

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

YUSGLEIDY VILLA ALVAREZ,

Petitioner,

Case No: 6:25-cv-6600-EAW

v.

MICHAEL J. FILICETTI, in his official capacity as
Sheriff of Niagara County, NY, et al.

Respondents

PETITIONER'S OPPOSITION TO RESPONDENTS' MOTION TO DISMISS

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INTRODUCTION

Petitioner Yusgleidy Villa Alvarez came to the United States as an unaccompanied minor. Her father had abandoned her as a baby and her mother died of brain cancer in 2023. The Department of Homeland Security (“DHS”) issued her a Notice to Appear and designated her as an “alien present in the United States who has not been admitted or paroled.” She was transferred to the care of the Department of Health and Human Services (“HHS”), who subsequently released her into the care of her aunt. She applied for and received status as a Special Immigrant Juvenile (“SIJ”), demonstrating that the U.S Citizenship and Immigration Service (USCIS) found that she had been abandoned by a parent and it was not in her best interest to return to her home country. DJS issued her an Employment Authorization Document (“EAD”) or work permit. And DHS granted her deferred status in her immigration case as receiving SIJ status would allow her to apply for lawful permanent residency as soon as a green card was available. She even secured a job in Buffalo, New York, cleaning Highmark Stadium, where the Buffalo Bills played. She did everything she was asked to do by the United States Government. And everything appeared to be going well.

On September 18, 2025, the Bills had just beaten the Miami Dolphins by a score of 31-21. Ms. Alvarez, as part of the cleaning team, finished her first day of work very early in the morning of September 19, 2025. On her way home, the Orchard Park Police pulled over the car she was riding in for several traffic violations. The police officer called Border Patrol, who detained all three individuals for being in the United States illegally. Later, USCIS terminated her deferred status and her work permit. DHS has detained her ever since. She was also issued a new NTA where DHS alleges again that she is present in the United States, who is not admitted or paroled.

Respondents now move to dismiss this case on the bases that (1) this Court does not have subject matter jurisdiction; (2) that the cancellation of deferred action does not violate the APA

(the government does not address the constitutional claim); and (3) Petitioner is properly subject to mandatory detention under 8 U.S.C. § 1225(b). But for the reasons discussed below, each of these arguments fail. DHS failed to uphold Petitioner's constitutional and statutory rights and did so under a faulty legal premise. For these reasons, Petitioner asks the Court to deny the motion to dismiss and grant the petition for a writ of habeas corpus. She respectfully requests that this Court order her immediate release as the arrest and detention are unlawful. In the alternative, Petitioner seeks a bond hearing.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner Yusgleidy Villa Alvarez is a citizen and national of Venezuela. Dkt. No. 7 at ¶ 22. Her father abandoned her when she was a young child, and her mother died of cancer in January of 2023. *Id.* at ¶ 24. On or about August 2, 2023, she entered the United States without a legal guardian. *Id.* at 25. On or about August 3, 2025, DHS took her into custody and issued her a Notice to Appear. *Id.* Her NTA lists her status as “an alien present in the United States who has not been admitted or paroled.” *Id.* at ¶ 26. Per U.S. policy on unaccompanied minors entering the United States, she was transferred to the Department of Health and Human Services (HHS), which subsequently released her into the custody of her aunt. *Id.* at ¶ 27. She was not designated for expedited removal under 8 U.S.C. § 1225(b)(1) or as an arriving alien § 1225(b)(2). *Id.* at ¶ 28.

On May 17, 2024, she applied for SIJ status. *Id.* at ¶ 29. On July 26, 2024, DHS approved that petition, giving her a path to become a lawful permanent resident and a priority date of May 17, 2024. *Id.* at ¶ 30. In that same July 26, 2024 approval notice, USCIS granted her deferred action for a period of four years. *Id.* On May 17, 2024, Petitioner applied for an EAD based on the C14 category, a category for those granted deferred action. *Id.* at ¶ 32. On or about February 20, 2025, USCIS approved that application, granting her work authorization through July 26, 2028. *Id.* at 32.

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

Upon information and belief, on September 19, 2025, DHS agents arrested Petitioner after the car she was riding in was pulled over for various traffic infractions as she drove home after her first day at work as a cleaner at the Buffalo Bills Stadium in Buffalo, New York. **Exhibit A to Declaration of Aaron J. Aisen ("Aisen Declaration")**. On the same day, USCIS terminated her deferred action. Dkt. No. 7 at ¶ 35. DHS has detained her since September 19, 2025. As of the date of this opposition, she is at the Northwest Detention Center in Washington State. **Aisen Declaration** at ¶ 6.

On September 25, 2025, USCIS sent a Notice of Intent to Revoke her EAD. Upon information and belief, USCIS did not perform a legitimate individual assessment of her case before arresting her. Dkt. No. 7, at ¶ 37; **Exhibit A to Aisen Declaration** Upon information and belief, she is not currently facing any criminal charges, nor does she have a criminal history either in Venezuela or in the United States. Dkt. No. 7, at ¶ 40; **Exhibit A to Aisen Declaration**.

On October 24, 2025, a month after taking her into custody, DHS filed a second Notice to Appear. This NTA also designated her as present without admission or inspection. Dkt. No. 7, at ¶ 41. On October 30, 2025, Petitioner filed an amended petition. Dkt. No. 7. On November 12, 2025, Respondents filed a Motion to Dismiss. Dkt. No. 8. Petitioner now files this opposition to that motion to dismiss.

