UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

E.J.C.C., a minor, by and through his next friend and attorney, Beth Baltimore,

Petitioner-Plaintiff,

v.

William JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director U.S. Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; 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; Joseph B. EDLOW, in his official capacity as Director of U.S. Citizenship and Immigration Services; U.S. Department of Homeland Security; U.S. Immigration and Customs Enforcement; U.S. Department of Health and Human Services; U.S. Office of Refugee Resettlement; U.S. Citizenship and Immigration Services.

Respondents-Defendants.

Case No. 25-cv-08805 (CS)

PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF VERIFIED AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT

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INTRODUCTION

In opposition, Respondents raise inapplicable jurisdictional arguments that, even if accepted by this Court, are overcome by the Suspension Clause. On the merits, Respondents concede that E.J.C.C. has not had a meaningful opportunity to apply for adjustment of status as a recipient of SIJ status and that he would lose his SIJ status upon removal. Yet they claim authority to detain E.J.C.C. and to execute removal, nullifying his SIJ status without cause or process. Not so. The SIJ statutory framework contemplates that E.J.C.C. must be provided an opportunity to apply for adjustment and due process prior to any revocation of his status. Similarly, Respondents say little on how their actions comport with the government's own regulations and policies, except to overstate their discretionary powers that are constrained by law and policy. E.J.C.C.'s unlawful detention is causing immense harm, and he should be immediately released to his family.

ARGUMENT

I. The INA Does Not Deprive this Court of Jurisdiction.

a. 8 U.S.C. §§ 1252(a)(5) and (b)(9) do not preclude jurisdiction over E.J.C.C.'s claims.

Sections 1252(a)(5) and (b)(9) strip jurisdiction over claims "arising from" or otherwise challenging final orders of removal. In *Jennings v. Rodriguez*, the Supreme Court eschewed "uncritical literalism" when determining whether claims "arise[] from" actions to remove noncitizens, finding a challenge to unlawful detention outside of (b)(9)'s reach, 138 S. Ct. 830, 840 (2018) (cleaned up). Even before *Jennings*, the Second Circuit cautioned, "a suit brought against immigration authorities is not *per se* a challenge to a removal order; whether the district court has jurisdiction will turn on the substance of the relief" sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). There, Ms. Delgado sought relief—reversal of USCIS's denial of a waiver of inadmissibility—that would inevitably lead to her removal order's vacatur. *See id.* at 54, 55. While the Court found §§ (a)(5) and (b)(9) preclude this type of indirect challenge to removal orders, the Supreme Court has since cautioned against expansive

interpretations of § 1252(b)(9) leading to "staggering results." *Jennings*, 138 S.Ct. at 840.

The relief E.J.C.C. seeks is even further attenuated from the type of indirect challenge addressed in *Delgado* and would not inevitably disturb the removal order. If E.J.C.C. prevails, he wins only the deferred action determination the agency promised and ensures the preservation of his SIJ status. And while this would provide him the opportunity to adjust status as Congress intended, that discretionary relief may be denied, leaving his removal order fully executable. *See Ruiz v. Mukasey,* 552 F.3d 269, 274 n.3 (2d Cir. 2009) (§ 1252(a)(5) does not preclude jurisdiction over "an action seeking review of the denial of an I-130 petition because such a denial is unrelated" to "any removal action"). E.J.C.C. does not seek here to reopen his removal case, let alone the right to stay in the United States. Rather, he agrees that relief must be sought through a motion to reopen.

The underlying purpose of §§ 1252(a)(5) and (b)(9)— to "limit all [non-citizens] to one bite of the apple" when seeking review of their removal orders—supports E.J.C.C.'s position. *Amritpal Singh v. USCIS*, 878 F.3d 441, 446 (2d Cir. 2017) (citing *Chen v. USDOJ*, 434 F.3d 144, 151 n.3 (2d Cir. 2006)); *accord Amarjeet Singh v. Gonzales*, 499 F.3d 969, 978 (9th Cir. 2007). Accordingly, the *Jennings* Court held that § 1252(b)(9) cannot be read to bar claims that would otherwise be "effectively unreviewable," 138 S. Ct. at 840. The provisions are thus *not* applicable to claims, like those raised here, that cannot be raised in removal proceedings and would not necessarily invalidate the removal order. *See, e.g., Calderon v. Sessions*, 330 F. Supp. 3d 944, 955–56 (S.D.N.Y. 2018) (§§ 1252(a)(5) and (b)(9) inapplicable where "Petitioner claims only that he has a *right to seek access* to a lawful regulatory process . . . , and seeks review of ICE's legal authority in executing an order of removal"); *De Jesus Martinez v. Nielsen*, 341 F. Supp. 3d 400, 408 (D.N.J. 2018) (§§ 1252(a)(5) and (b)(9) inapplicable where petitioner "does not bring a challenge to his order of removal but rather claims [a] right to engage in . . . process before removal"); *Wanrong Lin v. Nielsen*, 377 F. Supp. 3d 556, 562 (D. Md. 2019) (§ 1252 did not bar claims seeking only "the opportunity" to complete process provided by regulation);

Chhoeun v. Marin, No. 17-CV-01898, 2018 WL 1941756, at *4 (C.D. Cal. Mar. 26, 2018) (jurisdiction proper when relief sought only gives noncitizens opportunity to file motions to reopen).

