UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FERNANDO ISAIAS CARRANZA CHUQUI,

Petitioner,

v.

TAMMY MARICH, et al.,

Respondents.

Case No. 6:25-cv-6614-MAV

PETITIONER-PLAINTIFF'S OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS

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INTRODUCTION

In his Amended Verified Petition for Writ of Habeas Corpus and Complaint, ECF No. 10 (the "Petition"), Petitioner-Plaintiff Fernando Isaias Carranza Chuqui ("Petitioner" or "Fernando") raises nine claims challenging his unlawful arrest and detention, as well as Respondents' arbitrary and processless termination of his deferred action and employment authorization. In their Motion to Dismiss the Petition, ECF No. 17, besides raising several unsuccessful jurisdictional arguments, Respondents fail to address Fernando's two unlawful detention due process claims entirely—thereby waiving any challenge to those arguments. Respondents' arguments on Fernando's remaining claims are unavailing.

ARGUMENT

Dismissal at this stage of the proceeding is not warranted. Rule 12(b)(6) of the Federal Rules of Civil Procedure allows a party to move for dismissal on the basis for failure to state a claim. "To survive a motion to dismiss [under Rule 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (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." *Id.* at 678. "[A] court at this stage of our proceeding is not engaged in an effort to determine the true facts. The issue is simply whether the facts the plaintiff alleges, if true, are plausibly sufficient to state a legal claim." *Doe v. Columbia Univ.*, 831 F.3d 46, 48 (2d Cir. 2016). "In assessing a motion to dismiss, a court must view the evidence—and interpret any allegations—in the light most favorable to the plaintiffs, and must draw reasonable inferences in plaintiffs' favor." *Gamm v. Sanderson Farms, Inc.*, 944 F.3d 455, 458 (2d Cir. 2019); *see also Alvarez Ortiz v. Freden*, 2025 WL 3085032, at *3 (W.D.N.Y. Nov. 4, 2025).

Respondents' primary position on Fernando's detention boils down to the untenable claim that a noncitizen who has been present in this country for four years and is on a pathway to permanent status is still "seeking admission," rendering him subject to a mandatory detention statute that, historically, has never been applied to anyone in his circumstances. As for Fernando's arrest, Respondents fundamentally misunderstand Fernando's Fourth Amendment and related claims, ultimately failing to offer any meaningful counter to them. And when it comes to Fernando's deferred action termination claims, Respondents take the alarming position that deferred action does not actually protect its beneficiaries from removal—a claim contradicted by decades of Supreme Court precedent and Respondents' own authority. As Respondents ultimately fail to raise a meaningful challenge to any of Fernando's claims, the Court should deny Respondents' Motion to Dismiss in its entirety.

As is discussed *infra,* Fernando has—at this stage of the proceeding—sufficiently pled his claims for relief.

I. THE COURT HAS JURISDICTION TO HEAR FERNANDO'S UNLAWFUL DETENTION CLAIMS

Counts One to Seven of Fernando's Petition challenge his unlawful detention. Fernando does not make a systematic challenge to Respondents' implementation of 8 U.S.C. § 1225(b), nor does he make any challenges related to his removal proceedings. Accordingly, none of the narrow jurisdictional bars Respondents attempt to invoke prevent the Court from hearing these claims.

A. Section 1252(e)(3) Does Not Deprive the Court of Jurisdiction.

8 U.S.C § 1252(e)(3) "narrowly applies only to systemic challenges to regulations implementing [8 U.S.C. § 1225(b)]." *Mata Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *6-7 (W.D.N.Y. July 16, 2025). But Fernando "is not challenging the *implementation* of 8 U.S.C. § 1225(b)" at all. *J.A.M. v. Streeval*, 2025 WL 3050094, at *1 (M.D. Ga. Nov. 1, 2025). Rather,

he brings both "constitutional [and] statutory claims which precede and are collateral to" § 1225(b)'s statutory framework. *Mata Velasquez*, 2025 WL 1953796, at *7. First, he argues that, regardless of whether § 1225(b) applies, his re-detention without any process and his ongoing detention without any legitimate purpose violate his due process rights. ECF No. 1 at ¶¶ 51-66; ECF No. 4 at 19-26. Second, he asserts that, in fact, § 1226(a), not § 1225(b)(2)(A), "provides statutory authority for his detention," *J.A.M.*, 2025 WL 3050094, at *1. ECF No. 1 at ¶¶ 74-81; ECF No. 4 at 18-19. Section 1252(e)(3) does not prevent the Court from hearing these individualized claims. *See J.A.M.*, 2025 WL 3050094, at *1; *Maldonado Bautista v. Santacruz*, No. 5:25-cv-0873, ECF No. 81 at 6 (C.D. Cal. Nov. 20, 2025) (both rejecting this argument) and *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.,* Case 5:25-cv-01873-SSS-BFM, Dkts. 81 and 82. (C.D. Cal. Nov. 24, 2025)(Court granted granted nationwide class certification and partial summary judgment on behalf of the class).

