UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSELYN CHIPANTIZA-SISALEMA,

Petitioner,

v.

LADEON FRANCIS, *et al.*,

Respondents.

Case No. 25 Civ. 5528 (AT)

RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

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Defendants (the "Government") respectfully submit this memorandum of law in opposition to the amended petition for writ of habeas corpus filed by petitioner Joselyn Chipantiza-Sisalema ("Petitioner") on July 3, 2025. ECF No. 6 ("Am. Pet.").

PRELIMINARY STATEMENT

Petitioner is an applicant for admission from Ecuador who was apprehended by officers of the U.S. Department of Homeland Security ("DHS") near El Paso, Texas, after she unlawfully entered the United States. Because she is an alien who entered the United States without inspection or admission who was deemed inadmissible at that time, DHS had the discretion either to place Petitioner into removal proceedings under 8 U.S.C. § 1229a, or to issue an expedited removal order. Due to resource constraints, DHS opted at that time to place Petitioner in Section 1229a removal proceedings and release her in the interim on her own recognizance.

On June 24, 2025, U.S. Immigration and Customs Enforcement ("ICE") exercised its discretion and opted to detain Petitioner under 8 U.S.C. § 1226(a). Due to a lack of available bed space for female detainees with Petitioner's risk classification in the New York City area, on July 3, 2025, ICE transferred Petitioner to a facility in Monroe, Louisiana. Petitioner's removal case—through which she may request and receive a bond hearing—remains pending.

In this habeas petition, Petitioner argues that her detention is unlawful because she did not receive sufficient pre-deprivation process prior to her re-detention by ICE and because she may be denied a bond hearing under a BIA decision, *Matter of Q Li*. She also argues that her detention is unlawful based on the conditions of confinement at 26 Federal Plaza and because she was not permitted sufficient access to legal counsel.

Petitioner's petition should be denied. Because she is in removal proceedings and was detained under Section 1226a, Petitioner is entitled to a bond hearing if she requests one. Petitioner

must exhaust this administrative remedy available to her before challenging her detention through a habeas petition, as a bond hearing is constitutionally adequate process through which to challenge her detention. Additionally, Petitioner's transfer to Louisiana rendered all of her claims related to the conditions at 26 Federal Plaza moot, and they should be dismissed for lack of subject matter jurisdiction. Petitioner's only allegation related to her current facility in Louisiana—that she has been denied sufficient access to counsel because legal calls are not available every day—does not state a claim for a violation of any constitutional right she may have.

BACKGROUND

Petitioner is a native and citizen of Ecuador who unlawfully entered the United States on or before May 7, 2024. Declaration of Jun Ho Oh, dated July 11, 2025 ("Oh Decl.") ¶¶ 3, 4. On May 7, 2024, a Border Patrol Agent with U.S. Customs and Border Protection ("CBP") encountered Petitioner in the vicinity of El Paso, Texas, and arrested and transported her a facility in El Paso, Texas, for further processing. *Id.* ¶ 4. Petitioner admitted to a Border Patrol Agent that she unlawfully entered the United States, was not admitted or paroled, and did not possess valid entry documents. *Id.* ¶ 5.

On May 8, 2024, CBP served Petitioner with a Notice to Appear ("NTA"), the charging document used to commence removal proceedings, charging her with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. *Id.* ¶ 6. The NTA advised Petitioner that she was to appear before an Immigration Judge at 26 Federal Plaza in New York, New York, for a hearing on June 24, 2025. *Id.* After processing, CBP released Petitioner on her own recognizance the same day due to lack of bedspace. *Id.*

On June 24, 2025, Petitioner appeared in person without counsel before an Immigration Judge for an initial master calendar hearing at 26 Federal Plaza in her removal case. *Id.* ¶ 7. At the hearing, Petitioner requested additional time to obtain an attorney and the Immigration Judge granted the request and adjourned the hearing to March 24, 2026. *Id.* After the hearing, ICE took Petitioner into custody without incident. *Id.*

Due to lack of bedspace at detention facilities for women with Petitioner's risk classification in New York City area, after processing, Petitioner remained in ICE's hold room facility at 26 Federal Plaza pending transfer to an available long-term accommodation. *Id.* ¶ 8. On July 2, 2025, bedspace at Richmond Correctional Center in Monroe, Louisiana, was approved, and she was transported to Louisiana by plane the following day. *Id.* ¶¶ 9-10. On July 9, 2025, ICE filed a notice advising the Immigration Judge of Petitioner's detention in Louisiana and her removal case is expected to be transferred to the Jena Immigration Court in Louisiana shortly. *Id.* ¶ 12.

