

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YUSGLEIDY VILLA ALVAREZ,

Petitioner,

Case No: 6:25-cv-06600-EAW

v.

MICHAEL J. FILICETTI, in his official capacity as Sheriff of Niagara County, NY, KRISTI NOEM, in her official capacity as Secretary of Homeland Security, TODD M. LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement, and STEPHEN KURZDORFER, in his official capacity as Field Office Director, Buffalo Field Office, U.S. Immigration and Customs Enforcement, JOSEPH B. EDLOW, in his official capacity as Director, U.S. Citizenship and Immigration Services, and PAMELA BONDI, in her official capacity as Attorney General of the United States,

Respondents.

AMENDED VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, Yusgleidy Villa Alvarez, is an 18-year-old girl from Venezuela with an approved Special Immigrant Juvenile status (“SIJ”) petition and no criminal record. Her father abandoned her when she was a young child, and her mother died of cancer in January 2023. She came to the United States in August of 2023 and subsequently filed an application for SIJ, which was approved on July 26, 2024, with a visa priority date of May 17, 2024. In approving that application, U.S. Citizenship and Immigration Services (USCIS) determined that a parent had abandoned Yusgleidy and that it was in her best interest not to return to her home country.

2. An approved SIJ application gives Petitioner the ability to apply for permanent residence when there is a visa number available (i.e., her priority date is current). Per USCIS policy at the time it granted Yusgleidy's SIJ application, it granted her deferred action (i.e., temporary protection from deportation) and an Employment Authorization Document (EAD). She got a job as a cleaner at the Buffalo Bills Stadium in Buffalo, New York. She did everything right. But it did not protect her.

3. On September 19, 2025, after working a double shift on her first day on the job, ICE arrested her and detained her in the Niagara County Correctional Facility (NCCF), where she is currently incarcerated.

4. That same day, USCIS terminated Yusgleidy's deferred action and issued an intent to revoke her work permit.

5. USCIS provided no justification for terminating her deferred action other than it was exercising its discretion, nor did it provide her with any advanced notice or opportunity to be heard on the issue.

6. Petitioner's arrest and detention are wholly unjustified and unrelated to any individualized consideration of her circumstances. At barely 18 years old, she is considered a child under the Immigration and Nationality Act (INA). 8 U.S.C. 1101(b)(1). She has no criminal record anywhere in the world and has family ties and employment in the United States. DHS has not made any allegation that she is a danger to persons or property or a flight risk. And yet despite all of this, she currently sits in a jail cell.

7. For these reasons, Petitioner files this petition for a writ of habeas corpus requesting that this Court issue an order enjoining the Respondent from transferring her away from the

jurisdiction of this District pending these proceedings; find that her arrest and detention are unlawful; and order her immediate release from custody.

8. Petitioner also requests expedited consideration of her case under 28 U.S.C. § 1657.

CUSTODY

9. At the time of the filing of this petition, Yusgleidy is physically detained at Niagara County Correction Facility (“NCCF”) in Lockport, New York, a facility contracted by Immigration and Customs Enforcement (“ICE”), an agency within the U.S. Department of Homeland Security (“DHS”). She is in physical custody of Respondent Michael J. Filicetti, the Niagara County Sheriff, who is in charge of the NCCF. Mr. Filicetti and his agents have direct control of Yusgleidy. The other Respondents have some level of legal control over Yusgleidy and authority to detain or release her now and in the future and/or have discretionary control over her current applications.

JURISDICTION

10. This action arises under the United States Constitution and the (“INA”), 8 U.S.C. § 1101 et. seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. § 2241, art. I, § 9, cl. 2 of the United States Constitution (“Suspension Clause”) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue lies in the United States District Court for the Western District of New York, the judicial district where Petitioner is detained and where a substantial part of the events or omissions giving rise to this claim occurred. 28 U.S.C. § 1391(e).

PARTIES

12. Yusgleidy Villa Alvarez is a national and citizen of Venezuela and is currently detained by the Respondents at the NCCF in Lockport, New York. Upon information and belief, she has been in ICE custody since on or about September 19, 2025, when she was arrested in Buffalo, New York by DHS agents.