B. Sections 1252(g), 1252(a)(5), and 1252(b)(9) Do Not Deprive the Court of Jurisdiction.

Section 1252(g) is also "narrow," only preventing review of discretionary decisions "to commence removal proceedings, adjudicate cases, or execute removal orders." *Ozturk v. Hyde*, 136 F.4th 382, 396-397 (2d Cir. 2025). It is not, as Respondents would have it, "a shorthand way of referring to all claims arising from deportation proceedings." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) ("*AADC*"). Here, Fernando challenges only his unlawful detention and § 1252(g) "does not preclude jurisdiction over the challenges to the legality of [a noncitizen's] detention." *Ozturk*, 136 F.4th at 397; *see also Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 153 (W.D.N.Y. May 2, 2025) (rejecting broad reading of § 1252(g)).

8 U.S.C. § 1252(a)(5) bars district courts from hearing challenges to "an order of removal," while 8 U.S.C. § 1252(b)(9) bars them from reviewing "claims arising from actions or proceedings

brought to remove [a noncitizen]." *Ozturk*, 136 F.4th at 399, 401. Neither applies here, where "no order of removal is at issue," *id.* at 401, and where Fernando does not challenge any aspect of his removal proceedings. *See DHS v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020). That "detention itself is 'necessary for . . . removal proceedings'" does not "funnel[] . . . unlawful detention claims into § 1252(b)(9) claims." *Ozturk*, 136 F.4th at 399. What matters is that Fernando's claims are legally independent from his removal proceedings, and thus "may be resolved without affecting [them]" at all, rendering § 1252(b)(9) wholly inapplicable .*Id.*[1]

II. RESPONDENTS DO NOT ADDRESS FERNANDO'S UNLAWFUL DETENTION DUE PROCESS CLAIMS

While Respondents claim that Fernando's Petition "should be dismissed in its entirety," ECF No. 17-1 at 1, their motion to dismiss fails to address Claims One and Two of that petition—Fernando's substantive and procedural due process claims—at all. Respondents therefore waive any arguments against these claims for purposes of this motion.[2] *See Falcon v. City Univ. of New York*, 2016 WL 3920223, at *13 (E.D.N.Y. July 15, 2016).

A. Respondents Do Not Contest That Fernando Has Due Process Rights Regardless of His Statute of Detention.

The Supreme Court has repeatedly emphasized that "[t]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see*

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[1] Contrary to Respondents' contention, the plurality opinion in *Jennings v. Rodriguez,* 583 U.S. 281, 294 (2018), does not compel otherwise. *See Ozturk*, 136 F.4th. at 400-401. The *Jennings* plurality in fact found that there *was* jurisdiction to review detention claims despite § 1252(b)(9), rejecting a reading that would force noncitizens to wait until their removal proceedings were complete to challenge their unlawful detention, as this would make these claims "effectively unreviewable." 583 U.S. at 293-94; *see also Ozturk*, 136 F.4th at 400-401.

[2] While Respondents incorrectly argued in opposition to Fernando's motion for a preliminary injunction that noncitizens detained under 8 U.S.C. § 1225(b)(2), regardless of how long they have been present in this country, are entitled to no due process rights "beyond what Congress has provided" because they have not yet *legally* been admitted, ECF No. 12 at 17, this argument is nowhere to be found in their motion to dismiss.

also Mathews v. Diaz, 426 U.S. 67, 77 (1976); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020).

What process any noncitizen is due depends on their individual circumstances. *See Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966). While noncitizens "'on the threshold of entry' may have fewer due process rights than other persons," their "'constitutional status changes' after [they] 'begin[] to develop the ties [to this country] that go with permanent residence.'" *Clerveaux v. Searls*, 397 F. Supp. 3d 299, 311 (W.D.N.Y. July 31, 2019) (citation omitted). Fernando has lived in the United States for more than four years, building an entire life here. Respondents do not contest that Fernando's SIJS renders him only "a hair's breadth" from LPR status and creates a "substantial legal relationship" with the United States. *Osorio-Martinez v. U.S. Att'y Gen.*, 893 F.3d 153, 173-75 (3d Cir. 2018). This affords Fernando meaningful due process rights regardless of his statute of detention. *See id.*; *Clerveaux*, 397 F. Supp. 3d at 311.