The relief E.J.C.C. requests in this proceeding does not constitute "another bite" at his removal proceedings; none of his claims could have been brought in those proceedings, as a separate agency—USCIS—has jurisdiction over SIJ, deferred action, and adjustment of status. *See* Opp. 3–5. Any attempt to "cram[] judicial review of those questions into the review of final removal orders would be absurd." *Jennings*, 138 S. Ct. at 840. Thus, Respondents' reading would render E.J.C.C.'s claims "effectively unreviewable." *Id.*; *see also EOHC v. Sec'y U.S. DHS.*, 950 F.3d 177, 186 (3d Cir. 2020) (holding § 1252(b)(9) "does not strip jurisdiction when [noncitizens] seek relief that courts cannot meaningfully provide alongside review of a final order of removal"). Respondents admit as much, asserting that, but for this Court's order (ECF 5), they would remove E.J.C.C. within days, "depriving [him] of any meaningful chance for judicial review." *Jennings*, 138 S. Ct. at 840.

These statutes cannot be construed to produce that result because, as Respondents acknowledge, *see* Opp. at 12, they are claim-channeling (not claim-barring) provisions, *see Aguilar v. I.C.E.*, 510 F.3d 1, 11 (1st Cir. 2007) (§ 1252(b)(9) does not apply to claims that "cannot be raised efficaciously within the administrative proceedings"); *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 459 (S.D.N.Y. 2018) (rejecting application of §§ 1252(a)(5) and (b)(9) that would render claims "effectively unreviewable"); *Jimenez v. Nielsen*, 334 F. Supp. 3d 370, 381 (D. Mass. 2018) (§§ 1225(a)(5) and (b)(9) do "not apply to claims that cannot be raised efficaciously within [INA's] administrative proceedings") (cleaned up); *Cancino-Castellar v. Nielsen*, 338 F. Supp. 3d 1107, 1117 (S.D. Cal. 2018) (§ 1252(b)(9) did not preclude jurisdiction because it would render claim "effectively unreviewable" and could not "be remedied in a PFR"); *Jafarzadeh v. Nielsen,* 321 F. Supp. 3d 19 (D.D.C. 2018) (same).[1]

[1] Respondents point the Court to cases in which petitioners sought to access process that they could

b. Section 1252(g) does not preclude jurisdiction over E.J.C.C.'s claims.

In arguing that § 1252(g) precludes E.J.C.C.'s claims, the government fails to engage with the Second Circuit's controlling decisions on § 1252(g) and conflates E.J.C.C.'s distinct claims as one big challenge to execution of his final order. First, the Second Circuit has recently, clearly held that challenges to the legality of immigration detention are not captured by the three narrowly interpreted "discrete actions" in § 1252(g). *Ozturk v. Hyde*, 136 F.4th 382, 396–98 (2d Cir. 2025) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999)); *see also Fulton v. Noem*, No. 25-194, Slip. Op., at 2 (2d Cir. Apr. 30, 2025) (order granting stay of removal pending appeal, rejecting proposition that § 1252(g) bars review of challenges to manner of removal); *Kong v. United States*, 62 F.4th 608, 609 (1st Cir. 2023). This Court may find Respondents' detention of E.J.C.C. violated agency regulations and due process without disrupting his removal order or lawful use of discretion to execute the order.

Second, § 1252(g) does not bar E.J.C.C.'s deferred action claim because it neither challenges any of the "three discrete actions" in 1252(g) nor any denial of relief—he only seeks that the agency provide process and a determination to which he is entitled. *See Cho v. Jarina*, No. 07-CV-629, 2007 WL 1484053, at *3 (E.D. La. May 18, 2007) (when the government has "'ministerial nondiscretionary duty' to adjudicate" an application "within a reasonable time," there is "an enforceable duty under the APA" and "the jurisdiction-stripping provisions of [§] 1252 are inapplicable") (citation omitted);