Petitioner filed her habeas petition in this Court on July 3, 2025, ECF No. 1, and filed an amended petition on July 9, Am. Pet.[1] In this petition, Petitioner alleges violations of the Due Process Clause based on her re-detention by ICE and the conditions of confinement at 26 Federal Plaza (Count One); violations of the Fifth Amendment, First Amendment, Administrative Procedure Act ("APA"), and Immigration and Nationality Act ("INA") for lack of access to counsel (Count Two); and violation of the Fourth Amendment for her re-detention (Count Three). Am. Pet.

[1] On July 8, 2025, the Court issued an Order to Show Cause ("OSC") that ordered that the Government not transfer Petitioner out of ICE's New York Field Office's day-to-day operations area. ECF No. 4. When the OSC issued, however, Petitioner had been in Louisiana for four days, Oh Decl. ¶ 11, and there are no detention facilities for women in the Southern District of New York. ICE will not further transfer Petitioner absent emergency or further order of the Court.

¶¶ 31-42. She also seeks release pending adjudication of her petition under *Mapp v. Reno* (Count Four). Am. Pet. ¶¶ 43-45.

ARGUMENT

I. PETITIONER'S CHALLENGES TO HER DETENTION FAIL

In Count One, Petitioner argues that her detention violates due process, asserting that she was not accorded any pre-deprivation process related to "whether a change in [her] custody status was warranted." Am. Pet. ¶ 33. In Count Three, Petitioner argues that her redetention is "unreasonable and therefore violates the Fourth Amendment." *Id.* ¶ 42. These claims fails because Petitioner has failed to exhaust the administrative remedies available to her—which include a bond hearing before an immigration judge in her removal case—before filing this petition.

A. Petitioner May Challenger Her Detention Via a Bond Hearing

For more than a century, the immigration laws have authorized immigration officials to charge aliens as removable from the country, to arrest aliens subject to removal, and to detain aliens for removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523-26 (2003); *Abel v. United States*, 362 U.S. 217, 232-37 (1960) (discussing longstanding administrative arrest procedures in deportation cases). In the INA, Congress enacted a multi-layered statutory scheme for the civil detention of aliens pending a decision on removal, during the administrative and judicial review of removal orders, and in preparation for removal. *See generally* 8 U.S.C. §§ 1225, 1226, 1231. "Detention during removal proceedings is a constitutionally valid aspect of the deportation process."[2] *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020) (citing *Demore*, 538 U.S. at

[2] The Court should reject Petitioner's Fourth Amendment claim out of hand in light of the fact that the Petition provides no support for this theory. Am. Pet. ¶ 42. Petitioner's challenge should also be rejected because the Fourth Amendment has no applicability in the immigration context. As the Supreme Court explained in *Abel*, "the Fourth Amendment was tailored explicitly for the criminal

523); *see Demore*, 538 U.S. at 523 n.7 ("prior to 1907 there was no provision permitting bail for any aliens during the pendency of their deportation proceedings"); *Carlson v. Landon*, 342 U.S. 524, 538 (1952) ("Detention is necessarily a part of [the] deportation procedure."). Indeed, removal proceedings "'would be in vain if those accused could not be held in custody pending the inquiry into their true character.'" *Demore*, 538 U.S. at 523 (quoting *Wong Wing v. United States*, 163 U.S. 228, 235 (1896)); *cf. Reno v. Flores*, 507 U.S. 292, 306 (1993) ("Congress eliminated any presumption of release pending deportation, committing that determination to the discretion of the Attorney General.").

In this case, Petitioner's detention is governed by 8 U.S.C. § 1226(a). Section 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018). Section 1226(a) provides that "an alien *may* be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). The Attorney General and DHS thus have broad discretionary authority to detain a noncitizen during removal proceedings.[3] *See* 8 U.S.C.

