

TODD BLANCHE  
U.S. Deputy Attorney General  
ALINA HABBA  
Acting United States Attorney  
ANDREW BOCCIO  
ALEX SILAGI  
Assistant United States Attorneys  
970 Broad Street, Suite 700  
Newark, New Jersey 07102  
(201) 306-5172  
*Attorneys for Respondents*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

YANDDIRY YANETH CONTRERAS  
MALDONADO,

*Petitioner,*

v.

ALEXANDER CABEZAS, *et al.*,

*Respondents.*

HON. JAMEL K. SEMPER, U.S.D.J.

Civil Action No. 25-13004 (JKS)

---

**ANSWER TO AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

---

On the Brief:

Andrew Boccio  
Alex Silagi  
Assistant U.S. Attorneys

**TABLE OF CONTENTS**

Preliminary Statement..... 1

Background ..... 2

    I.    Relevant Legal Background ..... 2

        A. Detention of “Applicants for Admission” (8 U.S.C. § 1225(b))..... 2

        B. Special Immigrant Juvenile Classification and Deferred Action..... 4

    II.   Petitioner’s Immigration History..... 6

    III.  Procedural History..... 9

Legal Argument: The Court Should Dismiss The Habeas Petition..... 10

    I.    Petitioner Has Failed to Establish a Due Process Violation ..... 10

        A. Petitioner’s Detention is Lawful under 8 U.S.C. § 1225(b) ..... 10

        B. Petitioner’s Mandatory Detention Comports with Due Process ..... 12

        C. Petitioner Received a Constitutionally Sufficient Hearing ..... 14

        D. Petitioner’s SIJ Status Does Not Prohibit Removal or Detention ..... 17

    II.   Petitioner’s First Amendment Claim Fails ..... 19

    III.  Petitioner Cannot Seek a Stay of Removal via a Writ a Habeas Corpus.. 21

Conclusion..... 22

**TABLE OF AUTHORITIES**

**Cases**

*Akhmadjanov v. Oddo*,  
 No. 25-35, 2025 WL 660663 (W.D. Pa. Feb. 28, 2025) ..... 14

*Alvarez v. ICE*,  
 818 F.3d 1194 (11th Cir. 2016) ..... 18

*Benito Vasquez v. Moniz*,  
 No. 25-11737, 2025 WL 1737216 (D. Mass. June 23, 2025) ..... 17, 21

*Bonhometre v. Gonzales*,  
 414 F.3d 442 (3d Cir. 2005)..... 16

*Bravo v. Green*,  
 No. 16-4937 (JLL), 2017 WL 2268315 (D.N.J. May 24, 2017)..... 15

*Brisssett v. Attorney General*,  
 845 F. App'x 157 (3d Cir. 2021) ..... 16

*Calla-Collado v. Att’y Gen.*,  
 663 F.3d 680 (3d Cir. 2011)..... 20, 21

*Cortez-Amador v. Att’y Gen.*,  
 66 F.4th 429 (3d Cir. 2023) ..... 1, 4, 5, 18

*Demore v. Kim*,  
 538 U.S. 510 (2003) ..... 13

*Dep’t of Homeland Sec. v. Thuraissigiam*,  
 591 U.S. 103 (2020) ..... passim

*E.F.L. v. Prim*,  
 986 F.3d 959 (7th Cir. 2021) ..... 22

*Edison C. F. v. Decker*,  
 No. 20-15455, 2021 WL 1997386 (D.N.J. May 19, 2021)..... 20, 21

*German-Santos v. Warden Pike Cty. Corr. Facility*,  
 965 F.3d 203 (3d Cir. 2020)..... 17

*Jean W. v. Ahrendt*,  
 No. 21-365 (KM), 2021 WL 707745 (D.N.J. Jan. 14, 2021) ..... 15

*Jennings v. Rodriguez*,  
583 U.S. 281 (2018) ..... 2, 3, 12, 17

*Khan v. Attorney General*,  
448 F.3d 226 (3d Cir. 2006)..... 16

*Landon v. Plasencia*,  
459 U.S. 21 (1982) ..... 2

*Leamer v. Fauver*,  
288 F.3d 532 (3d Cir. 2002)..... 20

*Mathews v. Eldridge*,  
424 U.S. 319 (1979)..... 14

*Matter of Guerra*,  
24 I. & N. Dec. 37 (BIA 2006) ..... 17

*Matter of M-S-*,  
27 I & N Dec. 509 (A.G. 2019)..... 12

*Matter of Q. Li*,  
29 I. & N. Dec. 66 (BIA 2025) ..... 11

*Miranda v. Garland*,  
34 F.4th 338 (4th Cir. 2022)..... 17

*Munaf v. Geren*,  
553 U.S. 674 (2008) ..... 20

*Nishimura Ekiu v. United States*,  
142 U.S. 651 (1892) ..... 2

*Okorafor v. Attorney General*,  
787 F. App’x 808 (3d Cir. 2019) ..... 16

*Pena v. Hyde*,  
No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025) ..... 12, 13

*Pipa-Aquise v. Bondi*,  
No. 25-1094, 2025 WL 2490657 (E.D. Va. Aug. 5, 2025) ..... 12, 13

*Preiser v. Rodriguez*,  
411 U.S. 475 (1973) ..... 20

*Reno v. Am.-Arab Anti-Discrimination Comm. ("AADAC")*,  
525 U.S. 471 ..... 18, 19

*Rodriguez v. Bondi*,  
No. 25-791, 2025 WL 2490670 (E.D. Va. June 24, 2025)..... 14