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pursue within their removal proceedings or from outside of the United States. *See, e.g.*, *Delgado*, 643 F.3d at 54 (noting USCIS denied petitioner's provisional waiver); *Lin v. Borgen*, No. 25-CV-5618, 2025 WL 2158874, at *4 (S.D.N.Y. July 30, 2025) (noting petitioner could continue seeking provisional waiver once removed); *Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019) (no jurisdiction in challenge to insufficient notice of removal pursuant to valid removal order, as the relief—return to the United States and stay of removal pending habeas appeals—"would undo his removal order"); *Turcio v. Noem*, No. 25-CV-05941, 2025 WL 2124129, at *3 (S.D.N.Y. July 29, 2025) (noting petitioner could file motion to reopen from outside the United States); *Sean B. v. Wolf*, No. 20-CV-550, 2020 WL 1819897, at *1 (S.D.N.Y. Apr. 10, 2020) (petitioner was seeking second stay of removal, appealing second motion to reopen to the Second Circuit and could raise his claims there). In contrast, E.J.C.C.'s removal would necessarily preclude him from ever obtaining regulatory and statutory process to which he is entitled; "for these claims, review is now or never." *See EOHC*, 950 F.3d at 180.

AlShamsawi v. Holder, No. 2:10-CV-194, 2011 WL 1870284, at *2 n.3 (D. Utah May 16, 2011) (same).

Third, § 1252(g) does not bar E.J.C.C.'s claim seeking a stay of his removal order, which challenges only the government's *present authority* to execute that order. E.J.C.C. does not challenge the underlying validity of the removal order; he intends to seek to reopen proceedings before the immigration court to raise those arguments. Baltimore Decl. ¶ 3. Instead, here, E.J.C.C. asks only that he be given the process Congress and Respondents themselves made available to him—an opportunity to adjust his status and a determination on deferred action—before they execute that removal order. *Ragbir* is instructive. There, the Second Circuit found that § 1252(g) applied because the petitioner squarely challenged the government's "unquestionabl[e] . . . statutory authority" to execute his otherwise admittedly "valid final order of removal" after the government denied him a fourth stay. *Ragbir v. Homan*, 923 F.3d 53, 64 (2d Cir. 2019), *cert. granted, judgment vacated on other grounds sub nom. Pham v. Ragbir*, 141 S. Ct. 227 (2020).[2] Here, in contrast, E.J.C.C. does not contest Respondents' discretionary decision to execute his removal order. Instead, he claims they do not presently have the authority to do so. Since the government's ultimate discretionary authority to remove E.J.C.C. would remain unaffected by the relief he seeks, § 1252(g) does not bar his claim. *See Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1159 (C.D. Cal. 2018) (§ 1252(g) does not bar "a brief stay of deportations" for more process when no "direct[] challenge the bases for their orders of removal"); *see also You*, 321 F. Supp. 3d at 457 ("[w]hether Respondents' actions were legal is not a question of discretion" and thus outside § 1252(g)); *De Jesus Martinez*, 341 F. Supp. 3d at 406–07 (same).

The cases on which Respondents rely are inapposite and distinguishable.[3] A majority of them considered a stay of removal pending appeals or motions to reopen that directly concerned the validity

[2] *Troy as Next Friend Zhang v. Barr*, 822 Fed. Appx. 38 (2d Cir. 2020), on which Respondents rely, closely follows *Ragbir* and the petitioner there waived critical arguments, unlike here. *See id.* at 39.
[3] In *Duamutef v. I.N.S.*, 386 F.3d 172 (2d Cir. 2004), for example, the petitioner "[sought] an order compelling the [government] to execute [his] final order of deportation," *id.* at 176, unlike here.

of the removal order, did not involve a petitioner that needed to remain in the United States to preserve their current lawful status, or would require the court to address the underlying merits of the order of removal.[4] Here, E.J.C.C. seeks a stay of removal to give effect to the SIJ statutory framework, which requires that he remain in the United States. Similarly, in the cases Respondents cite concerning stays of removal pending the government's decision on noncitizens' provisional waiver application, courts have been clear that the government "is able to render a final determination" on their application "whether [p]etitioner remains in the United States or not." *Lin*, 2025 WL 2158874, at *5; *see also Camarena v. Dir., Immig. and Cust. Enf't*, 988 F.3d 1268, 1272 (11th Cir. 2021). Such is not possible here for E.J.C.C.'s eventual application to adjust status because his eligibility to apply would vanish upon removal. Further, Respondents rely on several cases that agree a district court has jurisdiction despite § 1252(g) if the court would not be obliged to address the merits of the removal order.[5] The instant petition does not challenge the validity of E.J.C.C.'s removal order. This Court has jurisdiction.