LEGAL STANDARD

"In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint."

DiFolco v. MSNBC Cable L.L.C., 622 F.3d 104, 111 (2d Cir. 2010). “A court should consider the motion by ‘accepting all factual allegations as true and drawing all reasonable inferences in favor of the plaintiff.’” *Gedney v. DolGen N.Y., LLC*, 763 F. Supp. 3d 356, 360 (W.D.N.Y. 2025) quoting *Trs. of Upstate N.Y. Eng’rs Pension Fund v. Ivy Asset Mgmt.*, 843 F.3d 561, 566 (2d Cir. 2016). “To withstand dismissal, a plaintiff must set forth ‘enough facts to state a claim to relief that is plausible on its face.’” *Gedney*, 763 F. Supp. 3d at 360, quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “‘A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.’” *Turkmen v. Ashcroft*, 589 F.3d 542, 546 (2d Cir. 2009), quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555 (internal quotations and citations omitted). “To state a plausible claim, the complaint’s ‘[f]actual allegations must be enough to raise a right to relief above the speculative level.’” *Nielsen v. AECOM Tech. Corp.*, 762 F.3d 214, 218 (2d Cir. 2014), quoting *Twombly*, 550 U.S. at 555).

ARGUMENT

I. THE COURT HAS JURISDICTION TO HEAR THIS HABEAS PETITION.

First, Respondents argue that the Court does not have jurisdiction to hear this petition based on several provisions under 8 U.S.C. § 1252. As discussed below, each one fails. Therefore, the Court should deny the motion to dismiss on this basis.

a. 8 U.S.C. § 1252(e)(3) Does Not Bar Review of Petitioner’s Claims.

First, Respondents claim that 8 U.S.C. § 1252(e)(3) bars this Court from having to jurisdiction to challenge her detention under 8 U.S.C. § 1225(b)(2)(A). This provision states in relevant part,

(3) Challenges on validity of the system.

(A) In general. Judicial review of determinations under section 235(b) [8 USCS § 1225(b)] and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

- (i) whether such section, or any regulation issued to implement such section, is constitutional; or
- (ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General to implement such section, is not consistent with applicable provisions of this title or is otherwise in violation of law.

This section does not apply here because “Petitioner is not challenging the *implementation* of 8 U.S.C. § 1225(b)(2), and she does not dispute that § 1225(b)(2) requires detention of aliens detained under that subsection.” *J.A.M. v. Streeval*, No. 4:25-cv-342 (CDL), 2025 U.S. Dist. LEXIS 215437, at *3 (M.D. Ga. Nov. 1, 2025) (emphasis in original). Instead, Petitioner is asserting that “Respondents lack statutory authority to detain h[er] under § 1225(b)(2) because that statute does not apply to an alien in h[er] circumstances. Petitioner maintains instead that 8 U.S.C. § 1226(a) provides the statutory authority for h[er] detention.” *Id.* Nor is Petitioner challenging the “validity of the system” of expedited removal or the lawfulness of any particular statute, regulation or policy. 8 U.S.C. § 1252(e)(3); *Materano v. Arteta*, 2025 U.S. Dist. LEXIS 179608 at *28 (S.D.N.Y. September 9, 2025) (finding jurisdiction over a habeas petition challenging arrest and detention pursuant to 8 U.S.C. § 1225). Accordingly, 8 U.S.C. § 1252(e)(3) does not deprive this Court of jurisdiction to hear this petition. *Id.*

b. 8 U.S.C. § 1252(g) Does Not Bar Review of Petitioner’s Claims

Respondents next argue that 8 U.S.C. § 1252(g) deprives this Court of jurisdiction. But this claim also fails. This provision states in relevant part:

(g) Exclusive jurisdiction. Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code [28 USCS § 2241], or any other habeas corpus provision, and sections 1361 and 1651 of such title [28 USCS §§ 1361 and 1651], no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

8 U.S.C.S. § 1252(g)

This provision does not, as Respondents suggest, bar this Court from hearing an APA claim relating to immigration matters. Multiple courts have rejected Respondents’ overbroad interpretation of §1252(g). For example, the Supreme Court held that §1252(g) does not function as a zipper clause to preclude review of all deportation claims. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Instead, “[t]he provision applies only to three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence proceedings, *adjudicate* cases, or *execute* removal orders.” *Id.* (emphasis in original). Additionally, the Second Circuit rejected the principle that §1252(g) bars habeas review of detention decisions. *Mahdawi v. Trump*, 126 F.4th 443, 450-51 (2d Cir. 2025). There, the Court considered and rejected the same interpretation of 8 U.S.C. § 1252(g) that the Government offers here, and found it “dramatically overstates the reach of § 1252(g).” *Id.* at 450. “Mahdawi’s habeas petition challenges his *detention* on the grounds that it violates his rights under the Constitution...Mahdawi’s ‘detention does not arise from the government’s ‘commenc[ement] of proceedings,’ which begins with the filing of an NTA in immigration court...Nor do his claims ‘arise from the decision to adjudicate [his] removal case,’ since it does not ‘implicate the Executive’s decision to continue or