13. Upon information and belief, Respondent, Michael J. Filicetti is the Sheriff of Niagara County, New York. He is in charge of the NCCF in Lockport, New York, which is located in the Western District of New York. He is Yusgleidy's immediate custodian. He is named in his official capacity.

14. Kristi Noem is the Secretary of Homeland Security and is the senior official responsible for supervising all activities within the Department of Homeland Security, including immigration activities. She is a legal custodian of Petitioner and is named in her official capacity.

15. Upon information and belief, Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioner and is named in his official capacity.

16. Upon information and belief, Stephen Kurzdorfer is the Field Office Director for the ICE Buffalo field office and supervises all activities within the jurisdiction of the Buffalo field office. In addition, upon information and belief, Respondent Kurzdorfer works and resides within the jurisdiction of the Western District of New York.

17. Upon information and belief, Joseph B. Edlow is the current Director of U.S. Citizenship and Immigration Services (USCIS). He is named in his official capacity.

18. Respondent Pam Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. Petitioner is not required to exhaust her administrative remedies in this matter because her available remedies provide no genuine opportunity for adequate relief as any attempt to seek administrative remedy would be futile, she would face irreparable injury without immediate judicial relief, and her case raises a substantial constitutional question. *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020).

20. Petitioner's Notice to Appear (NTA) dated October 24, 2025 lists her as "an alien present in the United States who has not been admitted or paroled." Therefore, she is being held pursuant to 8 U.S.C. §1225(b)(2)(A) and the only administrative remedy available to her is to request parole from ICE custody. Given that ICE is the same agency that is detaining her, this remedy provides no genuine opportunity for relief.

21. Finally, Yusgleidy's case raises a substantial constitutional question as to whether USCIS may revoke her deferred action with no justification, notice, or opportunity to be heard.

STATEMENT OF FACTS

22. In relevant part, Yusgleidy Villa Alvarez is a citizen and national of Venezuela.

23. She speaks Spanish and does not speak English.

24. Her father abandoned her when she was a young child and her mother died of cancer in January of 2023.

25. On or about August 2, 2023, she entered the United States without a legal guardian, surrendered to Border Patrol, and was issued a Notice to Appear on August 3, 2023. A true and accurate copy of this NTA is attached as **Exhibit A**.

26. She was issued a Notice to Appear (NTA), which listed her status as “an alien present in the United States who has not been admitted or paroled.” **Exhibit A**.

27. Per U.S. policy on unaccompanied minors entering the United States, she was transferred to the Department of Health and Human Services (HHS), who subsequently released her into the custody of her aunt. A true and accurate copy of her HHS order of release is attached as **Exhibit B**.

28. She was not designated for expedited removal under 8 U.S.C. § 1225(b)(1) or as an arriving alien § 1225(b)(2).

29. On May 17, 2024, she applied for SIJ status.

30. On July 26, 2024, that petition was approved, giving her a path to become a lawful permanent resident and a priority date of May 17, 2024. A true and accurate copy of the approval notice is attached as **Exhibit C**.

31. In that same July 26, 2024 approval notice, USCIS granted Yusgleidy deferred action for a period of four years. **Exhibit C**.

32. On May 17, 2024, Petitioner applied for an EAD based on the C14 category, a category for those granted deferred action. On or about February 20, 2025, USCIS approved that application, granting her work authorization through July 26, 2028. A true and accurate copy of the letter with her EAD card is attached as **Exhibit D**.

33. Upon information and belief, Yusgleidy's NTA was canceled on December 19, 2024, because she had an approved SIJS application and deferred action.

34. Upon information and belief, on September 19, 2025, DHS agents arrested Petitioner without explanation after her first day at work as a cleaner at the Buffalo Bills Stadium in Buffalo, New York.

35. On the same day, USCIS terminated Yusgleidy's deferred action. A true and accurate copy of the USCIS Deferred Action Termination Notice dated September 19, 2025, is attached as **Exhibit E**.