*Romero v. Hyde*,  
No. 25-11631, 2025 WL 2403827 (D. Mass. Aug. 19, 2025)..... 12

*Saadulloev v. Garland*,  
No. 23-106, 2024 WL 1076106 (W.D. Pa. Mar. 12, 2024) ..... 18

*Scott v. Zickefoose*,  
No. 12-782, 2012 WL 1232269 (D.N.J. Apr. 11, 2012)..... 20, 21

*Tazu v. United States Attorney General*,  
975 F.3d 292 (3d Cir. 2020)..... 22

*United States v. Granados-Alvarado*,  
350 F. Supp. 3d 355 (D. Md. 2018) ..... 18

*Zadvydas v. Davis*,  
533 U.S. 678 (2001) ..... 13

*Zapata v. United States*,  
264 F. App'x 242 (3d Cir. 2008) ..... 20

**Statutes**

6 U.S.C. § 279..... 6

8 U.S.C. § 1101(a)(13)(A) ..... 10

8 U.S.C. § 1101(a)(27)(J)..... 4

8 U.S.C. § 1158..... 9

8 U.S.C. § 1158(a)(1) ..... 9

8 U.S.C. § 1182(a)(6)(A)(i) ..... 8

8 U.S.C. § 1182(d)(5)(A) ..... 4, 13

8 U.S.C. § 1225..... 13

8 U.S.C. § 1225(a)(1) ..... 2, 10

8 U.S.C. § 1225(a)(3) ..... 2

8 U.S.C. § 1225(a)(4) ..... 3

8 U.S.C. § 1225(b) ..... 2-4, 8-10

8 U.S.C. § 1225(b)(1) ..... 2-4

8 U.S.C. § 1225(b)(1)(A)(i) ..... 3  
 8 U.S.C. § 1225(b)(1)(B) ..... 3  
 8 U.S.C. § 1225(b)(1)(B)(ii) ..... 3  
 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) ..... 3  
 8 U.S.C. § 1225(b)(2) ..... 1-3, 11, 12  
 8 U.S.C. § 1225(b)(2)(A) ..... 3, 11  
 8 U.S.C. § 1226(a) ..... passim  
 8 U.S.C. § 1232 ..... 11  
 8 U.S.C. § 1232(a) ..... 6, 11  
 8 U.S.C. § 1232(b) ..... 6, 11  
 8 U.S.C. § 1232(c)(2)(A) ..... 7  
 8 U.S.C. § 1252(g) ..... 18  
 8 U.S.C. § 1255(a) ..... 4  
 8 U.S.C. § 1231(g)(1) ..... 20  
 28 U.S.C. § 2241 ..... 1, 19  
 28 U.S.C. § 2241(c)(3) ..... 20

**Rules**

Fed. R. Civ. P. 10(c) ..... 7

**Regulations**

8 C.F.R. § 236.1(d)(3) ..... 15, 17  
 8 C.F.R. § 274a.12(c)(14) ..... 5, 19  
 8 C.F.R. § 1001.1(q) ..... 4  
 8 C.F.R. § 1003.19(d) ..... 17  
 8 C.F.R. § 1236.1(d)(3) ..... 15, 17

*Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;  
 Conduct of Removal Proceedings; Asylum Procedures,*

62 Fed. Reg. 10312-01, 1997 WL 93131, (Mar. 6, 1997) ..... 11

### PRELIMINARY STATEMENT

On July 8, 2025, U.S. Citizenship and Immigration Services (“USCIS”) terminated a discretionary grant to Petitioner of deferred action from removal. That same day, U.S. Immigration and Customs Enforcement (“ICE”) detained her, and the Department of Homeland Security (“DHS”) initiated removal proceedings against her for presence in the United States without admission or parole. Petitioner now brings a habeas action under 28 U.S.C. § 2241, alleging that the Due Process Clause and First Amendment require release. The Court should dismiss or deny the petition.

First, Petitioner’s Due Process claims fail. Petitioner is lawfully detained under 8 U.S.C. § 1225(b)(2), which provides that an “applicant for admission” within the meaning of that statute “shall be detained” until the conclusion of removal proceedings. Petitioner is an “applicant for admission” because she admittedly entered the United States without inspection and is now present in the United States without admission. *Id.* § 1225(a)(1). Accordingly, she received all process afforded to her by Congress, and her detention has not become unconstitutionally prolonged. Additionally, Petitioner has received a bond hearing that she may appeal through administrative processes. And Petitioner’s classification as a Special Immigrant Juvenile (“SIJ”) provides no protection from removal or detention. *See Cortez-Amador v. Att’y Gen.*, 66 F.4th 429 (3d Cir. 2023).

Second, Petitioner’s First Amendment claim seeks relief that is not cognizable in a habeas claim because it would not affect the fact or length of Petitioner’s

detention. For the same reason, insofar as Petitioner seeks a stay of removal through the present petition, the Court lacks jurisdiction to grant relief.

## **BACKGROUND**

### **I. Relevant Legal Background**

#### **A. Detention of “Applicants for Admission” (8 U.S.C. § 1225(b))**

“The power to admit or exclude [non-citizens] is a sovereign prerogative.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139 (2020) (alteration omitted) (quoting *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)). And “the Constitution gives ‘the political department of the government’ plenary authority to decide which [non-citizens] to admit.” *Id.* (emphasis added) (quoting *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892)). “[A] concomitant of that power is the power to set the procedures to be followed in determining whether a[] [non-citizen] should be admitted.” *Id.*; see *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) (“To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.”).