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justice system," and that "the Fourth Amendment probable cause determination is in fact only the first stage of an elaborate system, unique in jurisprudence, *designed to safeguard the rights of those accused of criminal conduct.*" 362 U.S. at 232-37 (1960) (emphasis added). The Court noted that "civil procedures . . . are inapposite and irrelevant in the wholly different context of the criminal justice system." *Id. see also id.* at 232, 234 (suggesting, in dicta, that the procedures, substantially similar to those in place today, that govern the initial arrest of aliens and their subsequent detention are a constitutionally valid aspect of civil removal proceedings).

[3] Although the relevant statutory sections refer to the Attorney General, the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135 (2002), transferred all immigration enforcement and administration functions vested in the Attorney General, with few exceptions, to the Secretary of Homeland Security. The Attorney General's authority—delegated to immigration judges, *see* 8 C.F.R. § 1003.19(d)—to detain, or authorize bond for noncitizens under section 1226(a) is "one of the authorities he retains . . . although this authority is shared with [DHS] because officials of

§ 1226(a)(1) (DHS "may continue to detain the arrested alien" during the pendency of removal proceedings); *Nielsen v. Preap*, 139 S. Ct. 954, 966 (2019) (highlighting that "subsection (a) creates authority for *anyone's* arrest or release under § 1226—and it gives the Secretary broad discretion as to both actions"). When a noncitizen is apprehended, a DHS officer makes an initial custody determination. *See* 8 C.F.R. § 236.1(c)(8). DHS "may continue to detain the arrested alien." 8 U.S.C. § 1226(a)(1). "To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings." *Johnson v. Guzman Chavez*, 141 S. Ct. 2271, 2280-81 (2021) (citing 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1113 (BIA 1999)). If DHS decides to release the noncitizen, it may set a bond or place other conditions on release. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8).

If DHS determines that a noncitizen should remain detained during the pendency of his removal proceedings, the noncitizen may request a custody redetermination hearing (*i.e.*, a "bond hearing") before an immigration judge. *See* 8 C.F.R. §§ 236.1(d)(1), 1003.19, 1236.1(d). The immigration judge then conducts a bond hearing and decides whether to release the noncitizen, based on a variety of factors that account for the noncitizen's ties to the United States and evaluate whether the noncitizen poses a flight risk or danger to the community. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); *see also* 8 C.F.R. § 1003.19(d) ("The determination of the Immigration Judge as to custody or bond may be based upon any information that is available to the Immigration Judge or that is presented to him or her by the alien or [DHS].").

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that department make the initial determination whether an alien will remain in custody during removal proceedings." *Matter of D-J-*, 23 I. & N. Dec. 572, 574 n.3 (A.G. 2003).

Section 1226(a) does not provide a noncitizen with an absolute right to release on bond. *See Matter of D-J-*, 23 I. & N. Dec. at 575 (citing *Carlson*, 342 U.S. at 534). Nor does the Constitution. *Velasco Lopez*, 978 F.3d at 848. Furthermore, § 1226(a) grants DHS and the Attorney General broad discretionary authority to determine whether to detain or release a noncitizen during his removal proceedings. *See id.* In the exercise of this broad discretion, and consistent with the DHS regulations, the BIA—whose decisions are binding on immigration judges—has placed the burden of proof on the noncitizen, who "must establish to the satisfaction of the Immigration Judge and this Board that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra*, 24 I. & N. Dec. at 38; *accord Matter of Adeniji*, 22 I. & N. Dec. at 1114. The BIA's "to the satisfaction" standard is equivalent to a preponderance of the evidence standard. *See Matter of Barreiros*, 10 I. & N. Dec. 536, 537 (BIA 1964). If, after the bond hearing, the immigration judge concludes that the noncitizen should not be released, or the immigration judge has set a bond amount that the noncitizen believes is too high, the noncitizen may appeal that decision to the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1003.19(f), 1003.38, 1236.1(d)(3). As such, Petition is entitled to a bond hearing in immigration court and may challenge her detention through that administrative process.