36. On September 25, 2025, USCIS sent a Notice of Intent to Revoke Yusgleidy's EAD. A true and accurate copy of this notice is attached as **Exhibit F**.

37. Upon information and belief, USCIS did not perform a legitimate individual assessment of her case before arresting her.

38. Since on or about September 19, 2025, Respondents have detained her in the NCCF.

39. Upon information and belief, the NCCF is a facility primarily designed to house those facing criminal charges while their court proceedings are pending and those who are serving criminal sentences of less than one year.

40. Upon information and belief, Yusgleidy is not currently facing any criminal charges, nor does she have a criminal history either in Venezuela or in the United States.

41. On October 24, 2025, a month after taking her into custody, DHS filed a second Notice to Appear. A true and accurate copy of this NTA is attached as **Exhibit G**.

LEGAL FRAMEWORK

I. DHS VIOLATED THE ADMINISTRATIVE PROCEDURE ACT IN TERMINATING YUSGLEIDY'S DEFERRED ACTION WITH NO NOTICE OR OPPORTUNITY TO BE HEARD.

42. Yusgleidy submits that DHS did not follow its own regulations in arresting and detaining her and subsequently terminating her deferred action. "[U]nder deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations." *Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020).

43. Those with SIJ status, such as Yusgleidy, may apply to adjust their status to that of a permanent resident if a visa number is available to them. 8 U.S.C. § 1153.

44. However, "[d]ue to ongoing visa number unavailability, the protection that Congress intended to afford SIJs through adjustment of status is often delayed for years." USCIS Policy Alert dated March 7, 2022, available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf> (last accessed on October 23, 2025). In USCIS's own words, "Congress likely did not envision that SIJ petitioners would have to wait years before visas became available." *Id.* In light of the delay caused by visa unavailability, USCIS created a new deferred action program in an effort to "further[] congressional intent to provide humanitarian protection for abused, neglected, or abandoned noncitizen children for whom a juvenile court has determined that it is in their best interest to remain in the United States." *Id.* Under this policy, USCIS granted deferred action on a case-by-case basis to those with approved SIJS applications who are unable to adjust due to the visa backlog and who warrant a favorable exercise of discretion. *Id.*

45. On June 6, 2025, USCIS abruptly reversed course and stopped its policy of granting deferred action to SIJs who are unable to adjust due to the visa backlog. USCIS Policy Alert dated June 6, 2025, available at <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf> (last accessed on October 23, 2025). That memo specifically states that “aliens with current deferred action based on their SIJ classification will generally retain this deferred action, as well as retain their current employment authorization provided based on this deferred action, until the current validity periods expire.” *Id.*

46. In its June 6, 2025 USCIS Policy Alert, USCIS stated that there are three reasons why deferred action may be revoked. They include:

- a. USCIS determines the favorable exercise of discretion is no longer warranted;
- b. The Form I-360 petition for SIJ classification was approved in error, and the petition is revoked; or
- c. The prior deferred action and related employment authorization were granted in error.

47. There is no allegation that Yusgleidy’s I-360 was granted in error or that the prior deferred action or EAD was granted in error.

48. In the first category, USCIS must make a determination that the exercise of discretion is no longer warranted and provide some justification for this decision. It cannot just revoke deferred action arbitrarily or capriciously.

49. Upon information and belief, USCIS made no such individual determination and provided no explanation for its decision to rescind her deferred action. Therefore, under USCIS’s own guidance, USCIS should not have terminated Petitioner’s deferred action and DHS should not have taken her into custody.

II. DHS VIOLATED YUSGLEIDY'S FIFTH AMENDMENT RIGHTS BY NOT GIVING HER NOTICE OR AN OPPORTUNITY TO RESPOND TO THE TERMINATION OF HER DEFERRED ACTION, WHICH RESULTED IN HER UNLAWFUL ARREST AND DETENTION.

50. In addition, DHS's termination of her deferred action with no notice or opportunity to respond violated her due process rights under the Fifth Amendment of the U.S. Constitution.