withdraw a proceeding.’” *Id.* at 452 (quoting *Ozturk v. Hyde*, 2025 U.S. App. LEXIS 10976 at *9 (2d Cir. May 6, 2025) (cleaned up). In accordance with this narrow interpretation of §1252(g), multiple New York district courts have held that while they may not have jurisdiction to review the government’s discretionary decision *to* initiate removal proceedings, they do have jurisdiction to review *how* the government exercises that discretion. *Velasquez v. Kurzdorfer*, 2025 U.S. Dist. LEXIS 135986, at *15-16 (W.D.N.Y. July 16, 2025) (finding jurisdiction to review the arrest and detention of a non-citizen who had been granted parole); *Torres-Jurado v. Biden*, 2023 U.S. Dist. LEXIS 193725, at *2 (S.D.N.Y. Oct. 29, 2023) (finding jurisdiction where “plaintiff’s action...does not dispute the wisdom of ICE’s decision to remove him, but challenges ICE’s legal authority to revoke the ICE Stay without process”) (internal quotations omitted); *You v. Nielsen*, 321 F. Supp. 3d 451, 457 (S.D.N.Y. 2018) (“Respondents are empowered to remove Petitioner at their discretion. But they cannot do so in any manner they please...That Courts can review ‘how’ Respondents exercise their discretion is, therefore, an uncontroversial proposition.”).

Here, Petitioner is not arguing that Respondents may not commence removal proceedings against her; she is merely arguing that they must follow the law and the Constitution when doing so. This question falls squarely within this Court’s jurisdiction.

c. 8 U.S.C. § 1252(b)(9) Does Not Bar Review of Petitioner’s Claims.

Next the Government argues that 8 U.S.C. § 1252(b)(9) bars this court from jurisdiction to hear this case. 8 U.S.C. § 1252(b)(9) provides that “the Court of Appeals is the exclusive forum for “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States.”” *H.G.V.U. v. Smith*, No. 25 CV 10931, 2025 U.S. Dist. LEXIS 205993, at *5 (N.D. Ill. Oct. 20, 2025). The government contends that Petitioner’s claims fall within the scope of this section

because they are related to her removal proceedings. But the Supreme Court has expressly rejected this interpretation. The Court stated that 8 U.S.C. § 1252(b)(9) “‘does not present a jurisdictional bar’ where petitioners are ‘not asking for a review of an order removal; they are not challenging the decision to detain them in the first place or to seek removal; and they are not even challenging any part of the process by which their removability will be determined.’” *Id.* at *6 quoting *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

The Government largely agrees with this statement by the *Jennings* Court. Dkt. No. 8-1 at 17-18. But the Government claims that in this case, Petitioner is challenging the government’s decision to detain her in the first place. *Id.* at 18. But this argument misreads the petition. DHS already made an initial decision about Petitioner’s detention. DHS already declared her to be detained under 8 U.S.C. § 1226(a) when it marked her as being present without inspection on her initial NTA. Petitioner is not challenging any of these initial decisions. What she is challenging are DHS’s recent actions to reverse these initial decisions without any individual assessment about to determine if she is now a flight risk or a danger to persons or property or is otherwise not or whether she individually needs to have her deferred action terminated in accordance with DHS’s own policies. These decisions and the “how” these decisions were reached are valid Fifth Amendment and APA claims. Dkt. No. 7 at 19-23. And these fall squarely within the Court’s jurisdiction.

d. Petitioner Is Not Required to Exhaust Her Administrative Remedies.

Next, Respondents argue that Petitioner is required to exhaust her administrative remedies. But this argument fails. First, no statutory requirement exists that Petitioner exhaust her administrative remedies. *Hechavarría v. Whitaker*, 358 F. Supp. 3d 227, 236-37 (W.D.N.Y. 2019). But even if this requirements is judicially imposed, it is not required in certain circumstances,

including when “(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question.” *Id.* at 237 citing *Able v. U.S.*, 88 F.3d 1280, 1288 (2d Cir. 1996).

Here, two of these exceptions apply. First, any attempt to seek an administrative remedy will be futile. The Board of Immigration Appeals (the “Board”) has ruled that anyone who is classified as an “inadmissible alien who establishes that he or she has been present in the United States for over 2 years” can be detained under 8 U.S.C. § 1225(b)(2) and “shall be detained for a proceeding under section 240.” *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 219-220 (BIA 2025). The consequence of this decision is that individuals who were historically classified as entry without inspection or EWI and eligible to apply for a bond before an immigration judge under 8 U.S.C. § 1226(a) are now ineligible for an immigration judge-issued bond. Therefore, any attempt to seek release before an immigration judge would be futile. Second, this petition raises a substantial constitutional question, i.e., whether DHS has violated his due process rights under the U.S. Constitution in detaining Petitioner. Therefore, Petitioner is not required to exhaust her administrative remedies.

II. THE REVOCATION OF PETITIONER’S DEFERRED ACTION VIOLATES HER RIGHTS UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION, AS WELL AS THE ADMINISTRATIVE PROCEDURES ACT.

Respondent argues that this Court should dismiss Petitioner’s claim that the revocation of her deferred action violates the APA because it alleges 8 U.S.C § 1252(g) strips this Court of jurisdiction to consider the issue, and because a grant of deferred action is discretionary. As argued below, both of these arguments fail because multiple courts have rejected Respondent’s overbroad interpretation of 8 U.S.C. § 1252(g), and the fact that deferred action is a discretionary benefit does

not mean Respondent may arbitrarily rescind it without following their own procedures. In Petitioner's opening petition, she alleges that the revocation of her deferred action also violates the Fifth Amendment of the Constitution. The government does not address this claim in its brief. However, to whatever extent their arguments involving jurisdiction and discretion are interpreted to challenge Petitioner's Fifth Amendment claim, they fail for the same reasons as they do in relation to her APA claim.