B. Petitioner May Not Challenge Her Detention Through a Habeas Petition Before Exhausting Administrative Remedies

Petitioner must exhaust her challenges to her detention in immigration court and at the BIA before bringing those challenges in federal court. While it is true that "[t]here is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention [in federal court]," *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014), "[a] habeas petitioner generally must exhaust administrative remedies before

seeking federal court intervention," *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456 (S.D.N.Y. 2010). "Under the doctrine of exhaustion of administrative remedies, 'a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself.'" *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (quoting *Guitard v. United States Sec'y of Navy*, 967 F.2d 737, 740 (2d Cir. 1992)); *Foster v. INS*, 376 F.3d 75, 78 (2d Cir. 2004) ("We have been nothing if not clear in requiring that a party may not seek federal judicial review of an adverse administrative determination until the party has first sought all possible relief within the agency itself."); *Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 819 (9th Cir. 2003) (a petitioner "must exhaust administrative remedies before raising . . . constitutional claims in a habeas petition when those claims are reviewable by the BIA on appeal"); *cf. Ceballos v. Ridge*, No. 04 Civ. 7304 (LAK), 2004 WL 2849604, at *2 (S.D.N.Y. 2004) (alien's request for release from custody was unexhausted and would not be considered by district court); *Diaz v. McElroy*, 134 F. Supp. 2d 315, 319-20 (S.D.N.Y. 2001) (claim unexhausted where petitioner failed to appeal custody decision by INS District Director to BIA). Indeed, judicial exhaustion "serves myriad purposes, including limiting judicial interference in agency affairs, conserving judicial resources, and preventing the 'frequent and deliberate flouting of administrative processes [that] could weaken the effectiveness of an agency.'" *See Bastek v. Federal Crop Ins. Corp.*, 145 F.3d 90, 93-94 (2d Cir. 1998) (citations omitted).

Where the exhaustion requirement is "judicially imposed instead of statutorily imposed," several exceptions permit courts to excuse a party's failure to exhaust administrative remedies. Such exceptions include when: "(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) (citations omitted). However, "[e]xhaustion is the rule, waiver the exception." *Abbey v. Sullivan*, 978 F.2d 37, 44 (2d Cir. 1992).

In light of the extensive process available to Petitioner while she is detained under Section 1226(a), her detention challenge is premature. Petitioner, who has been detained for only two and a half weeks, can seek a custody redetermination with the immigration court. Petitioner argues that she may not get a bond hearing because the Government is "likely to now contend in administrative pleadings that [Petitioner] is ineligible for bond under *Matter of Q Li*, 29 I. & N. Dec. 66 (BIA 2025), and that "[m]andatory detention without access to a bond hearing violates her right to due process." Am. Pet. ¶ 34. But, as stated above, Petitioner is eligible for a bond hearing because she was released by CBP into the United States on her own recognizance, and she is detained under Section 1226(a), as stated in ICE's sworn declaration. Oh Decl. ¶ 8. *Matter of Q Li* concerned an alien paroled into the United States and later detained under 8 U.S.C. § 1225(b),[4] and is therefore inapposite. *See* 29 I. & N. Dec. at 67. In *Valdez v. Joyce*, another case that Petitioner cites, *see* Am. Pet. ¶¶ 28, 33, the court excused the petitioner from exhausting his administrative remedies because he "may not be entitled to a bond hearing," which is not the case here. 25 Civ. 4627 (GBD), 2025 WL 1707737, at *1 n.1 (S.D.N.Y. June 18, 2025). As two other judges in this district recently held, those who are detained under Section 1226(a) are required to exhaust their administrative remedies before they may resort to a habeas petition. *See Castillo Lachapel v. Joyce*, 25 Civ. 4693 (JHR), 2025 WL 1685576, at *3-*4 (S.D.N.Y. June 16, 2025);

[4] When an alien is paroled into the United States, he is treated for due process purposes as if he is stopped at the border. *DHS v. Thuraissigiam*, 591 U.S. 103, 139 (2020). Detention under such circumstances is pursuant to § 1225(b), not § 1226(a).

Capunay Guzman v. Joyce, 25-CV-4777 (RA), 2025 WL 1696891, at *2-*3 (S.D.N.Y. June 17, 2025). And because Petitioner has not even sought a bond hearing, it is entirely speculative that the immigration judge would even apply *Matter of Q Li*. *Cf.* Memo Endorsement, Dkt. No. 12, *Khabhaza v. U.S. Imm. & Customs Enforcement*, No. 25 Civ. 5279 (JMF) (S.D.N.Y.) (petitioner detained pursuant to Section 1226(a) sought bond during pendency of habeas petition, bond hearing was held, and the petitioner was released on bond).