51. Deferred action is discretionary. USCIS Policy Alert dated March 7, 2022; USCIS Policy Alert dated June 6, 2025.

52. But DHS cannot unilaterally revoke a grant of deferred action without notice or process. To do so violates the Due Process Clause of the Fifth Amendment.

53. By its own policy, USCIS may revoke deferred action include "where the petition for SIJ classification was approved in error and the petition is revoked, or where the prior deferred action and related employment authorization were granted in error. *Inlago Tocagon v. Moniz*, Civil Action No. 25-cv-12453-MJJ, 2025 U.S. Dist. LEXIS 191829 (D. Mass. Sep. 29, 2025). None of these factors exist here.

54. In *U.S. ex rel. Paktorovics v. Murff*, the court held that a hearing "at which the basis for the discretionary ruling of revocation may be contested on the merits" was required before parole granted to Hungarian refugees could be terminated. 260 F.2d 610, 612 (2d. Cir. 1958). Judge Vilardo affirmed this holding in July of 2025, when he held that the Department could not terminate the parole of a Venezuelan national without first conducting a hearing. *Velasquez v. Kurzdorfer*, 2025 U.S. Dist. LEXIS 135986.

55. While those cases addressed the revocation of parole, not deferred action, the Courts' analysis is applicable here as parole, like deferred action, is a discretionary and temporary form of relief that is awarded on a case-by-case basis to those warranting a favorable exercise of discretion. See USCIS Policy Alert dated March 7, 2022, fn. 6; 8 U.S.C. § 1182(d)(5).

56. In terminating the deferred action, DHS only said that it “exercised its discretion to terminate [Petitioner’s] period of deferred action.” **Exhibit E**. But it never determined or stated why that exercise of discretion was no longer warranted or how it reached that conclusion.

57. Courts look to the three-part test in *Mathews v. Eldridge*, 424 U.S. 319 (1976) to determine if a noncitizen’s due process rights were violated. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). The three factors a court looks at to determine whether an individual has been deprived of due process are: (1) “the private interest that will be affected by the official action”; (2) “the [g]overnment’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,” and (3) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.” *Mathews*, 424 U.S. at 333; *see also Velasquez*, 2025 U.S. Dist. LEXIS 135986, at *44. This test is appropriate here as well.

61. Under the first factor, the Court looks at the private interest that will be affected by the official action. Here, the private interest affected is Petitioner’s freedom. The Second Circuit has observed that freedom from imprisonment is “the most significant liberty interest there is...” *Black v. Dir. Thomas Decker*, 103 F.4th 133, 151 (2d Cir. 2024). “As we have previously observed, case after case instructs us that in this country liberty is the norm and detention is the carefully limited exception.” *Id.* Yusgleidy is an 18-year-old girl with no criminal history and has never been in a U.S. detention facility before her placement at NCCF. She is being held in a county jail designed to house those accused and convicted of criminal offenses. A child with no criminal record has no place in a jail cell among adults with criminal histories. For these reasons, the first Mathews factor heavily favors Yusgleidy.

62. Under the second factor, the Court looks at the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail. *Id.* at *44. Courts have recognized that because “The government has an interest in ensuring that noncitizens will attend their immigration proceedings and that they will not be a danger to society if released.” *Black*, 103 F.4th at 153. The government also has an interest in ensuring that noncitizens will be available if an order of removal is issued against them and in the efficient administration of the immigration laws at the border. *Velasquez*, 2025 U.S. Dist. LEXIS 135986, at *45. While these are strong interests, the Respondents have not invoked any of these as a basis for terminating Yusgleidy’s deferred action and taking her into custody.

63. DHS has made no allegations of criminal behavior or immigration violations beyond her initial entry into the country, which took place when she was a minor and before her grant of deferred action. If DHS believes that any of these conditions are present here, it has not provided Yusgleidy notice of this. It did not give Yusgleidy any notice that it intended to revoke her deferred action or provide an explanation for doing so. Instead, it simply arrested her after her shift at work and placed her in a jail cell with no explanation. Therefore, while the Government’s general interests in ensuring appearances and protecting the public are strong, there are no circumstances in this case that would require the government to invoke those, and it has not done so.