Turning to the merits of the question, the revocation of Petitioner's deferred action violates the APA because USCIS failed to follow its own rules and regulations. *See Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118 (2d Cir. 2020) (government agencies are generally required to follow their own regulations"). USCIS' June 6, 2025 Policy Alert discontinues its policy of automatically granting SIJS beneficiaries deferred action, but states "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." According to the memo and the USCIS manual, SIJS deferred action can be revoked in cases where: USCIS determines the favorable exercise of discretion is no longer warranted, the SIJS petition was approved in error and is revoked, or the deferred action and employment authorization were granted in error. USCIS policy manual Volume 6, Part J, Ch. 4.G (available at: <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4>) (last accessed November 18, 2025). DHS has not alleged that any of these circumstances exist here. There is nothing to suggest that Petitioner's SIJS petition or deferred action were granted in error. Indeed, the revocation notice specifically states that her SIJS petition remains approved. Similarly, DHS has not even stated, let alone explained, that a favorable exercise of discretion is no longer warranted. It was therefore a violation of their own regulations

to revoke Petitioner's deferred action without first making a specific finding that would justify that revocation.

Additionally, the revocation of Petitioner's deferred action without notice or a pre-detention hearing violates the Fifth Amendment. The Fifth Amendment provides that the Government shall not deprive a person of "life, liberty, or property, without due process of law." U.S. CONST. AMEND. V. Respondent appears to suggest that deferred action does bestow an interest protected by the Fifth Amendment because it "does not contemplate that someone will not be arrested or detained or removed; it merely advise[s] them that they are low priority for such actions." Dkt. No. 8-1 at 21. However, numerous courts have rejected this interpretation.

The Supreme Court has held that "the defining feature of deferred action is the decision to defer removal." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 27 (June 18, 2020). Prior to this, the Supreme Court also described deferred action as meaning that "no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law and Procedure* §72.03[2][h] (1998)). Following this principle, multiple district courts have held that deferred action protects non-citizens from removal. *F.R.P. v. Wamsley*, 2025 U.S. Dist. LEXIS 214088 (D. Or. Oct. 30, 2025) (ordering the immediate release of a non-citizen with deferred action who was detained by ICE); *Primero v. Mattivelo*, 2025 U.S. Dist. LEXIS 130195 at *15 (D. Mass July 9, 2025) (finding that there is no significant likelihood of removal for a petitioner with deferred action); *Maldonado v. Noem*, 2025 U.S. Dist. LEXIS 106758 at *5 (S.D. TX. June 5, 2025) (finding that deferred action arguably rendered [petitioner] ineligible for removal). And with some programs, such as the SIJ and the Deferred Action for Childhood Arrivals programs, this

deferred action is also tied to the conferral of immigration benefits. For example, in *Regents*, the Supreme Court noted that the memorandum associated with the Deferred Action for Childhood Arrivals program was not “a passive non-enforcement policy.” 591 U.S. at 18. . Rather, the Court noted, “it created a program conferring affirmative immigration relief...” *Id.* Similarly, those who received SIJ status are eligible to apply to United States Citizenship and Immigration Services for a green card when one becomes available. Those with SIJ status cannot apply for lawful permanent resident status at a consulate overseas. Therefore, by terminating their status and putting them into removal proceedings with the possibility of being removed, Respondents are actively interfering in the ability of those with SIJ status from getting a statutory right without any explanation.

Respondent relies on *Sepulveda Ayala v. Bondi* to support its position that deferred action does not protect an individual from deportation. Dkt. No. 21 quoting *Ayala v. Bondi*, No. 2:25-cv-01063-JNW-TLF, 2025 U.S. Dist. LEXIS 142123, at *2 (W.D. Wash. July 24, 2025) (“quoting language from a deferred action notice explaining that deferred action is ‘an act of administrative convenience to the government which gives some cases lower priority for removal.’”). But the *Ayala* court does not adopt this as its final position. Instead, the *Ayala* court granted a preliminary injunction for a U visa beneficiary who was granted deferred action while in the process of being removed. The government took the same position in that case as it does here, arguing that deferred action merely lowers a beneficiary’s priority for removal. *Id.* at *20. Respondent’s brief implies that the court in *Ayala* upheld that position. It did not. Instead, the Court specifically rejected this “truncated description” of deferred action and found that a grant of deferred action indicates the non-citizen will not be removed. *Id.* at *23.

The fact that deferred action provides beneficiaries from protection from detention and removal does not mean that it is permanent or irrevocable. The government is free to make a

different decision and terminate this benefit for certain non-citizens. However because deferred action implicates interests protected by the Fifth Amendment, the government must provide due process before revoking it and the discretionary nature of deferred action does not change this requirement. *Bell v. Burson*, 402 U.S. 535, 539 (May 24, 1971) (acknowledging the “general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a ‘right’ or a ‘privilege’”).