Further, none of the exceptions to exhaustion applies here. Although the BIA does not have authority to review the constitutionality of the statute or regulations that it administers (*i.e.*, it cannot strike down the INA or its implementing regulations as unconstitutional), this prohibition does not prevent the BIA from remedying procedural violations, or from establishing rules and guidelines concerning the type and amount of legal process that aliens must receive in immigration proceedings. The BIA may review claims concerning procedural due process, and is capable of curing such procedural errors. *See, e.g.*, *United States v. Gonzalez-Roque*, 301 F.3d 39, 47 (2d Cir. 2002) ("while constitutional claims lie outside the BIA's jurisdiction, it clearly can address procedural defect"); *see also, e.g.*, *Matter of Chirinos*, 16 I. & N. Dec. 276, 277 (BIA 1977) (reviewing bond hearing procedures for fairness); *accord Rashtabadi v. INS*, 23 F.3d 1562, 1567 (9th Cir. 1994) (holding that allegations of due process violations "are exactly the sorts of procedural errors" the BIA is able to cure).

II. PETITIONER'S CLAIMS CONCERNING HER CONDITIONS OF CONFINEMENT AND ACCESS TO COUNSEL FAIL

Petitioner alleges that her detention is unlawful based on her conditions of confinement and lack of ready access to counsel while in ICE's holding facility at 26 Federal Plaza. *See* Am. Pet. ¶¶ 12-15, 35, 39. The Amended Petition contains no allegations related to the conditions at Richwood Correctional Center ("Richwood") in Louisiana except that her access to counsel

remains limited "due to the unavailability of legal call" noting that "[t]he next available legal call is not until July 11" (two days after the filing of the Amended Petition). *Id.* ¶ 16. Claims related to the circumstances of Petitioner's detention in 26 Federal Plaza are moot now that she has been transferred to Richwood. And the allegation of a two-day wait time for a legal call at Richwood does not state a claim for the deprivation of any constitutional right.

"The principle that a federal court 'lacks jurisdiction to consider the merits of a moot case is a branch of the constitutional command that the judicial power extends only to cases or controversies.'" *Chevron Corp. v. Donziger*, 833 F.3d 74, 123 (2d Cir. 2016) (citation omitted). "In order to satisfy the case-or-controversy requirement [of Article III], a party must, at all stages of the litigation, have an actual injury which is likely to be redressed by a favorable judicial decision." *United States v. Williams*, 475 F.3d 468, 478-79 (2d Cir. 2007). Federal courts have no authority to give an opinion upon a question that is moot as a result of events that occur during the pendency of the action. *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *see also Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of Watervliet*, 260 F.3d 114, 118-19 (2d Cir. 2001) ("Whenever mootness occurs, the court . . . loses jurisdiction over the suit, which therefore must be dismissed."). "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990). "When the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome, a case becomes moot and the Court lacks jurisdiction." *Freedom Party of New York v. New York State Bd. of Elections*, 77 F.3d 660, 662 (2d Cir. 1996) (internal quotation marks and alterations omitted). "To avoid becoming moot, the controversy must exist at every stage of the proceeding[.]" *Id.* (internal quotation marks and alterations omitted).

"This Circuit has long and consistently held that a plaintiff's request for declaratory or injunctive relief relating to a correctional facility is moot once plaintiff is transferred or released from the facility." *Phillips v. Ienuso*, No. 93 Civ. 6027 (Sotomayor, J.), 1995 WL 239062, at *1 (S.D.N.Y. Apr. 24, 1995) (citing cases, including *Young v. Coughlin*, 866 F.2d 567, 568 n.1 (2d Cir. 1989); *Tawwab v. Metz*, 554 F.2d 22, 23-24 (2d Cir. 1977); *Mawhinney v. Henderson*, 542 F.2d 1, 2 (2d Cir. 1976)); *accord Prins v. Coughlin*, 76 F.3d 504, 506 (2d Cir. 1996) ("It is settled in this Circuit that a transfer from a prison facility moots an action for injunctive relief against the transferring facility."); *Pugh v. Goord*, 571 F. Supp. 2d 477, 489 (S.D.N.Y. 2008) ("Where a prisoner has been *released* from prison, his claims for injunctive relief based on the conditions of his incarceration must be dismissed as moot.") (Sullivan, J.); *Hallett v. N.Y. State Dep't of Corr. Serv.*, 109 F. Supp. 2d 190, 196 (S.D.N.Y. 2000) (dismissing former prisoner's claims for injunctive relief on mootness grounds when he was no longer incarcerated) (Chin, J.); *Gadson v. Goord*, No. 96 Civ. 7544 (SS), 1997 WL 714878, at *3 (S.D.N.Y. Nov. 17, 1997) (same).

