.

84. D.T.M.P. has approved SIJS with deferred action and a priority date that is now current. She has no criminal history. She poses no flight risk. She has lived in the United States for over seven years and has deep community ties in New Jersey. There is no legitimate governmental interest in her continued detention.

85. D.T.M.P.'s continued detention causes her ongoing harm. She has been separated from her family and community for approximately eight weeks. The urgency of her release cannot be overstated given her imminent eighteenth birthday and her pathway to lawful permanent resident status. Her I-485 was approved by Judge Ling on August 28, 2026, and continued detention is simply unjustifiable.

86. D.T.M.P.'s prolonged detention in an institutional care setting, separated from her family, causes her emotional distress and psychological harm. Research consistently demonstrates that the detention of children in institutional settings—even when those settings are described as shelters—causes significant mental health harm. D.T.M.P. should be in the classroom, where she thrives and excels, and graduating from high school as salutatorian, not in a government facility.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF VIOLATION OF PROCEDURAL DUE PROCESS

87. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

88. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution amendment V due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful,

temporary, or permanent.” *Zadvydas*, 533 U.S. at 693, 698 (citations omitted). A child's interest in being free from confinement is no narrower than that of an adult. *Gault*, 387 U.S. at 13; *Reno*, 507 U.S. at 316 (O'Connor, J. and Souter, J., concurring).

89. Due process requires that the government not deprive an individual of their constitutional rights without meaningful notice and an opportunity to be heard before a neutral arbiter to protect against the risk of erroneous deprivation. *Mathews*, 424 U.S. at 335. Due process also requires that government action be rational and non-arbitrary. *See United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

90. Respondents' policies and actions, as set forth above, have deprived D.T.M.P. of freedom from confinement and her right to family integrity without constitutionally sufficient due process.

SECOND CLAIM FOR RELIEF

VIOLATION OF THE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT (TVPRA), 8 U.S.C. § 1232

91. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

92. Respondents have a non-discretionary duty under the TVPRA to promptly place D.T.M.P. "in the least restrictive setting" that is in her best interests, usually with "a suitable family member." 8 U.S.C. § 1232(c)(2)(A).

93. D.T.M.P. does not present any flight risk or danger to the community. She will turn eighteen on August 30, 2026, at which point she will no longer qualify as an unaccompanied child subject to ORR custody. The fact that her request for an adjustment of status (Form I-485) was granted by Judge Ling earlier today, August 28, 2026—just two days before her eighteenth birthday—further demonstrates that she poses no flight risk and that her continued detention

serves no legitimate purpose. Respondents have failed to place D.T.M.P. in the least restrictive setting in her best interests.

94. Respondents' policies and actions described above, which have resulted in D.T.M.P.'s unnecessary prolonged detention, violate Section 235 of the TVPRA, 8 U.S.C. § 1232.

THIRD CLAIM FOR RELIEF

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (APA), 5 U.S.C. §§ 701 et seq.

95. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

96. Respondents' continued detention of D.T.M.P. and failure to release her constitutes final agency action.

97. Respondents' continued detention of D.T.M.P. determines the “rights and obligations” of D.T.M.P. and creates “legal consequences” of continued detainment and separation from her family, in violation of D.T.M.P.'s fundamental right to liberty and family integrity. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citation omitted). Accordingly, D.T.M.P. is entitled to judicial review of ORR's actions under 5 U.S.C. §§ 702 and 704.

98. Respondents' continued detention of D.T.M.P. is arbitrary, capricious, and not in accordance with the law. 5 U.S.C. § 706(2)(A).

FOURTH CLAIM FOR RELIEF

VIOLATION OF THE FOUNDATIONAL RULE, 45 C.F.R. §§ 410.1000 et seq.

99. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

100. Federal agencies and their officials are required to follow their own “existing valid regulations.” *See Accardi*, 347 U.S. at 268. When an agency fails to comply with binding

regulations, such actions are “not in accordance with law.” 5 U.S.C. § 706(2)(A). *See Vitarelli v. Seaton*, 359 U.S. 535, 545 (1959).