64. Under the third factor, the Court looks at the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.

65. The failure of DHS to provide any meaningful reasoning or opportunity to be heard regarding this termination of her deferred action and parole creates a large risk that she will be

deprived of her liberty interests. *See Black*, 103 F.4th 133 at 152. While the Black court was addressing a non-citizen detained under 1226(c) (the INA's criminal history-based mandatory detention statute), its analysis is equally applicable to those subject to §1225(b)(2)(A), given that non-citizens detained under either statute are ineligible for a custody hearing. The Black Court made two general observations with respect to this factor. First, "the procedures used for section 1226(c) . . . include no mechanism for a detainee's release, nor for individualized review of the need for detention." *Id.* Second, the "broad reach means that many noncitizens are detained . . . who may have meritorious defenses to deportation at such time as they are able to present them." *Id.* (internal citations and quotations omitted).

66. To receive deferred action, USCIS must make its decision on a "case-by-case" basis. USCIS Policy Alert dated March 7, 2022, fn. 6. This is similar to the issuance of parole. 8 U.S.C. § 1182(d)(5)(A).

67. "Several courts have found that just as a grant of parole requires an individualized review, revocation of parole requires a case-by-case assessment to comply with the statute." *Velasquez*, 2025 U.S. Dist. LEXIS 135986 at *28. While USCIS's termination notice states that USCIS "individually reviewed her case," it does not explain the reasons for spontaneously revoking her deferred action. Additionally, the notice specifically states that she may not appeal or move to reopen or reconsider USCIS's decision.

68. Finally, the fact that USCIS terminated her deferred action on the exact same day ICE took her into custody makes clear that she was not given any warning of their decision or opportunity to be heard on the matter. USCIS's failure to provide Yusgleidy with advanced notice of its intention to revoke her deferred action or any explanation for its decision to do so, combined with the lack of any review or appeal process, increases the risk of erroneous deprivation.

69. As in *Velasquez*, any attempt made by Yusgleidy to secure release through ICE's discretionary parole program would be futile, given the fact that ICE has already decided to detain her. She has no criminal record and has an approved SIJS application, finding that it is not in her best interest to return to Venezuela and giving her a path to a green card in the United States. To mitigate the risk of deprivation, due process requires that Yusgleidy have, at a minimum, the opportunity to submit relevant evidence on the issuance of her deferred action termination, but she was expressly told she cannot challenge that in the notice she received. **Exhibit E.** *See Velasquez* 2025 U.S. Dist. LEXIS 135986, at *46. For these reasons, the third Mathews factor heavily favors Yusgleidy.

70. ICE's arrest and continued detention of Yusgleidy without following the proper procedure for terminating her deferred action is therefore unlawful as it violates the Fourth and Fifth Amendments to the U.S. Constitution.

71. The proper remedy is to order her immediate release and reinstate her deferred action status and EAD or, in the alternative, order that she receive a bond hearing with the burden on the government to show by clear and convincing evidence that she is not a danger to persons or property or a flight risk and, that if she is found to be a danger or flight risk, no alternatives to detention exist to mitigate the danger or flight risk. *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

III. YUSGLEIDY FALLS UNDER 8 U.S.C § 1232(c)(2)(B), WHICH REQUIRES PLACEMENT IN THE LEAST RESTRICTIVE SETTING AVAILABLE.

Minors who arrive in the U.S. without a parent or other legal guardian are considered "unaccompanied minors" and receive special treatment under the immigration laws because of their vulnerable status. *See* 6 U.S.C. §279; 8 U.S.C. §1232. Specifically, the Department of Health and Human Services (HHS) is responsible for their care. *Id.* Additionally, the Trafficking Victims

and Protection Reauthorization Act (TVPRA) states that if DHS wishes to commence removal proceedings against an unaccompanied minor, they must do so through standard removal proceedings, in which the minor is provided counsel and may apply for relief at no cost. 8 U.S.C. §1232(a)(5)(D). Accordingly, unaccompanied minors are not subject to expedited removal. *Id.*

Additionally, in 2013, Congress amended the TVPRA as to minors who reach the age of 18 after entry into the United States. This amendment requires unaccompanied minors transferred from HHS to DHS custody after turning 18 to be placed in the least restrictive setting available, including alternatives to detention or placement with a sponsor. 8 U.S.C. § 1232(c)(2)(B). These laws clearly demonstrate congressional intent to exempt unaccompanied minors, even those who have reached the age of majority, from mandatory detention.