In the above cases, the courts have concluded that a claim for injunctive relief regarding conditions of confinement becomes moot once the petitioner is released or transferred from the detention facility because the petitioner is no longer subject to the actions or conditions sought to be enjoined. *See, e.g.*, *Prins*, 76 F.3d at 506; *Mawhinney*, 542 F.2d at 2. This Court should similarly conclude here. Petitioner is not subject to the conditions of confinement that she asserts existed at 26 Federal Plaza. Further, the Amended Petition does not include any allegation related to the living conditions at her current facility. *See* Am. Pet. ¶ 16.

Petitioner's allegation that she her access to counsel remains "extremely limited" because of the "unavailability of legal calls," *id.* ¶ 16, does not state a claim for a denial of constitutional

rights.[5] Courts have held that the statutory right to counsel in immigration proceedings is violated only where conditions are "tantamount to denial of counsel." *E.g.*, *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005). Petitioner acknowledges that she does have access to counsel by phone, stating that as of July 9, the next available call was on July 11. *Id.* That legal calls are not available on a daily basis is not tantamount to a denial of counsel.[6] Moreover, any assertions of possible future difficulties accessing counsel is entirely speculative; since this action has been filed, the Government has provided information to Petitioner's counsel as to her whereabouts and facilitated communications. It is, of course, inherent in any detention scenario that access to counsel will be more limited compared to release, but that does not make it unconstitutional.

III. PETITIONER SHOULD NOT BE RELEASED PENDING ADJUDICATION OF THE PETITION

Petitioner also seeks release under the Court's inherent authority and *Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001). *See* Am. Pet. ¶¶ 43-45. However, such release is warranted only when a

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[5] Petitioner also argues, with minimal explanation, that her lack of access to counsel also violates the APA, the INA, and the First Amendment. *See* Am. Pet. ¶¶ 37-39. The Supreme Court recently held that, for an action bringing claims for relief, under statutes including the APA and the INA, that necessarily imply the invalidity of a detainee's confinement, regardless of whether a detainee formally requests release from confinement, such "claims fall within the 'core' of the writ of habeas corpus and *must be brought in habeas*." *Trump v. J.G.G.*, 143 S. Ct. 1003, 1005 (2025) (emphasis added). Here, Petitioner seeks "immediate[] release . . . from custody." Am. Pet. at Prayer for Relief. This is a core habeas claim and it is simply not cognizable under the APA or the INA. Petitioner's First Amendment claim should be disregarded because she pleads no facts in support of it whatsoever. To the extent this is intended to be a First Amendment retaliation claim alleging that Petitioner's transfer to Louisiana was retaliation for filing the original habeas petition, that claim fails because the decision to transfer Petitioner was made before that petition was filed. *See* Oh Decl. ¶ 10.

[6] "Because immigration proceedings are of a civil rather than criminal nature, aliens in removal proceedings 'enjoy[ ] no specific right to counsel' under the Sixth Amendment to the Constitution. *Debeatham v. Holder*, 602 F.3d 481, 486 (2d Cir. 2010) (quoting *Jian Yun Zheng v. U.S. Dep't of Justice*, 409 F.3d 43, 46 (2d Cir. 2005)); *see Iavorski v. INS*, 232 F.3d 124 (2d Cir. 2000) (discussing 8 U.S.C. § 1362 and due process considerations).

petitioner (i) raises substantial claims and (ii) extraordinary circumstances (iii) make the grant of bail necessary to make the habeas remedy effective. *Id.* at 230. This standard is "a difficult one to meet," and the burden is on the petitioner to make the necessary showings. *Id.* No such claims or circumstances are raised here, and immediate release is not necessary to make the habeas remedy effective. As such, *Mapp* release should be denied.