II. The Suspension Clause Requires Review of Petitioner's Claims.

If the Court disagrees with E.J.C.C.'s interpretation of §§ 1252(a)(5), (b)(9), and (g), it must find those provisions unconstitutional as applied here because the Suspension Clause requires some mechanism for federal court review of challenges to detention, including detention incident to

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[4] *See, e.g., Vasquez v. U.S.*, No. 15-CV-3946, 2015 WL 4619805, at *2, *4 (S.D.N.Y. Aug. 3, 2015) (no jurisdiction to grant stay of removal pending review of removal order after court of appeals had twice denied stay); *Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022) (no jurisdiction where noncitizen had "taken full advantage of his statutory rights" & could access required process post-removal); *supra* n.1.

[5] *See, e.g., Elgharib v. Napolitano*, 600 F.3d 597, 605 (6th Cir. 2010) ("If . . . petition raised a challenge that did not require the district court to address the merits of her order of removal, then this court's precedents would support her argument"); *Vidhja v. Whitaker*, No. 19-cv-613, 2019 WL 1090369, at *5 (S.D.N.Y. Mar. 6, 2019) (no jurisdiction because "Petitioner's request for an emergency stay of removal is not premised on the manner in which Respondents are executing removal," a legal question permitting review); *Silva v. U.S.*, 866 F.3d 938, 941 (8th Cir. 2017) (no jurisdiction where petition does not "present a habeas claim that raises a purely legal question of statutory construction," unlike when same court held it could consider if government had lawful authority to remove noncitizen); *cf. Singh v. Napolitano*, 500 Fed. Appx. 50, 52 (2d Cir. 2012) (jurisdictional concerns raised, as "[a]djudicating . . . petition would require . . . determin[ing] whether he is presently an asylee who may not be removed").

removal. *I.N.S. v. St. Cyr*, 533 U.S. 289, 300 (2001); *Ragbir*, 923 F.3d at 57. To determine whether a jurisdiction-stripping statute violates the Suspension Clause, courts must first determine whether a petitioner's claim "fall[s] within the scope of § 2241 habeas corpus review." *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 669 (E.D. Va. 2020). If so, courts then undertake a two-step inquiry to: (1) "determine whether a given habeas petitioner is prohibited from invoking the Suspension Clause due to some attribute of the petitioner or to the circumstances surrounding his arrest or detention"; and (2) determine "whether the substitute for habeas is adequate and effective to test the legality of the petitioner's detention (or removal)." *Id.* at 671 (cleaned up); *see also Boumediene v. Bush*, 553 U.S. 723, 739, 771, 792 (2008); *Osorio-Martinez v. Atty. Gen. U.S. of Am.*, 893 F.3d 153, 166 (3d Cir. 2018). All three factors weigh in favor of application of the Suspension Clause here.

As a preliminary matter, E.J.C.C.'s claims fall with the scope of § 2241 habeas corpus review because he seeks release from detention, and Respondents argue that his detention is for the purpose of his removal. *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) ("claims for relief [that] 'necessarily imply the invalidity' of [a petitioner's] confinement and removal . . . fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas") (cleaned up). As such, any meaningful remedy—including release from custody—requires the adjudication of whether his removal should be stayed pending an opportunity to apply for adjustment of status. *See Ragbir*, 923 F.3d at 74 (habeas relief could "prevent the Government from deporting [the petitioner] for its duration"); *Del Cid v. Bondi, et al.*, No. 3:25-CV-00304, 2025 WL 2985150, at *4 (W.D. Pa. Oct. 23, 2025) ("Government must provide [SIJ beneficiaries] an opportunity to pursue adjustment of status, and the way in which the Government seeks to remove them must adequately take stock of their SIJ Status"); *accord Cortez-Amador v. Atty. Gen.*, 66 F.4th 429, 433 n.11 (3d Cir. 2023). For this reason, "[t]he Supreme Court has explained that § 2241 . . . 'implements the constitutional command that the writ of habeas corpus be made available . . . to test the legality of a given restraint on liberty.'" *Joshua M.*, 439 F. Supp. 3d at

669–70 (quoting *Jones v. Cunningham*, 371 U.S. 236, 238 (1963); citing *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). As in *Joshua M.*, E.J.C.C. "asserts in his § 2241 Petition that his detention and pending removal violate federal statutes and the Constitution" and "seeks relief that may alter the fact or execution of his detention and such detention presents a clear restraint on his liberty." *Id.* at 670. Thus, "habeas presents the appropriate procedural vehicle" for E.J.C.C.'s claims. *Id.*