Multiple district courts have upheld this principle as it relates to deferred action specifically. *Inland Empire – Immigrant Youth Collective v. Nielsen*, 2018 U.S. Dist. LEXIS 242686 at *59 (Cen. Cal. Dist. April 19, 2018) (“even absent a claim of entitlement to an important benefit, once it is *conferred*, recipients have a protected property interest that requires a fair process before the government may take that benefit away”); *Medina v. United States Dep’t of Homeland Sec.*, 2017 U.S. Dist. LEXIS 185367 (W.D Wash., Nov. 8, 2017) (“the representations made to applicants for [Deferred Action for Childhood Arrivals] cannot and do not suggest that no process is due to them, particularly...where benefits have already been conferred). In *Gamez Lira v. Noem* the district court in New Mexico ordered the immediate release of a DACA recipient, finding “for the last ten years, he had lived under the understanding that he was unlikely to be subject to enforcement proceedings...at the very least, he justifiably expected that his DACA status would not terminate without notice and the opportunity to respond.” *Gamez Lira v. Noem*, No. 1:25-cv-00855-WJ-KK, 2025 U.S. Dist. LEXIS 173818, at *8 (D.N.M. Sep. 5, 2025). Lastly, Judge Vilardo found that a non-citizen was entitled to a meaningful opportunity to be heard before his parole (a purely discretionary form of temporary permission to enter the U.S) was revoked. *Velasquez v. Kurzdorfer*, 2025 U.S. Dist. LEXIS 135986 (W.D.N.Y. July 16, 2025). This long line of cases establishes that some process was due before DHS could revoke Petitioner’s deferred action.

Given the importance of the protection provided by deferred action, this Court should follow *Gamez Lira* and *Velasquez v. Kurzdorfer*, and find that the process Petitioner was due was advanced notice that DHS intended to revoke her deferred action and an opportunity to be heard before she was stripped of this protection from detention and removal on which she had reasonably relied. Respondents violated her due process rights, as well as the APA, when they provided her with neither and instead arrested and detained her without cause. As such, this Court should hold their actions unlawful and order Petitioner's immediate release.

III. PETITIONER IS DETAINED UNDER 8 U.S.C. § 1226(a).

Respondents argue that this case should be dismissed because Petitioner is detained under 8 U.S.C. § 1225(b). But this argument is also problematic. For the reasons that follow, the Court should deny the motion to dismiss on this basis.

Two statutory provisions govern the detention of non-citizens present in the US pending the outcome of their removal proceedings. Broadly speaking, 8 U.S.C. § 1225 governs the detention of non-citizens arriving in the United States. 8 U.S.C. § 1226 governs the detention of non-citizens already physically present in the United States. DHS and the Board of Immigration Appeals claim that Petitioner is detained under 8 U.S.C. § 1252(b)(2). But this is incorrect.

8 U.S.C. § 1225(b)(2) states in relevant part that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under” 8 U.S.C. § 1229a. 8 U.S.C. § 1225(a)(1) defines an "applicant for admission" as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival . . .).”

8 U.S.C. § 1226(a) states that “On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” After that arrest, the Attorney General “may continue to detain the arrested alien” or release the alien on a bond with conditions or on conditional parole. 8 U.S.C. § 1226(a)(1)-(2).

In July 2025, DHS took the position that anyone who is an applicant for admission is no longer detained under 8 U.S.C. § 1226(a) and is instead an applicant for admission seeking admission under 8 U.S.C. § 1225(b). The Board of Immigration Appeals later adopted this position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Therefore, all individuals who were once eligible for bond under 8 U.S.C. § 1226(a) were now detained under 8 U.S.C. § 1225(b) and no longer eligible for bond. But as demonstrated below, this interpretation is not supported by the plain language of the detention provisions, the legislative history, past practice, and DHS’s treatment of this Petitioner.

a. The plain text of 8 U.S.C. § 1225 and § 1226 does not support Respondents’ position.

First, the plain text of these statutes does not support the government’s position. The term “seeking admission” denotes an active activity. The term “seeking” is a present participle denoting something happening in the present. As one court explained, while the term “seeking admission” is not defined in 8 U.S.C. § 1225(b)(2)(A), the term “necessarily implies some sort of present-tense action.” *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *19 (S.D.N.Y. Aug. 8, 2025) (internal citations and quotations omitted). That court further explained, “The INA defines ‘admitted’ and ‘admission’ as ‘the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.’” *Id.* quoting 8 U.S.C. § 1101(a)(13)(A). Even if an individual never lawfully enters the United States and is an “applicant for admission,” “it does not follow that he continues to be actively ‘seeking’ such lawful entry at this time. [The non-citizen]

has already ‘entered’ the country (albeit unlawfully).” *Id.* “The Respondents’ interpretation of § 1225(b)(2)(A) simply ignores the statute’s present-tense active language.” *Id.*

This interpretation of “seeking” in the present tense is also reflected in the accompanying regulations. In 8 C.F.R. § 1225, the regulations use the phrase “seeking admission” to denote inspection at the border. For example, 8 C.F.R. § 1225(a)(5) states,

An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant’s intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

The phrase “seeking admission” is used in the context of an inspection at the border. Similarly, 8 C.F.R. § 1225(b)(2)(A) states, “Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” Likewise, 8 C.F.R. § 235.1(f)(1), titled “Alien applicants for admission”— provides that

[e]ach alien *seeking admission at a United States port-of-entry* must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal under the immigration laws, Executive Orders, or Presidential Proclamations, and is entitled, under all of the applicable provisions of the immigration laws and this chapter, to enter the United States.