101. Under the Foundational Rule, Respondents have a non-discretionary duty to promptly place D.T.M.P. in the least restrictive setting that is in her best interests. 45 C.F.R. § 410.1003(f). ORR is also required to make and record prompt and continuous efforts towards a child's release. *Id.* § 410.1203(a).

102. Respondents have failed to comply with these binding regulations by continuing to detain D.T.M.P. in an institutional setting when her release is warranted, and therefore are holding D.T.M.P. unlawfully.

FIFTH CLAIM FOR RELIEF

VIOLATION OF THE INA, 8 U.S.C. § 1357(a)(2)

103. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

104. The Immigration and Nationality Act only authorizes warrantless arrests in the interior of the United States if the officer "has reason to believe" that the noncitizen "so arrested is in the United States in violation of [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).

105. Any immigration department or agency that apprehends or encounters an unaccompanied child must notify the Department of Health and Human Services within 48 hours, and *if* that department or agency takes the child into custody, must transfer the child to the custody of HHS within 72 hours. 8 U.S.C. § 1232(b)(3).

106. D.T.M.P. was arrested without a warrant on June 29, 2026. D.T.M.P. is a seventeen-year-old child who has lived in the United States for over seven years. She has an approved SIJS petition with deferred action and a priority date that is now current. She is an

excellent student with no criminal history. She was living at a known address in Dover, New Jersey, and was complying with all legal obligations. There was absolutely no reason to believe that D.T.M.P. was "likely to escape before a warrant c[ould] be obtained." 8 U.S.C. § 1357(a)(2). *See J.U. v. Maldonado*, 805 F. Supp. 3d 482, 493 (E.D.N.Y. 2025) (holding warrantless arrest unlawful where petitioner posed no flight risk); *Chogllo Chafila*, 804 F. Supp. 3d at 264 (ordering release to remedy warrantless arrest and noting that "absent a warrant a noncitizen may not be arrested and detained under section 1226(a)").

107. Because D.T.M.P.'s arrest by DHS was unlawful, the transfer of D.T.M.P. to ORR custody and ORR's continued custody based on that arrest is likewise unlawful, and D.T.M.P. must be released.

SIXTH CLAIM FOR RELIEF

VIOLATION OF 8 C.F.R. § 287.8

108. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

109. Federal agencies and their officials are required to follow their own "existing valid regulations." *See Accardi*, 347 U.S. at 268. When an agency fails to comply with binding regulations, such actions are "not in accordance with law." 5 U.S.C. § 706(2)(A). *See Vitarelli*, 359 U.S. at 545.

110. Designated immigration officers are authorized to make arrests following the procedures outlined in 8 C.F.R. § 287.8(c), when the officer "has reason to believe that the person arrested has committed an offense against the United States or is a [noncitizen] illegally in the United States." 8 C.F.R. § 287.8(c)(2)(i). An officer must obtain a warrant for such an arrest "except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

111. D.T.M.P. was arrested without a warrant. As described above, D.T.M.P. is a seventeen-year-old child with SIJS and deferred action who had been living in the community for over seven years. She posed no flight risk. The ICE officers used excessive force against a minor child—pointing a firearm at her, dragging her from the vehicle, and handcuffing her—in violation of 8 C.F.R. § 287.8(a)(2), which requires that force used by immigration officers be "reasonable and necessary." Because D.T.M.P.'s arrest by DHS was unlawful, the transfer of the child to ORR custody was likewise unlawful, and D.T.M.P. must be released.

SEVENTH CLAIM FOR RELIEF

UNREASONABLE SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT

112. Petitioner restates and realleges all paragraphs above as if fully set forth herein.

113. The Fourth Amendment protects “the right of the people to be secure in their persons . . . against unreasonable searches and seizures” and establishes that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things to be seized.” U.S. Const. amend. IV.