A noncitizen “who has not been admitted or who arrives in the United States” is considered an “applicant for admission” under the Immigration and Nationality Act (“INA”). 8 U.S.C. § 1225(a)(1). All “[a]pplicants for admission must ‘be inspected by immigration officers’ to ensure that they may be admitted into the country consistent with U.S. immigration law.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(a)(3)). “[A]pplicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Id.* at 287. “Both § 1225(b)(1) and

§ 1225(b)(2) authorize the detention of certain aliens.” *Id.* Immigration officials also have the discretion to permit an applicant for admission to withdraw an application and depart the United States immediately. 8 U.S.C. § 1225(a)(4).

Under § 1225(b)(1), applicants for admission who are “arriving” or fall into certain other categories are subject to expedited removal. In general, an immigration officer who finds the applicant inadmissible “shall order” removal without further hearing. § 1225(b)(1)(A)(i). If the applicant announces an intention to apply for the asylum or expresses a fear of persecution, expedited removal is postponed pending further proceedings on the asylum application. *Id.* § 1225(b)(1)(B). However, the applicant “shall be detained” throughout this process. *Id.* § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV).

Subject to certain exceptions not applicable here, § 1225(b)(2)(A) applies to all other applicants for admission. Such applicants “shall be detained” pending a standard removal proceeding unless the immigration officer determines that the applicant is “clearly and beyond a doubt entitled to be admitted.” *Id.* § 1225(b)(2).

Although detention under § 1225(b) is mandatory, it is not indefinite. On the contrary, “§§ 1225(b)(1) and (b)(2) . . . provide for detention for a specified period of time.” *Jennings*, 583 U.S. at 299. Specifically, “detention must continue until immigration officers have finished ‘consider[ing]’ the application for asylum or until removal proceedings have concluded.” *Id.* (internal citation omitted). “Once those proceedings end, detention under § 1225(b) must end as well.” *Id.* at 297.

Further, while section 1225(b) does not provide for bond hearings, *see id.* at 297–303, it does contain “a specific provision authorizing release from . . . detention”: The Secretary of Homeland Security “may ‘for urgent humanitarian reasons or significant public benefit’ temporarily parole [non-citizens] detained under §§ 1225(b)(1) and (b)(2),” *id.* at 300 (quoting 8 U.S.C. § 1182(d)(5)(A)). “[S]uch parole,” however, “shall not be regarded as an admission of the [non-citizen].” 8 U.S.C. § 1182(d)(5)(A); *see* 8 C.F.R. § 1001.1(q). When the DHS Secretary determines that “the purposes of [the] parole . . . have been served[,] the [non-citizen] shall . . . return or be returned to the custody from which he was paroled.” 8 U.S.C. § 1182(d)(5)(A). After that, the noncitizen’s “case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.” *Id.*

B. Special Immigrant Juvenile Classification and Deferred Action

Petitioner is a Special Immigrant Juvenile, a classification available to noncitizen children subject to state juvenile court proceedings related to abuse, neglect, abandonment, or a similar basis under state law. 8 U.S.C. § 1101(a)(27)(J). SIJ classification permits the recipient to apply for an adjustment to legal permanent resident (“LPR”) status if certain other requirements are met, including that an immigrant visa is “immediately available” at the time of applying. 8 U.S.C. § 1255(a), (h). But SIJ classification does not render a noncitizen lawfully present, does not confer lawful status, and does not result in eligibility for employment authorization.

SIJ classification also does not preclude removal proceedings against the recipient or detention. *See, e.g., Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 432 (3d

Cir. 2023). In March 2022, USCIS exercised its discretion to implement a policy of automatically considering deferred enforcement action for a period of four years to SIJ recipients who are ineligible to apply for adjustment of status solely due to unavailable immigrant visas.<sup>1</sup> The March 2022 policy further explained that “USCIS consider[ed] deferred action on a case-by-case basis to determine whether the noncitizen with SIJ classification warrants a favorable exercise of discretion.” *Id.* Deferred action does not affect removability but is rather an “act of administrative convenience to the government that gives some cases lower priority.” 8 C.F.R. § 274a.12(c)(14). A recipient of deferred action may apply for and receive employment authorization for the period of deferred action upon a showing of economic necessity. *Id.*

On June 6, 2025, USCIS revised its policy regarding deferred action for SIJ recipients.<sup>2</sup> Under current policy, USCIS will “no longer conduct deferred action determinations for aliens with SIJ classification who cannot apply for adjustment of status solely because an immigrant visa is not immediately available.” *Id.* If USCIS previously granted deferred action to an SIJ recipient, the “deferred action remains valid for the authorized period, unless terminated by USCIS, on a case-by-case basis,

---

<sup>1</sup> USCIS, March 7, 2022 Policy Alert, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf> (last visited September 2, 2025).

<sup>2</sup> USCIS, June 6, 2025 Policy Alert, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf> (last visited September 2, 2025). A putative class action complaint pending in the Eastern District of New York is challenging this policy change. *See A.C.R. v. Noem*, No. 1:25-cv-3962 (E.D.N.Y.). A hearing on the plaintiffs’ motions for a preliminary injunction and class certification in that matter is currently scheduled for September 4, 2025.

as a matter of discretion.” USCIS Policy Manual, Vol. 6, Part J, Ch. 4 § G.1.<sup>3</sup> USCIS further “reserves the right to terminate prior grants of deferred action and revoke the related employment authorization as a matter of discretion” if, among other reasons, it “determines the favorable exercise of discretion is no longer warranted.” *Id.* § G.2. “This termination and revocation may occur at any time, including prior to the end of the current validity period(s).” *Id.*

## **II. Petitioner’s Immigration History**

Petitioner was born in Honduras. *See* Am. Pet. ¶ 20, ECF No. 18. In July 2019, at the age of 17, Petitioner entered the United States without inspection. *Id.* ¶ 22. Border patrol agents arrested her near El Paso, Texas. *Id.* The following day, DHS issued a Notice of Custody Determination stating that “[p]ursuant to the authority contained in [8 U.S.C. § 1226(a)],” DHS would detain Petitioner pending a final administrative determination in her immigration case. *Id.* Ex. 7. DHS issued Petitioner a Notice to Appear (“NTA”), the initiating document for removal proceedings but, for unknown reasons, did not file the NTA with an immigration court to formally commence removal proceedings. *Id.* at 10 n.4 & Ex. 11.