IV. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a) AND ELIGIBLE FOR A BOND HEARING.

72. In the alternative, even if DHS properly terminated Petitioner's deferred action, Petitioner is still detained under 8 U.S.C. § 1226(a) and eligible for a bond hearing.

A. Legal framework governing detention of non-citizens

73. Two sections of the Immigration and Nationality Act govern the detention of non-citizens who have not received a final order of removal: 8 U.S.C. § 1225 and 8 U.S.C. § 1226.

74. First, noncitizens detained under 8 U.S.C. §1226 are classified under one of two subsections: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1226(c).

75. "Section 1226(a) governs a separate non-mandatory detention scheme and provides for the 'default rule' for detaining and removing aliens 'already present in the United States.'" *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *14 quoting *Jennings*, 583 U.S. at 303. Non-citizens detained under this subsection are entitled to a bond hearing before an immigration judge. 8 U.S.C. §1226(a).

76. 8 U.S.C §1226(c) provides that non-citizens in removal proceedings who have certain criminal convictions are subject to mandatory detention. 8 U.S.C. §1226(c). While these non-citizens are generally presumed to be ineligible for a bond hearing, they can still petition Federal Courts for a writ of habeas corpus for prolonged detention in violation of the Due Process Clause of the Fifth Amendment. A federal judge can then order a bond hearing with the burden on the government to show by clear and convincing evidence that the individual is a danger to persons or property or a flight risk. See *Black v. Dir. Thomas Decker*, 103 F.4th 133 (2d Cir. 2024); *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

77. Second, non-citizens detained under 8 U.S.C. § 1225 are similarly divided into two categories.

78. 8 U.S.C § 1225(b)(1) provides for mandatory detention of “arriving aliens” and noncitizens subject to expedited removal. 8 U.S.C §1225(b)(2) governs those who are considered “applicants for admission.”

79. For decades following the enactment of these provisions, those declared present in the United States, later arrested, and placed in standard removal proceedings (removal proceedings pursuant to 8 U.S.C. 1229(a)), were considered detained under 8 U.S.C 1226(a) and eligible for a bond hearing before an immigration judge, unless their criminal history subjected them to mandatory detention under 8 U.S.C. 1226(c). See e.g., *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (discussing Section 1226(a) as the “default rule” for detaining noncitizens “already present in the United States”); *Miranda v. Garland*, 34 F.4th 338, 346 (4th Cir. 2022) (same); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428-JRR, 2025 WL 2430025, at *9 (D. Md. Aug. 24, 2025) (“Since at least 1996, the INA has mandated the detention of arriving aliens and certain criminal non-citizens detained in the United States. The Board of Immigration Appeals has long held to this

interpretation. For everyone else, 8 U.S.C. § 1226(a) provides DHS the discretion to detain noncitizens, subject to review during a custody hearing before an immigration judge.”); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255, at *9 (E.D. Va. Sept. 19, 2025) (“Before July 8, 2025, ‘DHS’s long-standing interpretation has been that § 1226(a) applie[d] to those who have crossed the border between ports of entry and are shortly thereafter apprehended.”) (quoting Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022)).

80. In recent months, however, Respondents have adopted an entirely new interpretation of the statute and now claim that all noncitizens who entered the United States without admission or parole are considered seeking admission and therefore ineligible for a bond. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); see also *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

B. Petitioner is detained under 8 U.S.C. 1226(a) and eligible for a bond hearing.

81. Petitioner entered the U.S. in 2023 as an unaccompanied minor and was transferred to HHS, who subsequently released her into the custody of her aunt. See **Exhibit B**.