E.J.C.C. also readily satisfies the first step in the Court's inquiry: invocation of the Suspension Clause is proper here. Courts consider: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Id.* at 671–72 (quoting *Boumediene*, 553 U.S. at 766). E.J.C.C. has "satisfied rigorous eligibility criteria for SIJ status," which includes "a range of statutory and constitutional protections," *id.* at 672, and demonstrates that he has "developed the 'substantial connections with this country' . . . that 'go with permanent residence,'" *Osorio-Martinez*, 893 F.3d at 168 (citations omitted); *see also id.* at 168–77. Further, E.J.C.C. has no criminal history, has lived in the United States for over two years and is enrolled in public school, where he was integrating into the community until his abrupt detention by ICE at what he believed to be a routine check-in. Am. Pet. ¶¶ 21, 31, 34, 103[6]. "[T]here are no serious practical obstacles to permitting habeas corpus proceedings other than the kind of 'incremental expenditure of resources' that the Supreme Court deemed not dispositive to the question of granting the writ." *Joshua M.*, 439 F. Supp. 3d at 672; *see also Ragbir*, 923 F.3d at 72 ("presence in the United States" of a person "awaiting deportation violates no law"). For these reasons, E.J.C.C. is "entitled to constitutional protections, including those provided by the Suspension Clause." *Joshua M.*, 439 F. Supp. 3d at 672; *see also Osorio-Martinez*, 893 F.3d at 177.

[6] Disturbingly, Respondents weaponized a supervision condition "to use it as a trap for unsuspecting" noncitizens and "erect an impenetrable barrier" to adjustment. *Wanrong Lin*, 377 F. Supp. 3d at 564.

As for the inquiry's second step, E.J.C.C. has no adequate or effective alternatives to a habeas petition and Respondents do not contend otherwise. Habeas "protections have been strongest" in the context of "reviewing the legality of Executive detention" *Ragbir*, 923 F.3d at 73 (quoting *St. Cyr*, 533 U.S. at 301); *see also Boumediene*, 553 U.S. at 782–83. "For the writ to be effective . . . , '[t]he habeas court must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain,'" including "a meaningful opportunity to demonstrate that [the petitioner] is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Osorio-Martinez*, 893 F.3d at 177 (quoting *Boumediene*, 553 U.S. at 783 and citing *St. Cyr*, 533 U.S. at 301).

Here, none of E.J.C.C.'s claims can be meaningfully heard in his removal proceedings, *see supra* Section I. A motion to reopen E.J.C.C.'s removal proceedings—which would be untimely, *see* 8 C.F.R. § 1003.23(b)(1)—and any eventual petition for review are ineffective and inadequate alternatives. First, a motion to reopen does not automatically stay E.J.C.C.'s removal or ensure his release. *See Joshua M.*, 439 F. Supp. 3d at 673. And while E.J.C.C. has sought an emergency stay of removal with ICE, *see* ECF 7-12, such a stay is discretionary, *Joshua M.*, 439 F. Supp. 3d at 673 (citing BIA Practice Manual § 6.4(d)(i), 1999 WL 33435431 at *3), and has here been ignored, ECF 42 ¶ 26. In any event, seeking such relief from Respondents would be futile as they have made clear that ICE intends to remove E.J.C.C. as soon as possible. ECF 42 ¶¶ 26, 29; Opp. at 2–3. Moreover, unlike other forms of immigration relief, E.J.C.C.'s removal will "inherently jettison his SIJ status for lack of presence in the United States" and foreclose access to the only available judicial forum for his claims. *Joshua M.*, 439 F. Supp. 3d at 676; *see also* 8 U.S.C. § 1101(27)(a)(J); *Del Cid*, 2025 WL 2985150, at *4. Finally, E.J.C.C.'s young age and SIJ status, which "provides him statutory rights," ultimately "make this case unique and . . . illustrates why the administrative process and court of appeals review do not provide an adequate alternative to habeas relief." *Joshua M.*, 439 F. Supp. 3d at 675; *see also Osorio-Martinez*, 893 F.3d at 177 (when INA jurisdiction-stripping provisions "preclude review of the erroneous application

or interpretation of relevant law," "[i]nvocation of the Suspension Clause is . . . proper") (cleaned up).

III. Respondents Fail to Meaningfully Contest Petitioner's APA and *Accardi* Claims.

a. The APA and Accardi *Claims are properly brought since habeas is inadequate.*

The government incorrectly asserts that habeas relief forecloses APA review. Opp. 17–18; *see* 5 U.S.C. § 704 (permitting APA review only where there is "no other adequate remedy in a court"). Habeas may remedy unlawful *custody*, but cannot review or set aside the discrete agency action challenged here. 5 U.S.C. § 706(1), (2). Reading § 704 to limit E.J.C.C. to a habeas action would "defeat the [APA's] central purpose of providing a broad spectrum of judicial review of agency action," *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988), and declaratory and injunctive APA relief remains available for agency compliance. *Shaughnessy v. Pedreiro*, 349 U.S. 48, 51–52 (1955).[7]

b. Other litigation does not bar Petitioner's claims or require a stay of this proceeding.