114. Immigration officers are authorized to perform immigration stops of noncitizens only upon a reasonable suspicion, based on specific articulable facts, that the person being questioned is a noncitizen unlawfully in the United States. *See Trump v. Illinois*, 146 S. Ct. 432, 436 n.4 (2025) (explaining that immigration stops must meet the mandates of the Fourth Amendment).

115. Courts have interpreted the Fourth Amendment to require ICE to meet the standard of probable cause when it effectuates a warrantless immigration arrest under 8 U.S.C. § 1357(a)(2). *See, e.g., Escobar Molina v. U.S. Dep’t of Homeland Sec.*, 811 F. Supp. 3d 1, 30 (D.D.C. 2025).

116. Immigration stops without reasonable suspicion and immigration arrests without probable cause violate the Fourth Amendment's prohibition on unreasonable searches and seizures. This is true even if an arrest warrant was created post-arrest.

117. Because Respondents arrested Petitioner without a warrant and a showing of probable cause, his detention violates the Fourth Amendment.

PRAYER FOR RELIEF

Petitioner prays that the Court assume jurisdiction over this Petition and Complaint and grant the following relief:

1. Issue a Writ of Habeas Corpus compelling Respondents to release D.T.M.P. from custody on August 30, 2026 (her eighteenth birthday) or immediately thereafter, without any additional restraints on her liberty, including electronic monitoring, and enjoining any re-detention under the immigration laws of the United States;

2. A declaratory judgment that Respondents have violated D.T.M.P.'s constitutional and statutory rights by detaining her without a lawful warrant, by failing to promptly release her, and by violating the TVPRA, the APA, and the Foundational Rule;

3. Declare that Respondents' actions violate the Fourth Amendment;

4. An injunction prohibiting D.T.M.P.'s continued custody by ORR or re-detention by ICE, as required by federal statutes, the Foundational Rule, and the U.S. Constitution;

5. Order a stay of removal to any other place outside of the New York or New Jersey area to retain the Court's jurisdiction and allow Petitioner to meaningfully participate in these proceedings while this action is pending;

6. An award of costs and reasonable attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

7. Any other relief this Court deems just and proper.

DATED: August 28, 2026

Respectfully submitted,

/s/ Bryan Wolin

KILPATRICK TOWNSEND & STOCKTON LLP

Bryan Wolin

3 Times Square

New York, NY 10036

Telephone: (212) 775-8735

Facsimile: (646) 304-2293

Email: BWolin@ktslaw.com

Pro Bono Counsel for Petitioner

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

Pursuant to 28 U.S.C. § 2242, the undersigned counsel for Petitioner verifies that the facts set forth in this Petition are true and correct to the best of counsel's knowledge, information, and belief, based upon communications with Petitioner's Next Friend, Rochelle Kiam-Abraham, and review of Petitioner's immigration records.

Dated: August 28, 2026

Respectfully submitted,

/s/ Bryan Wolin

KILPATRICK TOWNSEND & STOCKTON LLP

Bryan Wolin

3 Times Square

New York, NY 10036

Telephone: (212) 775-8735

Facsimile: (646) 304-2293

Email: BWolin@ktslaw.com

Pro Bono Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief to be served upon the following parties by Federal Express overnight delivery:

Robert F. Kennedy, Jr.
Secretary of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Angie Salazar
Acting Director
Office of Refugee Resettlement
330 C Street SW, Room 5123
Washington, DC 20201

Luzaury Cotto
Federal Field Specialist
Office of Refugee Resettlement
330 C Street SW, Room 5123
Washington, DC 20201

Walter J. Joseph, Director
Children's Home of Poughkeepsie
10 Childrens Way
Poughkeepsie, NY 12601

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

Markwayne Mullin
Secretary of Homeland Security
2707 Martin Luther King Jr. Ave., SE
Washington, D.C. 20528

David Venturella
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, D.C. 20536