Because Petitioner entered the United States as an unaccompanied minor, the Trafficking Victims Protection Reauthorization Act (“TVPRA”) required her transfer into the custody of the Office of Refugee Resettlement (“ORR”), an agency within the Department of Health and Human Service. *Id.* ¶ 26; *see generally* 6 U.S.C. § 279; 8

---

<sup>3</sup> <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4> (last visited September 2, 2025).

U.S.C. § 1232(a) and (b). Among other things, ORR has a statutory directive to place unaccompanied minors subject to immigration detention “in the least restrictive setting that is in the best interest of the child.” 8 U.S.C. § 1232(c)(2)(A). In August 2019, ORR released Petitioner into her aunt’s care in New Jersey. Am. Pet. ¶ 26. Petitioner alleges that she has been continuously present in the United States since her July 2019 entry. *Id.* ¶ 1.

ICE records indicate that since entering the country Petitioner has been arrested twice on criminal charges of simple assault and driving without a license. ECF No. 10-1, at 2.<sup>4</sup> On both occasions, Plaintiff failed to appear for a subsequent court appearance, resulting in the issuance of a bench warrant. *Id.*

On November 15, 2023, USCIS granted Petitioner’s Form I-360 petition for classification an SIJ. Am. Pet. ¶ 40 & Ex. 14. At the same time, USCIS exercised its discretion to defer immigration enforcement action against Petitioner. *Id.* USCIS then exercised its discretion to terminate Petitioner’s period of deferred action (and accompanying employment authorization) on July 8, 2025. Am. Pet. ¶ 63 & Ex. 23; ECF No. 10-2.

Separately, Petitioner filed a Form I-589, Application for Asylum, with USCIS in January 2021. Am. Pet. ¶ 28 & Ex. 5. She appeared for an interview with an

---

<sup>4</sup> Respondents filed certain immigration records under seal as exhibits to its Answer to Petitioner’s original petition. ECF Nos. 10-1, 10-2, 10-3, 10-4, 10-5. Respondents incorporate those records as exhibits to this Answer under Federal Rule of Civil Procedure 10(c) and Rule 12 of the Rules Governing Section 2254 Cases in the United States District Courts.

asylum officer on July 8, 2025. *Id.* ¶ 50. Petitioner’s asylum application remains pending. *Id.* ¶ 58.

On July 8, 2025, DHS issued a second NTA against Petitioner, alleging that she is removable under 8 U.S.C. § 1182(a)(6)(A)(i) as “an alien present in the United States who has not been admitted or paroled.” *Id.* Ex. 20. ICE detained Petitioner the same day, at the conclusion of her asylum interview. Am. Pet. ¶ 50. At the time Petitioner filed her original petition for habeas corpus, ECF No. 1, ICE housed her at the Elizabeth Contract Detention Facility in Elizabeth, New Jersey. Am. Pet. ¶ 54. On July 13, 2025, ICE transferred Petitioner to the El Paso Soft Sided Facility in El Paso, Texas due to the operation needs of ICE’s Enforcement and Removal Operations in Newark. Declaration of Alexander Cabezas, ECF No. 26-1. (“Cabezas Decl.”) ¶ 4. On July 24, 2025, ICE transferred Petitioner to the Otero County Processing Center in Chaparral, New Mexico, where she remains. *Id.* ¶ 5.

Petitioner filed a motion for bond with an Immigration Judge (“IJ”) on August 8, 2025. Am. Pet. ¶ 85 & Ex. 28. The IJ denied Petitioner’s motion on August 11, 2025, after determining that he lacked jurisdiction to grant a bond. Am. Pet. Ex. 28. Specifically, the IJ held that because Petitioner undisputably entered the United States without inspection, she is considered an “applicant for admission” and subject to mandatory detention under 8 U.S.C. § 1225(b). *Id.* The IJ then held another hearing on August 14, 2025, where he reached the merits of the bond decision. During that hearing, ICE’s attorney stated that Petitioner was eligible for a bond determination. On the merits of the bond request, the IJ determined that Petitioner

“had not met her burden of showing that she is not a flight risk and not a danger to the community” and denied bond under 8 U.S.C. § 1226(a). Aug. 14, 2025 Order of IJ, ECF No. 26-2. Petitioner’s immigration proceedings remain ongoing, with a merits hearing scheduled for December 16, 2025.

### **III. Procedural History**

Petitioner filed a verified habeas petition on July 9, 2025, which generally alleged that her detention violated the INA’s general asylum provision, 8 U.S.C. § 1158(a)(1), the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (“APA”). ECF No. 1 ¶¶ 42–53. After Respondents answered the petition, ECF No. 10, Petitioner filed the present Amended Verified Petition for Writ of Habeas Corpus, ECF No. 18.