Respondents have failed to show an indefinite stay of this case is warranted while *A.C.R. v. Noem*, No. 1:25-cv-3962 (E.D.N.Y.)—a *putative* class action that raises only one of E.J.C.C.'s claims—proceeds, *see* Opp. at 18, especially while E.J.C.C. remains unlawfully detained. *Maldonado-Padilla v. Holder*, 651 F.3d 325, 328 (2d Cir. 2011); *Nat'l Indus. for Blind v. Dep't of Veterans Affs*, 296 F. Supp. 3d 131, 137 (D.D.C. 2017) (stay is "an extraordinary remedy" only granted in "rare circumstances"); *cf. Sensient Colors, Inc. v. Kohnstamm*, No. 07-CV-7846, 2008 WL 11456113, at *2 (S.D.N.Y. July 7, 2008) (stay proper for "duplicative litigation"). While E.J.C.C. remains detained, a stay would irreparably harm him by depriving him of liberty and separating him from his family, community, and school. *See,*

[7] Respondents rely on cases where custody was the only injury and habeas supplied complete relief, and/or courts declined to reach the APA upon resolution on other grounds. *See Raspoutny v. Decker*, 708 F. Supp. 3d 371, 380–81 (S.D.N.Y. 2023) (arrest not final agency action; habeas adequate for custody); *Lucas v. Fed. Bureau of Prisons*, No. 17-CV-1184, 2018 WL 3038496, at *2 (S.D.N.Y. June 19, 2018) (conditions claim redressable in habeas); *Quintanilla v. Decker*, No. 21-CV-417, 2021 WL 707062, at *3 n.5 (S.D.N.Y. Feb. 22, 2021) (due process resolved case; APA not reached); *Trump v. J.G.G.*, 604 U.S. 670, 672, 674 (2025) (only viable relief under § 704 was release and restrictions on removal or transfer, all available under habeas).

e.g., *Velesaca v. Decker*, 458 F. Supp. 3d 224, 240–41 (S.D.N.Y. 2020) ("[D]eprivation of an alien's liberty is, in and of itself, irreparable harm.") (cleaned up); *Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has "serious" "detrimental impact"); *Make the Rd. New York v. Pompeo*, 475 F. Supp. 3d 232, 268 (S.D.N.Y. 2020) ("indefinite family separation" is "form of irreparable injury"); *N. B. v. U.S.*, 552 F. Supp. 3d 387, 397 (E.D.N.Y. 2021) ("disruption of one's education constitutes irreparable harm.") (collecting cases). Respondents face no such harm without a stay. *See Ozturk*, 136 F.4th at 402. [8]

c. The government's attempt to remove Petitioner violates the APA.

It is undisputed that (1) removing E.J.C.C. would be a *de facto* revocation of his SIJ status without "good and sufficient cause" or due process, 8 U.S.C. § 1155; Am. Pet. ¶ 76; (2) 8 U.S.C. § 1101(27)(a)(J) requires a SIJ beneficiary to remain "present in the United States" to maintain their status, and E.J.C.C.'s removal would lead to the loss of his SIJ status; and (3) ICE's attempt to remove E.J.C.C. directly conflicts with USCIS's grant of SIJ status. Notably, USCIS's grant of SIJ status to E.J.C.C. occurred *after* he had been issued a final removal order. *See* Am. Pet. ¶¶ 25, 29; ECF 7-4; ECF 7-9. Despite this, Respondents seek to remove him approximately six months after a grant of SIJ status and know that he has not had an opportunity to apply for adjustment, *see* Opp. at 2–3; Am. Pet. ¶¶ 25, 29; ECF 7-4; ECF 7-9. All these actions violate the APA. Am. Pet. ¶¶ 75–79.

Respondents also fail to meaningfully contest that the SIJ statutory framework requires "the Government [to] provide [SIJ beneficiaries] an opportunity to pursue adjustment of status, and the way in which the Government seeks to remove them must adequately take stock of their SIJ Status." *Del Cid*, 2025 WL 2985150, at *4.[9] Instead, Respondents gesture at inapplicable caselaw discussing SIJ

[8] Were Respondents to release E.J.C.C. to his legal guardian, Yupa Camas Decl. ¶ 7, 10–11; Exs. 1–3 of Baltimore Decl., and this Court's Order barring his removal, ECF 5, remained in place during the pendency of the instant action, Petitioner would consent to a stay until *A.C.R.* has been finally decided.
[9] Respondents point to *Cortez-Amador*, 66 F.4th 429, to support their position, but the Third Circuit's decision there reinforces E.J.C.C.'s position—that "Congress intended to provide SIJS recipients with

beneficiaries' *general* removability, *see* Opp. at 11, which is not at issue here and does not account for E.J.C.C.'s specific arguments that *his* removal—given the circumstances of his adjustment-of-status process and lack of any intervening changed circumstances—would contravene the purpose of the SIJ statutory framework. Am. Pet. ¶ 77.[10] Here, Respondents concede that E.J.C.C. has not had an opportunity to apply for adjustment as he remains in the long line of SIJ beneficiaries waiting to apply. Opp. at 2, 4. Because the SIJ statutory framework requires he be provided that opportunity before removal, Respondents' attempt to remove E.J.C.C. now is contrary to law.

d. The government's revocation of Petitioner's order of supervision ("OSUP") violates Accardi *and the government's refusal to decide on Petitioner's deferred action violates the APA and* Accardi.