First, for the reasons already discussed, Petitioner has not raised substantial claims. Her detention is permitted under 8 U.S.C. § 1226(a). Petitioner's claims are no different than those brought by countless aliens who are in removal proceedings, and she does not raise any novel issues concerning the applicability of the immigration laws. *Cf. Ozturk v. Trump*, __ F. Supp. 3d ___, 2025 WL 1420540, at *5-*6 (D. Vt. May 16, 2025) (raising First Amendment retaliation claim regarding the institution of removal proceedings).

Second, Petitioner has not shown extraordinary circumstances. Petitioner argues that "her prolonged confinement in inhumane conditions without access to family or counsel present extraordinary circumstances," Am. Pet. ¶ 44, but her detention of less than three weeks is hardly "prolonged," and, as noted above, she is no longer in the temporary holding facility of which she previously complained. The Second Circuit has not elaborated in great detail on the extraordinary circumstances requirement,[7] but other circuits have noted that special circumstances include: (1) a

[7] In *Elkimya v. DHS*, 484 F.3d 151, 154 (2d Cir. 2007), the court did not find extraordinary circumstances because the plaintiff there offered no reason "other than convenience, why his continued detention by the INS would affect th[e] Court's ultimate consideration of the legal issues presented in his petition for review." In *Daum v. Eckert*, No. 20-3354, 2021 WL 4057190, at *2 (2d Cir. Sept. 7, 2021), the court held that COVID-19 was not an extraordinary circumstance warranting bail. Other cases summarily reject assertions of extraordinary circumstances. *See, e.g.*, *Illarramendi v. United States*, 906 F.3d 268, 271 (2d Cir. 2018); *Stolfa v. Holder*, 498 F. App'x 58, 60 (2d Cir. Aug. 16, 2012).

serious deterioration of health while incarcerated, (2) unusual delay in the appeal process, (3) short sentences for relatively minor crimes so near completion that extraordinary action is essential to make collateral review truly effective. *See, e.g.*, *United States v. Mett*, 41 F.3d 1281, 1282 n.4 (9th Cir. 1994) (listing circumstances (1) and (2)); *Calley v. Callaway*, 496 F.2d 701, 702 n.1 (5th Cir. 1974) (internal citations omitted) (listing circumstance (3)); *see also Castaneda-Castillo v. Holder*, 638 F.3d 354, 361 n.7 (1st Cir. 2011) (holding that special circumstances may include delayed extradition hearing); *United States v. Lui Kin-Hong*, 83 F.3d 523, 524 (1st Cir. 1996) (same); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (extraordinary circumstances "seem to be limited to situations involving poor health or the impending completion of the prisoner's sentence"). None of these circumstances are present here.

Third, release is not necessary to make the habeas remedy effective in this case. Petitioner can continue to pursue immigration relief in her removal proceedings, and her detention pending resolution of her removal case is permitted by law. While Petitioner and her family are undoubtedly affected by her detention, the effects do not require release to make the remedy effective, particularly when Petitioner has not even availed herself of the bond procedures in immigration court. Other courts have grappled with this requirement, and in the face of similar assertions have rejected release. *See, e.g.*, *Evangelista v. Ashcroft*, 204 F. Supp. 2d 405, 407-09 (E.D.N.Y. 2002) (denying bail application because, for several reasons, petitioner "has not convinced the court that his immediate release is necessary in order to make the habeas remedy effective," even where the petitioner argued that he and his wife suffered from medical issues); *Halley v. Ashcroft*, 148 F. Supp. 2d 234, 236 (E.D.N.Y. 2001) (denying bail application, and noting, "petitioner has not demonstrated why the grant of bail is necessary to make the discretionary Section 212(c) hearing, which guarantees neither his release from detention nor vacatur of the INS's order of removal,

effective."); *cf. Fernandez Aguirre v. Barr*, No. 19 Civ. 7048 (VEC), 2019 WL 3889800, at *4 (S.D.N.Y. Aug. 19, 2019) ("Because the Petition seeks only a constitutionally-adequate bond hearing, and because the Court has granted that relief, immediate release is not necessary to make the habeas writ effective.").

Accordingly, the Court should deny the request for release pending adjudication.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for writ of habeas corpus.

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 5,301 words.