“This suggests that those “seeking admission” are at or near the border.” *Ortiz*, 2025 U.S. Dist. LEXIS 217654, at *17. Again, “seeking admission” is done in the present at the border by an immigration officer.

The *Benitez* court used the following analogy. Suppose someone sneaks into a movie theater without purchasing a ticket and then sits through the first part of a movie. *Id.* at *21. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe

them as "seeking admission" (or "seeking" "lawful entry") at that point — one would say that they had entered unlawfully but now seek a lawful means of remaining there. *Id.* Similarly, a person who has been in the United States for a period of time cannot be said to be actively seeking admission to the United States. Therefore, an individual who has been present for several years and already designated by DHS as present, even if not admitted or paroled, could not be said to be seeking admission to the United States.

In addition, the terms “applicant for admission” and “seeking admission” are not synonymous because this would create surplusage problems with the INA. It is axiomatic that every clause and word of a statute should have meaning. *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023). “It is a basic canon of statutory interpretation that a statute should be construed as to give effect to all its provisions and that no part will be superfluous.” *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 U.S. Dist. LEXIS 191630, at *22 (E.D.N.Y. Sep. 29, 2025) citing *Corley v. United States*, 556 U.S. 303, 314 (2009). “This presumption is ‘strongest when an interpretation would render superfluous another part of the same statutory scheme.’” *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *22-23 quoting *Marx v. Gen. Rev. Corp.*, 568 U.S. 371, 386 (2013).

Mandatory detention under § 1225(b)(2)(A) applies to a noncitizen who meets three criteria: (1) one who is an "applicant for admission" (a "term of art" in the INA that includes noncitizens who arrive in the United States," as well as those already present in the United States who have not been admitted, U.S.C. § 1225(a)(1)); (2) who is actively "seeking admission" to the country, and (3) whom an examining immigration officer determines "is not clearly and beyond a doubt entitled to be admitted.

Benitez, 2025 U.S. Dist. LEXIS 157214, at *17-18 (cleaned up). “If, as Respondents argue, § 1225(b)(2)(A) were intended to apply to all ‘applicant[s] for admission,’ there would be no need to include the phrase ‘seeking admission’ in the statute.” *Id.* at *18. In other words, if mandatory

detention was required for all applicants for admission, the statutes would not use the phrase “seeking admission. *Id.* The “statute would instead provide for mandatory detention for any ‘applicant for admission,’ if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” *Id.*

Second, 8 U.S.C. § 1226(c)(1)(A) states that the “Attorney General shall take into custody any alien who is inadmissible by reason of having committed any offense covered in” 8 U.S.C. § 1182(a)(2), which includes offenses such as crimes of moral turpitude and offenses relating to controlled substances. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *23. “[T]his mandatory detention under [8 U.S.C. § 1226(c)] would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions.” *Id.* quoting *Hasan v. Crawford*, No. 1:25-cv-1408 (LMB/IDD), 2025 U.S. Dist. LEXIS 184734, *9 (E.D. Va. Sep. 19, 2025). In a similar vein, in January 2025, Congress passed the Laken Reily Act, which amended 8 U.S.C. § 1226 and 8 U.S.C. § 1226(c)(1)(E). This amendment makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions in 8 U.S.C. § 1182 and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes. 8 U.S.C. § 1226(c)(1)(E). Even under this new amendment, Congress intended for mandatory detention to apply only when both the inadmissibility and criminal conduct criteria are satisfied. *J.U.*, 2025 U.S. Dist. LEXIS 191630, at *23-24.

Finally, the entire structure of these sections and the sections surrounding them support Petitioner, “Notably, sections 1221 through 1225a all deal with noncitizens arriving in the United States—or in the case of section 1225a—seeking to arrive.” *Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 U.S. Dist. LEXIS 217654, at *20 (W.D.N.Y. Nov. 4, 2025). Logically, it does not make sense to “sandwich section 1225 between sections dealing exclusively with arrival or attempted arrival

of noncitizens if it were intended to broadly apply to all noncitizens present in the United States who have not been admitted.” *Id.* at 20-21. Finally, the title of section 1225 is "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing." 8 U.S.C. § 1225 (emphasis added). *Id.* at 21 (also citing other cases supporting the use of the term “arriving” in the title of the section. The plain text of these detention statutes supports Plaintiff’s interpretation and refutes the Respondents’ interpretation.

b. Case law rejects Respondents’ interpretation of 8 U.S.C. §§ 1225 and 1226.

Both Supreme Court precedent and recent decisions by numerous courts around the country, including here in the Western District of New York and other districts in this Circuit have rejected Respondents’ argument. First, the Supreme Court has noted that “U.S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under [8 U.S.C. §1225(b)(1) and 8 U.S.C. § 1225(b)(2)]. It also authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§1226(a) and (c).” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). In other words, the court distinguishes between those who are seeking admission from those already in the country.