82. DHS issued her an NTA which marked her as “an alien present in the United States who has not been admitted or paroled.” See **Exhibit A**. That NTA was subsequently cancelled after her petition for SIJ status was approved. However, DHS issued a new NTA on October 24, 2025, which also marks her as being present without having been admitted or paroled. See **Exhibit G**.

83. Petitioner has never been subject to expedited removal and has not been designated an arriving alien. See Exhibits A and G; 8 U.S.C. §1232(a)(5)(D). She has no criminal record and

is therefore not subject to 8 U.S.C. 1226(c). Therefore, the only possible statute for her to fall under is 8 U.S.C. 1226(a).

84. To the extent that Respondents argue that she is detained under 8 U.S.C. § 1225(b) and seeking admission pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), this argument fails.

85. The Board's reversal of historical practice and newly revised interpretation of the detention statutes are not entitled to any deference. See *Loper Bright Ent. v. Raimondo*, 603 U.S. 369, 412-13 (2024). Numerous courts around the country have rejected the reasoning in *Yajure Hurtado* and held that those who have been designated as "present" in the United States are classified under 8 U.S.C. § 1226(a) and are, at a minimum, entitled to a bond hearing before an immigration judge. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-24. *Artiga*, 2025 U.S. Dist. LEXIS 196847, at *15-24; *Orellana v. Moniz*, Civil Action No. 25-cv-12664-PBS, 2025 U.S. Dist. LEXIS 196282, at *13-14 (D. Mass. Oct. 3, 2025) (collecting cases). Furthermore, the government's policy in *Yajure Hurtado* renders other statutes, e.g., 8 U.S.C. § 1226(c) generally, and the Laken Riley Act, superfluous. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-24.

86. Additionally, the TVPRA makes clear that Congress did not intend those who entered the U.S. as unaccompanied minors to be subject to mandatory detention, even after they reached the age of 18. 8 U.S.C. §1232(a)(5)(D); P.L. 113-4 §1261(2)(B).

87. Accordingly, Yusgleidy is subject to discretionary detention under 8 U.S.C. §1226(a) based on her NTA, congressional intent toward unaccompanied minors, and the plain text of the statute.

88. As a person detained under 8 U.S.C. § 1226(a), Yusgleidy must, upon her request, receive a custody redetermination hearing (colloquially called a “bond hearing”) with strong procedural protections. 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

89. Therefore, Yusgleidy respectfully requests a bond hearing with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger. *Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

90. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

91. Respondents failed to properly follow their own policy memo dated June 6, 2025.

92. USCIS’s June 6, 2025 memo states that while it will not continue to grant all approved SIJs deferred action, those already with deferred action will retain it.

93. USCIS did not give Petitioner advanced notice that it intended to terminate her deferred action and only did so on the same day she was taken into custody. She received no opportunity to be heard on the matter and no explanation for her deferred action’s revocation and her subsequent detention.

94. For these reasons, Petitioner respectfully requests that the Court reinstate her deferred action and EAD and order her immediate release, or in the alternative, a bond hearing before an immigration judge in which the burden is on the government to show by clear and

convincing evidence that Petitioner is a danger or flight risk and that no alternatives to detention could mitigate the risk of danger or flight.

COUNT TWO

**VIOLATION OF THE FOURTH AMENDMENT OF THE U.S. CONSTITUTION
(UNLAWFUL ARREST)**

95. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

96. DHS granted Petitioner deferred action by USCIS after the agency approved her application for Special Immigrant Juvenile Status. At the time of her arrest, she had been living at liberty pursuant to a determination by federal immigration authorities. The government exercised its discretion, in part, because it believed that she was not a danger to the community or a flight risk. Since that time, Petitioner followed all rules. She has obtained her work permit, gotten a job, and committed no crimes.

97. The government lacked reliable information of changed or exigent circumstances that would justify her arrest after federal immigration authorities had already decided she could pursue her claims for immigration relief at liberty at least until July 26, 2028. Her arrest is unreasonable and violates the Fourth Amendment.