Respondents do not grapple with either of E.J.C.C.'s *Accardi* claims. First, they do not dispute that E.J.C.C.'s OSUP was revoked without notice or any identified regulatory trigger. Am. Pet. ¶¶ 26–34. Instead, Respondents admit E.J.C.C. has been on an OSUP since May 2022 and that he complied with all reporting requirements. *Id.*; ECF 42 ¶¶ 10–13, 18–21, 23. At his October 23, 2025 check-in, ICE gave no advance warning that revocation was contemplated, no written reasons, no post-arrest interview, and instead "took Petitioner into custody due to his final order of removal," cancelled his release, and issued removal paperwork. Am. Pet. ¶¶ 32, 34; ECF 42 ¶ 24. The government identifies no condition of release he violated, no evidence of danger or flight risk, and no development under 8 C.F.R. § 241.13(i) making his removal reasonably foreseeable. The only material change was favorable to him—a grant of SIJ status, placing him on a statutory path to lawful permanent status. Am. Pet. ¶¶

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an opportunity to pursue adjustment of status," Opp. at 11 n.1 (quoting *Cortez-Amador*, 66 F.4th at 433 n.12), and removal of SIJ beneficiaries must ensure that they have such a meaningful opportunity, *Del Cid*, 2025 WL 2985150, at *4 (discussing *Cortez-Amador*, *Osorio-Martinez*, *Benito Vasquez*, *D.M.S.C.*).

[10] *See, e.g., Benito Vasquez v. Moniz*, 788 F. Supp. 3d 177, 181 (D. Mass. 2025) (in case raising distinct claims, noting in *dicta* that SIJ recipients are generally removable); *U.S. v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (SIJ status did not shield recipient from criminal prosecution for unlawful firearm possession); *D.M.S.C. v. Kelly*, No. 16-CV-5727, 2017 WL 3390234, at *3 (E.D. Pa. Aug. 7, 2017) (SIJ status does not confer parole).

28–29. ICE's decision to arrest him at his check-in is thus precisely the kind of arbitrary revocation the regulations were meant to prevent. *See* 8 C.F.R. §§ 241.4, 241.5, 241.13.

The government's assertion that *Accardi* relief is unavailable to E.J.C.C. because his claims do not involve a "fundamental right" is mistaken. Freedom from physical confinement is "the most significant liberty interest there is," *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020), and courts have recognized that the government must provide meaningful process before depriving noncitizens, and especially children, of that liberty. *See Lopez v. Sessions*, No. 18-CIV-4189 (RWS), 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018). The custody regulations safeguard that interest.

Second, Respondents similarly argue only that USCIS's deferred-action policy for SIJ beneficiaries is a purely discretionary benefit that cannot affect any "fundamental right." Opp. 19–21. But E.J.C.C. does not claim a right to a particular outcome of that discretionary determination. He challenges the agency's failure to follow the binding procedure in effect when USCIS approved E.J.C.C.'s SIJ petition on April 15, 2025. Am. Pet. ¶¶ 52–61, 86–91. That procedural commitment matters; SIJ status carries "a clear set of rights, including eligibility to apply for adjustment to LPR status" from within the United States, *Osorio-Martinez v. Att'y Gen. U.S.*, 893 F.3d 153, 178–79 (3d Cir. 2018), and the deferred-action determination is the mechanism USCIS adopted to protect SIJ recipients from detention and removal that would cut off their congressionally created path to lawful permanent residence. The government thus conflates a claimed entitlement to discretionary relief (which Petitioner does not assert) with the distinct, *Accardi*-protected right to the binding procedure the agency adopted to safeguard SIJ recipients' status. For these same reasons, USCIS's failure to issue any deferred-action determination is also agency action unlawfully withheld under the APA, 5 U.S.C. § 706(1). Am. Pet. ¶¶ 92–96. And the June 6, 2025 rescission does not retroactively cure Respondents' failure to act on pre-rescission approvals. *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (agencies lack authority to promulgate retroactive rules absent clear congressional authorization).