The Amended Petition no longer alleges violations of 8 U.S.C. § 1158 or the APA but brings three new claims. First, Petitioner alleges that her detention under 8 U.S.C. § 1225(b) without a pre-detention bond hearing violated the Due Process Clause. Am. Pet ¶¶ 119–28. Second, Petitioner alleges that her August 14, 2025 bond hearing failed to provide her with constitutionally sufficient process. *Id.* ¶¶ 129–41. Third, Petitioner alleges that Respondents retaliated against her for filing her original habeas petition, in violation of the First Amendment. *Id.* ¶¶ 142–55. Respondents submit this memorandum of law in response to the Amended Petition.

**LEGAL ARGUMENT:  
THE COURT SHOULD DISMISS THE HABEAS PETITION**

**I. Petitioner Has Failed to Establish a Due Process Violation**

A. Petitioner’s Detention is Lawful under 8 U.S.C. § 1225(b)

Petitioner first claims that her detention violates the Due Process Clause because ICE has “not offered any permissible purpose for [her] detention” and because ICE was required to perform an “individualized assessment of the factors in her case” prior to detention. Am. Pet. ¶¶ 125–26. But ICE has lawfully detained Petitioner under 8 U.S.C. § 1225(b) and has provided her all available process.

To understand why ICE has detained Petitioner under § 1225(b), a brief recap of the caselaw interpreting the statute is helpful. By its plain text, § 1225(b) requires ICE to detain two types of “applicants for admission”—those who have “arrived in the United States” and those “who ha[ve] not been admitted.” 8 U.S.C. § 1225(a)(1). “[A]rrive[d] in the United States” means the noncitizen has just entered the country—such as at the airport or at the U.S. border—or did so very recently. *See Thuraissigiam*, 591 U.S. at 139. Noncitizens “have not been admitted” if no immigration officer inspected them or authorized them to be here. *See* 8 U.S.C. § 1101(a)(13)(A) (defining “admission”).

Even though § 1225(b) requires the detention of both types of applicants for admission, immigration officials did not always interpret it that way. Specifically, DHS’s predecessor agency, the U.S. Immigration and Naturalization Service (“INS”), read § 1225(b) to apply only to those who have arrived in the United States. That is, while INS detained arriving aliens, INS chose whether to detain aliens who have not

been admitted. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312-01, 10323, 1997 WL 93131, (Mar. 6, 1997) (“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.”). Noncitizens who were present without admission were detained under the discretionary rules of INA § 236(a), 8 U.S.C. § 1226(a). *See id.*

Here, because Petitioner entered the United States as an unaccompanied minor, she was detained under the TVPRA and transferred into the custody of ORR. 8 U.S.C. § 1232(a) and (b). Nothing in 8 U.S.C. § 1232 cross-references other detention authority in the INA or suggests that when ORR takes an unaccompanied child into custody or releases her from custody, she ceases to be an “applicant for admission.”

Instead, any noncitizen present without admission or parole remains an applicant for admission and subject to mandatory detention under § 1225(b)(2)(A). ICE takes this position because it accords with the plain language of the statute and is consistent with recent caselaw from the Board of Immigration Appeals (“BIA”), the highest-level administrative body for interpreting immigration law. Specifically, in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), the BIA held that ICE had authority under § 1225(b)(2) to re-detain the petitioner two years after she entered the United

States on parole.<sup>5</sup> *See also Matter of M-S-*, 27 I & N Dec. 509 (A.G. 2019); *Jennings*, 583 U.S. at 299.

ICE respectfully submits that Petitioner must be detained under § 1225(b)(2) because she is present without being admitted or paroled.<sup>6</sup> As her Notice to Appear states, Petitioner is “present in the United States without being admitted or paroled” because she entered the country without inspection in Texas on July 9, 2019. Am. Pet. Ex. 20; *see Pena*, 2025 WL 2108913, at \*2 (upholding mandatory detention under §1225(b)(2) of noncitizen who “is present in the country but has not yet been lawfully granted admission”). As such, the Court should reject Petitioner’s argument that ICE has not offered a permissible statutory basis for her detention.

B. Petitioner’s Mandatory Detention Comports with Due Process

The Court should also reject Petitioner’s argument that she has not been afforded sufficient process. As a general matter, “applicants for admission are entitled only to those rights and protections Congress set forth by statute,” and “the

---

<sup>5</sup> Since early July, several district courts have addressed ICE’s interpretation of § 1225(b)(2). *Compare Romero v. Hyde*, No. 25-11631, 2025 WL 2403827, at \*1 (D. Mass. Aug. 19, 2025) (collecting cases holding that ICE’s interpretation is “contrary to the plain text of the statute and the overall statutory scheme”), *with Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657, at \*1 (E.D. Va. Aug. 5, 2025) (holding that noncitizen paroled in August 2021 and re-detained in May 2025 was an “applicant for admission” subject to mandatory detention under § 1225(b)); *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913, at \*2 (D. Mass. July 28, 2025) (upholding mandatory detention under §1225(b)(2) of noncitizen who “is present in the country but has not yet been lawfully granted admission”).

<sup>6</sup> ICE acknowledges that during Petitioner’s August 14, 2025, bond hearing, its attorney took the position that Petitioner was eligible for a bond determination under 8 U.S.C. § 1226(a). Nonetheless, it maintains that Petitioner is legally detained under § 1225(b)(2) based on the plain language of the statute and the case law described above.

due process clause requires ‘nothing more.’” *Pena*, 2025 WL 2108913, at \*2 (citing *Thuraissigiam*, 591 U.S. at 140). That is because “the Constitution gives the political department of the government plenary authority to decide which aliens to admit, and a concomitant of that power is the power to set the procedures to be followed in determining whether an alien should be admitted.” *Thuraissigiam*, 591 U.S. at 139 (citation omitted) (cleaned up); *see also id.* (“[A]liens who arrive at ports of entry—even those paroled elsewhere in the country for years pending removal—are treated for due process purposes as if stopped at the border.”). Here, once ICE determined that Petitioner entered the United States without inspection or parole (a fact that Petitioner does not dispute), it follows that Petitioner is an “applicant for admission” and subject to mandatory detention.