Respondents’ reliance on *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) is misplaced and even supports Petitioner’s case. In that case, Court was asked to consider whether a petition for a writ of habeas corpus, usually used to challenge unlawful detentions, could be used to obtain “additional administrative review of [an] asylum claim, and ultimately to obtain authorization to stay in” the United States,” *Id.* at 107. The Court said that this was not a proper use of the writ. *Id.*

In addition, that petitioner also invoked a due process argument by claiming due process rights even though he “enter[ed] the country illegally and was apprehended just 25 yards from the

border” and put into expedited removal. *Id.* at 107. The Supreme Court also rejected this argument distinguishing between those who “have established connections in this country” and those “at the threshold of initial entry.” *Id.* Respondents’ reliance on the Court’s reference to “paroled elsewhere in the country for years” fares no better. DHS can parole noncitizens who fall under 8 U.S.C. § 1225 (b) (2). But parole does not change the status of arriving alien because parolees are treated as if they are still at the border. 8 U.S.C. § 1182(d)(5) (when the purposes of parole are accomplished, the noncitizen shall return or be returned “from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.”). Therefore, the reference from this case to parolees is limited to those designated as arriving aliens, which Petitioner was not, a fact verified by DHS’s acknowledgment on her NTA that she is present in the United States without admission or parole.

In addition to this Court, Judge Vilardo, Judge Vacca, and Judge Geraci from the Western District of New York have joined numerous courts in the Second Circuit and around this country in rejecting the Respondents’ re-interpretation of these detention provisions because it goes against “the plain language of the statute, the legislative history, and traditional canons of statutory interpretation.” *Astudillo v. Hyde*, No. 25-551-JJM, 2025 U.S. Dist. LEXIS 214063, at *7 (D.R.I. Oct. 30, 2025) (internal citations and quotations omitted); *see e.g., Andrade Lozano v. Hyde, et al.* 6:25-cv-06528-MAV, Dkt. No. 20 (October 17, 2025); *Ortiz*, 2025 U.S. Dist. LEXIS 217654, at *3 (W.D.N.Y. Nov. 4, 2025)(rejecting *Yajure Hurtado* and collecting cases of courts rejecting the holding of *Yajure Hurtado*); ; *Quituzaca Quituisaca v. Bondi, et al.*, 6:25-cv-06527-EAW, at Dkt. No. 15 (W.D.N.Y. Nov. 12, 2025); *Mendoza v. Bondi, et al.*, 1:25-cv-954-EAW, at Dkt. No. 15 (W.D.N.Y. Nov. 12, 2025); *Najeem v. Bondi*, 6:25-cv-06584-EAW, at Dkt. No. 6 (W.D.N.Y. Nov. 12, 2025).

c. The legislative history of the detention statutes and historical practice also support Petitioner's position.

The legislative history of these statutes also supports Petitioner's position. In drafting the detention provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [division C of Public Law 104–208] [As Amended Through P.L. 112–176, Enacted September 28, 2012]. (“IIRIRA”), “Congress clarified that the IIRIRA amendment of § 1226(a) simply “restate[d]” the detention authority previously found at § 1252(a) “to arrest, detain, and release on bond a noncitizen who is not lawfully in the United States.” *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 U.S. Dist. LEXIS 182412, at *11 (D. Nev. Sep. 17, 2025) (internal citations and quotations omitted and cleaned up). “In distinguishing between noncitizens arriving versus noncitizens residing in the U.S., Congress reflected its understanding of longstanding due process precedent that recognizes the more substantial due process rights of noncitizens already residing in the U.S. with those of noncitizens recently arriving.” *Id.* at 12. Amendments to 8 U.S.C. § 1225(b)(1) and (b)(2) “were designed to address the perceived problem of noncitizens *arriving* in the U.S.” *Id.* at 11-12.

Until recently, it was the “longstanding practice of the agencies charged with interpreting and enforcing the INA applied § 1226(a) to noncitizens like Petitioner, who entered the U.S. without inspection and were apprehended while residing in the U.S.” *Id.* at 12. “[I]n the decades since IIRIRA was enacted, DHS and the EOIR have applied § 1226(a) to the detention of individuals apprehended within the continental U.S. who entered without inspection and provided them access to release on bond.” *Id.* at 13.

Respondents contend that *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2004) gives them permission to change agency practices and, therefore, the court should give longstanding

agency practice little weight. Dkt. No. 17-1 at 11. Respondents state that the “weight given to agency interpretations “must always depend upon their thoroughness, the validity of their reasoning, the consistency with earlier and later pronouncements, and all those factors which give them power to persuade.” Dkt. No. 17-1 at 11 quoting *Loper Bright*, 603 U.S. at 432-33 (internal citations and quotations omitted). But this only supports Petitioner’s argument. Respondents’ new interpretation cannot be squared with the plain language of the statutes, historical context, and past practice. In addition, *Loper Bright* does not require this Court to give deference to the Respondents’ new interpretation if there is very little or nothing to support it, as is the case here.

d. Respondents have designated and treated Petitioner as detained under 8 U.S.C. 1226(a).

As a practical matter, DHS has affirmatively designated Petitioner as falling under 8 U.S.C. 1226(a). In the NTA dated August 3, 2023, DHS designated her as an “alien present in the United States who has not been admitted or paroled. Dkt. No. 7-1. This is the designation generally given to those detained under 8 U.S.C. § 1226. Since she was an unaccompanied minor when she entered the United States, she was transferred to the custody of HHS and subsequently released into the custody of her aunt, in accordance with the protections provided to unaccompanied minors under the Trafficking Victims and Protection Reauthorization Act (TVPRA), Public Law No: 117-348 (01/05/2023). After Petitioner’s SIJS petition was approved, DHS dismissed her original NTA. In her most recent NTA dated October 24, 2025, it marked the same box indicating she is present in the United States without having been admitted or paroled. She is not in expedited removal or an arriving alien. Therefore, the Court should declare her to be detained under 8 U.S.C. § 1226(a) and order her immediate release or grant her a bond hearing.

e. Petitioner’s arrest and detention under 8 U.S.C. § 1225(b)(2) is unconstitutional and warrants immediate release.