IV. Respondents Do Not Meaningfully Dispute Petitioner's Due Process Claims.

Respondents do not address E.J.C.C.'s claims that the revocation of his SIJ status and his detention violate due process. *See* Am. Pet. ¶¶ 97–110. First, they do not dispute that E.J.C.C. has a protected liberty interest that cannot be deprived without due process. *See* Am. Pet. ¶¶ 100–104. Second, while they describe SIJ benefits as "limited," Opp. at 11–12, they do not dispute that E.J.C.C.'s SIJ status reflects a Congressional determination to create a legal relationship with SIJ beneficiaries, protected by statutory due process protections, and provides him access to specific benefits. *See* Am. Pet. ¶¶ 106–109; *Osorio-Martinez*, 893 F.3d at 163, 168–77. Through these protections and benefits, the SIJ statutory framework creates a protectible liberty or property interest in SIJ status. Specifically, "a property interest arises" "where one has a 'legitimate claim of entitlement' to the benefit" and "statutes or regulations 'meaningfully channel[ ] official discretion by mandating a defined administrative outcome.'" *Kapps v. Wing*, 404 F.3d 105, 113 (2d Cir. 2005) (citations omitted). The SIJ framework limits USCIS's authority to a "consent function" constrained "to determining whether the request for SIJ classification is 'bona fide.'" *Flores Zabaleta v. Nielsen*, 367 F. Supp. 3d 208, 216, 217 (S.D.N.Y. 2019) (USCIS Policy Manual's explanation on agency's consent authority); *id.* at 216 (setting aside SIJ denial, as USCIS acted "in excess of its statutory jurisdiction"); *R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 380–81 (S.D.N.Y. 2019) (discussing limits of consent authority; holding the government exceeded its authority); Am. Pet. ¶ 45. Accordingly, E.J.C.C. cannot be deprived of SIJ status without due process.

Respondents' arguments that E.J.C.C.'s detention does not violate substantive due process hinge entirely on the permissibility of his removal. *See* Opp. 11–12, 23–25. Respondents cannot establish that E.J.C.C.'s removal under these circumstances is lawful. *See supra* Section III.c.

V. Petitioner Should be Released to His Legal Guardian.

The Court should order E.J.C.C.'s release to his legal guardian. An "unaccompanied alien child" is, *inter alia*, one with "no parent or legal guardian in the United States . . . available to provide care and physical custody." 6 U.S.C. § 279(g)(2)(C)(ii). Once a legal guardian is available, willing, and able to assume custody, ORR's authority ends. *See Maldonado v. Lloyd*, No. 18-CIV-3089, 2018 WL 2089348, at *5–6 (S.D.N.Y. May 4, 2018); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 207, 211–12 (S.D.N.Y. 2020); *D.J.C.V. v. United States*, 605 F. Supp. 3d 571, 606–07 (S.D.N.Y. 2022); *see also* 8 C.F.R. § 236.3(d)(2). Since E.J.C.C.'s uncle became his standby guardian when his mother self-deported and has since been appointed his full guardian, Yupa Camas Decl. ¶¶ 7, 10–11; Exs. 1–3 to Baltimore Decl., E.J.C.C. was never "unaccompanied." ORR lacks authority to detain him and may not use the TVPRA's "suitability" process to delay release. *See* 8 U.S.C. § 1232(c)(3)(A); *cf. D.B. v. Cardall*, 826 F.3d 721, 744–49 (4th Cir. 2016) (Floyd, J., dissenting). Continued institutional custody contradicts Congress's child-welfare framework, *see* Am. Pet. ¶¶ 62–86, 80–82, as keeping E.J.C.C. in ORR custody while his legal guardian is ready to provide care exacerbates the harms—family separation, instability, educational disruption—that these laws were enacted to prevent. ECF 51-1, at 5–9, 11–12; *see generally* ECF 49.

VI. Petitioner Should be Released Pending Adjudication of His Petition.

Contrary to Respondents' contentions, release on bail pending adjudication of the petition is appropriate given E.J.C.C.'s "substantial claims," the extraordinary circumstances presented by his age, SIJ status, and potential irreparable harm, *see supra* Section III.b. *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 486 (D. Vt. 2025) (listing *Mapp v. Reno* factors). Respondents do not—and could not—claim that E.J.C.C. is a flight risk or danger. And Respondents' contention that E.J.C.C. is lawfully required to stay in ORR custody is belied by the fact that he was never unaccompanied. *See supra* Section V.

CONCLUSION

For the foregoing reasons, E.J.C.C. requests the Court grant his petition and complaint.

Dated: November 12, 2025
New York, N.Y.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1(c), the undersigned counsel hereby certifies that this memorandum complies with the allocated page limit (fifteen pages) per this Court's order. ECF 55.

/s/Elizabeth Gyori
Elizabeth Gyori