Petitioner’s current detention also comports with due process. Although the due process clause prohibits unduly prolonged detention, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), some amount of detention is permissible, *Demore v. Kim*, 538 U.S. 510, 511 (2003). To that end, Petitioner’s detention is presumptively reasonable if it does not exceed six months. *Zadvydas*, 533 U.S. at 701. Here, ICE detained the Petitioner on July 8, about two months ago. Am. Pet. ¶¶ 50, 52. Her detention is presumptively reasonable. *See, e.g., Pena*, 2025 WL 2108913, at \*2–3 (holding detention of 17 days under § 1225(b) comported with due process); *Pipa-Aquise*, 2025 WL 2490657, at \*1 (holding that “Petitioner two-month detention” under § 1225(b) did not violate due process). Moreover, Petitioner can request release on parole under § 1225. 8 U.S.C. § 1182(d)(5)(A).

Finally, even where detention under § 1225(b) has become “unreasonable” under the Due Process Clause, the appropriate remedy is a bond hearing, rather than immediate release. *See, e.g., Akhmadjanov v. Oddo*, No. 25-35, 2025 WL 660663, at \*5 (W.D. Pa. Feb. 28, 2025); *Rodriguez v. Bondi*, No. 25-791, 2025 WL 2490670, at \*3 (E.D. Va. June 24, 2025). “Here, however, Petitioner has already received a bond hearing and has been detained for approximately [two] months, which is substantially less than the length of detention that courts have previously determined would constitutionally require a hearing under the Due Process Clause.” *Rodriguez*, 2025 WL 2490670, at \*3 (collecting cases); Aug. 14, 2025 Order of IJ, ECF No. 26-2 (denying Petitioner’s request for release after a bond hearing).

Accordingly, the Court should dismiss Petitioner’s due process challenges to her detention in Counts I and II of the Amended Petition.

C. Petitioner Received a Constitutionally Sufficient Hearing

Even if the Court holds that 8 U.S.C. § 1226(a) governs Petitioner’s detention, which it should not for the reasons discussed above, Petitioner’s Due Process claims fail. In Count II of the Amended Petition, Petitioner argues that even though she received a bond hearing, it was not constitutionally sufficient. First, Petitioner argues that the IJ placed the burden on her, instead of the government, to prove she was entitled to bond. Am. Pet. ¶¶ 138–40. Second, Petitioner argues her bond hearing before the IJ did not meet the *Mathews v. Eldridge* factors because: (1) the IJ should not have found Petitioner to be a flight risk, (2) Petitioner did not have

“sufficient time” with her counsel to prepare for the bond hearing, and (3) the IJ allegedly pre-decided the bond determination. Am. Pet. ¶¶ 132–34.

As a threshold matter, this Court is not the proper forum to raise these challenges; they must be raised through the administrative process of the INA. Although Petitioner claims to have “exhausted remedies for release before the Immigration Court,” Am. Pet. ¶ 12, she does not allege facts proving so. Where, as here, a noncitizen is denied bond, the noncitizen may seek review of that decision with the BIA. *See* 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3) (“Appeal to the Board of Immigration Appeals”). As a result, she did not exhaust her available administrative remedies, and the Court should dismiss her challenge to the adequacy of the bond hearing for lack of subject-matter jurisdiction. *See Jean W. v. Ahrendt*, No. 21-365 (KM), 2021 WL 707745, at \*1 (D.N.J. Jan. 14, 2021) (“To the extent Petitioner seeks to challenge the constitutionality of the bond hearing he received and request a second bond hearing, he may do so ... after he has exhausted his administrative remedies.”); *see also Bravo v. Green*, No. 16-4937 (JLL), 2017 WL 2268315, at \*3 (D.N.J. May 24, 2017) (holding that a petitioner who “could have, but did not, present his procedural claim to the [BIA]” has not unexhausted the claim and cannot litigate the claim “until such time as he does exhaust his administrative remedies”).

To the extent that Petitioner claims she does not have to seek review with the BIA because she is asserting a due process challenge, *see* Am. Pet. ¶ 12, the Court should reject that argument. Although exhaustion “is not always required when the petitioner advances a due process claim,” courts should look beyond the “due process

label,” and instead consider whether a purported due process claim “amounts to a procedural error correctible through the administrative process”; if so, then exhaustion is required. *Khan v. Attorney General*, 448 F.3d 226, 235-36 n.8 (3d Cir. 2006); accord *Brissett v. Attorney General*, 845 F. App’x 157, 159 n.2 (3d Cir. 2021); *Okorafor v. Attorney General*, 787 F. App’x 808, 810 (3d Cir. 2019). In other words, “merely” couching a claim “in the language of procedural due process does not qualify it for th[e] exception” from the exhaustion requirement.” *Okorafor*, 787 F. App’x at 810 (quotations omitted).