“[T]he Fifth Amendment entitles noncitizens to due process of law . . . whether their presence here is lawful, unlawful, temporary, or permanent.” *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020). As this Court has held that Petitioner is detained under 8 U.S.C. § 1226(a), the rules governing this detention under this statute govern.

“[A]n alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a) Under 8 U.S.C. § 1226(a)(1), Petitioner’s detention is discretionary rather than mandatory. *Huamani v. Francis*, No. 25-cv-8110 (LJL), 2025 U.S. Dist. LEXIS 219101, at *14-15 (S.D.N.Y. Nov. 4, 2025) citing 8 U.S.C. § 1226(a)(1). “Aliens who are arrested and detained may generally apply for release on bond or conditional parole. *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021) citing 8 U.S.C. § 1226(a)(2). “To secure release, the alien must show that he does not pose a danger to the community and that he is likely to appear for future proceedings. 8 C.F.R. §§ 236.1(c)(8), [8 C.F.R. § 1236.1(c)(8)]” *Id.* “If DHS denies the alien’s request, the alien may request a bond hearing in front of an immigration judge by filing an application for a change in the alien’s detention conditions. *See* §§ 236.1(d)(1), 1003.19(a), 1236.1(d)(1).” *Id.* at 527-28.

The essence of due process is the requirement that “a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.” *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976). Two provisions govern the re-detention after initial release. First, 8 U.S.C. § 1226(b) provides that “the Government retains significant discretion in revoking conditional parole—it may do so ‘at any time.’” *Huamani*, 2025 U.S. Dist. LEXIS 219101, at *18. Second, 8 C.F.R. § 1236.1(c)(9) states, “When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of” the relevant officer, “in which event the alien may be taken into physical custody and detained.” But Due Process still

requires that such discretion actually be exercised—i.e., that some determination actually be made. *Huamani*, 2025 U.S. Dist. LEXIS 219101, at *18. “At a minimum, however, § 1226(a) requires a valid exercise of DHS's discretion. *Benitez v. Francis*, 2025 U.S. Dist. LEXIS 157214, at *33 (S.D.N.Y. Aug. 8, 2025). “DHS has wide latitude with respect to its discretion in this regard that is not subject to second-guessing by [a] Court.” *Id.*

To determine what procedures are required under the Fifth Amendment in cases of prolonged detention, courts in this Circuit typically apply the due process test outlined in *Mathews*, 424 U.S. at 335: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the procedures used; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail. *Benitez*, 2025 U.S. Dist. LEXIS 157214, at *26.

With respect to the first factor, “the most significant liberty interest there is—the interest in being free from imprisonment.” *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Respondent was legally outside detention and engaged in legal activities when DHS detained her based solely on the faulty premise that she should be detained under 8 U.S.C § 1225(b)(2). As this was a faulty premise, the first prong clearly favors Petitioner.

Next, there is a high risk of erroneous deprivation given that DHS detained Petitioner without using any individual assessment to determine whether Petitioner constituted a flight risk or was a danger to persons or property. DHS simply changed its premise for Petitioner's detention, a premise that this Court held was incorrect. Therefore, this factor also strongly favors Petitioner.

Finally, the Government's interest is low here. It has an interest in ensuring that individuals in proceedings are not flight risks or danger to society. But the Government makes no allegation that Petitioner is a flight risk or a danger to persons or property. In fact, the Government made no

individualized assessment at all. Respondents have failed to show a significant interest in Petitioner's continued detention. The decision to now detain her is arbitrary and capricious, and an abuse of its discretionary authority. *Valdez v. Joyce*, 2025 U.S. Dist. LEXIS 117131, at *9 (S.D.N.Y. June 18, 2025). Therefore, this factor strongly favors Petitioner as well.

In summary, “there is nothing to suggest that DHS exercised any discretion at all in detaining [Petitioner].” *Benitez*, 2025 U.S. Dist. LEXIS 157214, at *33. The sole basis for Petitioner’s detention in this case is that DHS changed its theory of Petitioner’s detention. Specifically, DHS believed that Petitioner, who was originally subject to 8 U.S.C. § 1226(a) and eligible for release, was now subject to mandatory detention under 8 U.S.C. § 1225(b)(2). In addition, the Government has made no allegation or showing that Petitioner is a flight risk or a danger to persons or property. There is no evidence that DHS made an individualized determination that Petitioner needed to be re-detained. “Respondents' ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates [her] due process rights.” *Valdez*, 2025 U.S. Dist. LEXIS 117131, at *10. The proper remedy in this case is to order immediate release and terminate any appeal before the Board of Immigration Appeals. *Id.*; *Huamani*, 2025 U.S. Dist. LEXIS 219101, at *25-26.

CONCLUSION

For these reasons, Petitioner requests that the Court grant her petition and order her immediate release. In the alternative, Petitioner requests that the Court grant her a bond hearing.

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Batavia, New York

s/ Aaron J. Aisen
Aaron J. Aisen
Rosalie Capps
Attorneys for Petitioner

ECBA Volunteer Lawyers Project, Inc.
45 Ellicott Street, Suite 1
Batavia, New York 14020
Phone: (585) 524-1778
Fax: (585) 524-4552
aaisen@ecbavlp.com