98. Petitioner requests that the Court order her immediate release or, in the alternative, a bond hearing before an immigration judge in which the burden is on the government to show by clear and convincing evidence that Petitioner is a danger or flight risk and that no alternatives to detention could mitigate the risk of danger or flight.

COUNT THREE

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE
FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

99. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

100. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.” U.S. CONST AMEND. V.

101. The government made the reasoned decision to grant Petitioner deferred action while she waited for a visa number to become available so that she could adjust her status to that of a lawful permanent resident. The Due Process Clause entitles her to meaningful process assessing whether the revocation of her deferred action and subsequent detention is justified. The revocation of Petitioner’s deferred action and subsequent arrest and detention without an opportunity for her to contest this decision in front of a neutral adjudicator after she had been living in the United States for over two years provide insufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution.

102. Petitioner respectfully requests that the Court reinstate her deferred action and EAD and order her immediate release, or in the alternative, a bond hearing a bond hearing before an immigration judge in which the burden is on the government to show by clear and convincing evidence that Petitioner is a danger or flight risk and that no alternatives to detention could mitigate the risk of danger or flight.

COUNT FOUR

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT
(Violation of 8 U.S.C § 1232(c)(2)(B))**

103. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

104. Under 8 U.S.C § 1232(c)(2)(B), when a noncitizen turns 18, DHS is supposed to “consider placement in the least restrictive setting available after taking into account the alien’s danger to self, danger to the community, and risk of flight.” These individuals “shall be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien’s need for supervision, which may include placement of the alien with an individual or an organizational sponsor, or in a supervised group home.” *Id.*

105. DHS has not demonstrated any reason why she does not qualify for least restrictive detention. She is not a danger to persons or property nor a flight risk. She has family that she can be released to.

106. Therefore, Petitioner asks that the Court immediately release her under alternatives to detention to her family.

COUNT FIVE

**VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)
(Bond Hearing Under 8 U.S.C. § 1226(a))**

107. Petitioner re-alleges and incorporates by reference each and every allegation contained above.

108. Petitioner is detained under 8 U.S.C. § 1226(a).

109. Petitioner has not been, and will not be, provided with a bond hearing as required by law due to current DHS policy.

110. Petitioner's continued detention without the ability to obtain a bond hearing is therefore unlawful.

111. Because Petitioner is detained under 8 U.S.C. § 1226(a), under the Due Process Clause of the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226(a), and 8 C.F.R. 236.1(d) & 1003.19(a)-(f), Petitioner is entitled to receive a bond hearing before an immigration judge with strong procedural protections.

112. Therefore, if the Court does not release Petitioner outright, Petitioner requests a court order that she is entitled to a bond hearing in front of an immigration judge with the burden on the government to prove by clear and convincing evidence that he is not a danger to the public or property and not a flight risk and to likewise demonstrate by clear and convincing evidence that no alternatives to detention can mitigate the risk of flight or danger or on conditions the Court deems just and proper. *See Cantor v. Freden*, 761 F. Supp. 3d 630, 635-41 (W.D.N.Y. 2025).

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue an order barring respondents from transferring Yusgleidy from the geographic jurisdiction of the Western District of New York while these proceedings are pending to allow her attorneys to readily communicate with her, including meeting with her in person.
3. Issue an order or orders requiring the following:
 - a. Declare her arrest and detention to be unlawful;
 - b. Order Petitioner's immediate release from custody, or, in the alternative, order a bond hearing before an immigration judge in which the burden is on the government to show by clear and convincing evidence that Petitioner is a danger or flight risk and that no alternatives to detention could mitigate the risk of danger or flight; and

- c. Prohibit Petitioner's re-detention without leave of this Court, which this Court will not grant unless and until the government demonstrates that Petitioner has received a meaningful opportunity to be heard and that all statutory, regulatory, and constitutional due process requirements have been met.
4. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
5. Grant any other relief which this Court deems just and proper.

DATED: October 30, 2025
Batavia, New York

Respectfully submitted,

s/ Aaron J. Aisen

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