Here, Petitioner’s purported due process challenge is not something that can avoid exhaustion before the BIA. Her allegations, stripped of the “due process label,” represent “a claim of procedural error that could have been addressed by the BIA on appeal,” and so “the requirement that [Petitioner] exhaust administrative remedies applies.” *Khan*, 448 F.3d at 236 n.2 (quotations omitted); see also *Bonhometre v. Gonzales*, 414 F.3d 442, 448 (3d Cir. 2005) (“Clearly, the BIA has the ability to conduct *de novo* review of an immigration proceeding and the subsequent decision of the IJ.”). Petitioner’s procedural due process claim—predicated on the IJ’s review and weighing of the evidence—could be argued before the BIA. Indeed, Petitioner has until September 15, 2025 to appeal the IJ’s bond determination. Aug. 14, 2025 Order of IJ, ECF No. 26-2. Thus, she has not exhausted administrative remedies with respect to his claim alleging procedural inadequacies with the bond hearing. See, e.g., *Okorafor*, 787 F. App’x at 810 (dismissing petition for lack of subject-matter jurisdiction because due process claim regarding purported errors in IJ’s decision

“could have been addressed and remedied by the BIA,” but the petitioner “did not assert the[] alleged due process errors before the BIA.”<sup>7</sup>

D. Petitioner’s SIJ Status Does Not Prohibit Removal or Detention

Moreover, Petitioner’s SIJ classification and prior grant of deferred action (which USCIS has since terminated) do not shield her from detention or removal. Nor does Petitioner’s SIJ classification alter the detention authority.

First, “[t]he fact that petitioner has been given [SIJ] status has no effect on ICE’s statutory and regulatory authority to detain him.” *Benito Vasquez v. Moniz*, No. 25-11737, 2025 WL 1737216, at \*2 (D. Mass. June 23, 2025) (collecting cases).

---

<sup>7</sup> Setting aside the exhaustion issue, Petitioner’s claims fail on the merits too. As to the burden issue, it is well settled that the government does not bear the burden of proof at § 1226(a) bond hearings. *See Jennings*, 138 S. Ct. at 847-48 (holding that “[n]othing in § 1226(a)’s text . . . even remotely supports the imposition” of the burden on the government to prove that a noncitizen is a danger or a flight risk, much less by clear and convincing evidence). Petitioner’s reliance on the Third Circuit’s decision in *German-Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203 (3d Cir. 2020), is incorrect because that case involved detainees under § 1226(c), which is inapplicable.

Moreover, Petitioner’s other arguments concerning the evidence considered, what weight given, conjecture about the decision being predetermined, and so on, fail. During her administrative proceedings, the noncitizen may present any evidence they believe bears on the issues of flight risk or dangerousness, see 8 C.F.R. § 1003.19(d) (immigration judge may consider “any information that is available . . . or that is presented to him or her by the [noncitizen] or the [Department of Homeland Security]”), with the possibility of further review in the event of changed circumstances, see *id.* §§ 236.1(d)(3), 1236.1(d)(3). The existing procedures governing bond hearings are flexible, permitting an immigration judge to consider a wide range of factors and the noncitizen to present any evidence that may bear on any of those factors. *Matter of Guerra*, 24 I. & N. Dec. 37, 40–41 (BIA 2006). And courts have rejected allegations like those Petitioner brings here to the procedures adopted in a § 1226(a) bond hearing. *See Miranda v. Garland*, 34 F.4th 338, 361 (4th Cir. 2022) (rejecting petitioner’s “litany of complaints about the procedures the government has adopted for § 1226(a) hearings” including “that detention, with limited visitation rights, prejudices an alien’s ability to prepare for hearings,” and that the burden was improperly on petitioner).

That is because SIJ classification provides a path to legal permanent residency, but *not* an exemption from removal, as the Third Circuit has recognized. *Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 432–33 (3d Cir. 2023) (holding that a SIJ recipient may be “subject to removal simply for presence in the United States without being admitted or paroled”); *see also United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (“[A]n SIJ designation does not strip the U.S. government of all removal powers.”).

Second, the Court lacks jurisdiction over a challenge to USCIS’s decision to revoke deferred action and initiate removal proceedings against Petitioner. 8 U.S.C. § 1252(g) strips district courts of jurisdiction over any claim arising from a decision to “commence [removal] proceedings.” *See also Reno v. Am.-Arab Anti-Discrimination Comm.* (“AADC”) (“Respondents’ challenge to the Attorney General’s decision to ‘commence proceedings’ against them falls squarely within § 1252(g)”; *Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal[.]”); *Saadulloev v. Garland*, No. 23-106, 2024 WL 1076106, at \*3 (W.D. Pa. Mar. 12, 2024) (“The Government’s decision to arrest Saadulloev on April 4, 2023, clearly is a decision to ‘commence proceedings’ that squarely falls within the jurisdictional bar of § 1252(g).”). Indeed, the Supreme Court cited challenges to the use of deferred action as a paradigm for what § 1252(g) is designed to prevent. *AADC*, 525 U.S. 471 at 483–85.

Even if the Court had jurisdiction over such a claim, which it does not, USCIS did not act unlawfully by terminating its prior grant of deferred action. Deferred action is “a regular practice” in which the Secretary of Homeland Security exercises her discretion “for humanitarian reasons or simply for [her] own convenience,” to notify a noncitizen of a non-binding decision to forbear from seeking his removal for a designated period. *AADC*, 525 U.S. at 483–84; *see also* 8 C.F.R. § 274a.12(c)(14) (explaining that “deferred action” is “an act of administrative convenience to the government which gives some cases lower priority”). “At each stage the Executive has discretion to abandon the endeavor.” *AADC*, 525 U.S. at 483. Here, USCIS acted within its discretion to terminate its prior grant of deferred action and initiate removal proceedings. *See supra* pp. 5–6; Am. Pet. ¶ 63 & Ex. 23; ECF No. 10-2.

## **II. Petitioner’s First Amendment Claim Fails**

Petitioner’s final claim alleges that ICE retaliated against her filing of the original habeas petition in this action by transferring her to a facility outside of New Jersey and allegedly interfering with her access to counsel. As an initial matter, Petitioner’s claim fails on the merits because ICE transferred her out of New Jersey due to the operational needs of ICE’s Enforcement and Removal Operations in Newark, not in retaliation for the filing of this habeas action. Cabezas Decl. ¶ 4. But regardless, the Court lacks habeas jurisdiction over this claim because it does not challenge the fact or length of Petitioner’s detention.

28 U.S.C. § 2241 grants federal courts jurisdiction over allegations that a petitioner (including an immigration detainee) “is in custody in violation of the

Constitution or laws or treaties of the United States.” § 2241(c)(3); *see also* *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (“Habeas is at its core a remedy for unlawful executive detention.”). Therefore, the traditional function of the writ is to seek one’s release from unlawful detention. *Thuraissigiam*, 140 S. Ct. at 1969 (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)). As the Supreme Court has held, relief other than “simple release” is not available in a habeas action. *See Thuraissigiam*, 140 S. Ct. at 1970–71 (“Claims so far outside the core of habeas may not be pursued through habeas.”) (internal quotations and citations omitted). Put differently, federal habeas relief is generally limited to an alleged deprivation of rights that “necessarily impacts the fact or length of detention.” *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002).

On the other hand, “a district court does not have jurisdiction over a habeas corpus challenge” to a transfer between detention facilities. *See Zapata v. United States*, 264 F. App’x 242, 243–44 (3d Cir. 2008). That is because a transfer between facilities, “regardless of their geographical location or security levels, cannot affect the fact or the length of” detention. *Scott v. Zickefoose*, No. 12-782, 2012 WL 1232269, at \*2 (D.N.J. Apr. 11, 2012). Moreover, “Congress has provided the Government with considerable discretion in determining where to detain aliens pending removal or the outcome of removal proceedings.” *Edison C. F. v. Decker*, No. 20-15455, 2021 WL 1997386, at \*6 (D.N.J. May 19, 2021) (citing 8 U.S.C. § 1231(g)(1) and *Calla-Collado v. Att’y Gen.*, 663 F.3d 680, 685 (3d Cir. 2011)).

Accordingly, “[s]everal courts in this District have therefore found that this Court lacks jurisdiction to enjoin a transfer in an immigration habeas matter.”

*Edison*, 2021 WL 1997386, at \*6 (collecting cases). Many others have found no jurisdiction in the related context of claims to enjoin transfers between prison facilities. *Scott*, 2012 WL 1232269, at \*2 (collecting cases). And Petitioner’s related access to counsel claim, which also cannot affect the fact or length of detention, fails for the same reason. *Cf. Edison*, 2021 WL 1997386, at \*6 (“Notwithstanding the right to counsel an alien may have even in his underlying immigration proceedings, an alien ‘does not have the right to be detained where he believes his ability to obtain representation and present evidence would be most effective.’” (quoting *Calla-Collado*, 663 F.3d at 685)).

The Court should therefore dismiss Petitioner’s First Amendment claim for lack of jurisdiction.

### **III. Petitioner Cannot Seek a Stay of Removal via a Writ of Habeas Corpus**

Finally, to the extent Petitioner challenges her removability or seeks a stay of removal while awaiting an adjustment to legal permanent residency, that relief is unavailable in habeas because it is not a challenge to the legality of Petitioner’s detention. *See, e.g., Vasquez*, 2025 WL 1737216, at \* 3 (D. Mass. June 23, 2025) (to extent petitioner seeks to enjoin ICE from removing him from Massachusetts, to compel ICE to afford him an interview sooner or to have the Court review ICE’s determination regarding his removal, such requests are beyond habeas relief).

A stay of removal is not the type of relief that the Supreme Court found to be subject to habeas review. *See Thuraissigiam*, 140 S. Ct. at 1970 (holding that the relief sought, which did not include release, fell “outside the scope of the common-law

habeas writ”). In reversing the Ninth Circuit’s decision, the Supreme Court concluded that habeas has been historically used to challenge confinement and detention. *Id.* at 1969–70. In *Thuraissigiam*, the petitioner did not seek “simple release,” and if he had sought proper habeas relief, it would take the form of release “in the cabin of a plane bound for [the designated country].” *Id.* at 1970. Other circuits have followed this principle. *See, e.g., Tazu v. United States Attorney General*, 975 F.3d 292, 300 (3d Cir. 2020) (“And Tazu’s constitutional right to habeas likely guarantees him no more than the relief he hopes to avoid—release into ‘the cabin of a plane bound for Bangladesh.’”) (brackets omitted); *E.F.L. v. Prim*, 986 F.3d 959, 965–66 (7th Cir. 2021) (holding that a petitioner could not invoke an alleged Suspension violation when a petition does not contest the lawfulness of restraint or seek release from custody).

Accordingly, this Court should dismiss the Amended Petition to the extent it seeks a stay of removal.

### **CONCLUSION**

For the foregoing reasons, the Court should dismiss or deny the Amended Petition.

Respectfully submitted,

TODD BLANCHE  
U.S. Deputy Attorney General

ALINA HABBA  
Acting United States Attorney  
Special Attorney

By: */s/ Andrew Boccio*  
ANDREW BOCCIO  
Assistant U.S. Attorney

*/s/ Alex Silagi*  
ALEX SILAGI  
Assistant U.S. Attorney  
*Attorneys for Respondents*

Dated: September 2, 2025