B. Respondents Fail to Address Fernando's Substantive or Procedural Due Process Claims.

Respondents do not claim that Fernando's detention serves any legitimate purpose that satisfies substantive due process and thus have likewise waived any challenges to Fernando's substantive due process claim. *See Falcon*, 2016 WL 3920223, at *13. Their silence is unsurprising, as the government previously found that Fernando is neither a flight risk nor a danger to the community—the only two circumstances that can justify immigration detention—and nothing has changed since then that would suggest otherwise. *See* ECF No. 10 at ¶¶ 63-67; ECF No. 10-1. Fernando has no criminal record, ECF No. 10-6, and his ties to the United States have only grown stronger. Accordingly, his detention bears "no reasonable relation" to a legitimate interest in immigration detention, which mandates his release. *Zadvydas*, 533 U.S. at 690.

Respondents equally offer no response to Fernando's procedural due process claim. Courts across the country have confirmed that noncitizens who, like Fernando, have previously been released from detention on a finding of lack of flight risk and danger, cannot constitutionally be re-detained without a pre-deprivation hearing justifying that detention. ECF No. 10 at ¶¶ 9, 68-78 (collecting cases). Respondents offer no counter to this extensive case law. Nor do they contest the fact that the *Matthews* factors weigh overwhelmingly in favor of ordering Fernando's release until he is provided meaningful pre-deprivation process, given that (1) his prior release from ORR custody, his grant of SIJS, and the government's prior dismissal of his removal proceedings all create a particularly strong interest in his continued liberty; (2) he has been afforded no meaningful process at all to ensure he has not been erroneously deprived of that liberty; and (3) the government has no legitimate interest in his detention. *See id.*; *see also R.D.T.M. v. Wofford*, 2025 WL 2686866, *4-6 (E.D. Cal. Sept. 18, 2025) (finding that pre-deprivation process was required for petitioner previously released from ORR custody, ordering release and enjoining re-detention absent clear and convincing evidence that petitioner presented flight risk or danger).

III. THAT FERNANDO IS DETAINED UNDER 8 U.S.C. § 1226(A) RENDERS HIS CURRENT DETENTION UNLAWFUL

In any event, contrary to Respondents' assertion, Fernando's detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2). As courts in this district have recently held, Respondents' newfound interpretation of 8 U.S.C. § 1225(b)(2)(A) as applying to all noncitizens who entered the country without admission, *see* ECF No. 17-1 at 10-20, is not supported by the statutory text, the broader context of the statute as a whole, or Supreme Court jurisprudence—and it even conflicts with how Respondents themselves have read the statute for decades. *See e.g., Alvarez Ortiz v. Freden*, 2025 WL 3085032, at *6-10 (W.D.N.Y. Nov. 4, 2025); *see also Rezende v. Bondi*, No. 6:25-cv-6538, ECF No. 19 (W.D.N.Y. Oct. 29, 2025); *Barbosa Da Cunha v. Moniz*, Case No.

6:25-cv-6532, ECF No. 25 (W.D.N.Y. Oct. 20, 2025); *Andrade Lozano v. Hyde*, Case No. 6:25-cv-6528, ECF No. 31 (W.D.N.Y. Nov. 25, 2025) (Vacca, J.); *see also Demirel v. Fed. Detention Center*, No. 2:25-cv-05488 (E.D. Pa. Nov. 18, 2025), ECF No. 11-1 (appendix showing that in 282 of the 289 cases on this issue across the country, federal district courts have rejected Respondents' arguments).

The plain language of § 1225(b)(2) provides 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 section 1229a of this title." § 1225(b)(2) (emphases added). Respondents' suggestion that "applicant for admission" and "seeking admission" are used interchangeably to refer to any noncitizen who has not been lawfully admitted into the United States, ECF No. 17-1 at 15-16, is plainly wrong. "[I]f all 'applicant[s] for admission' also are 'seeking admission,' then the words 'seeking admission' would be surplusage." *Alvarez Ortiz*, 2025 WL 3085032, at *7 (collecting cases). "After all, Congress simply could have said 'if the examining immigration officer determines that *an applicant for admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained.'" *Id.* But it did not. Instead, under the plain language of the statute, while any noncitizen who has not been lawfully admitted into the United States is an "applicant for admission," only those who are actively "seeking admission" via "physical entry at the border" are subject to detention under § 1225(b)(2). *Id.* at *6-7.

This reading is supported by other subparagraphs of § 1225(b)(2) which carve out exceptions to mandatory detention for categories of applicants for admission who arrive to the United States in certain ways (stowaways, crewmen, certain noncitizens arriving on land). *Id.* at *8. It is also supported by the statute's implementing regulations, which refer to noncitizens

"seeking admission at a United States port-of entry," 8 C.F.R. § 235(f)(1), again "suggest[ing] that those 'seeking admission' are at or near the border." *Id.* Further, § 1225 is nestled among various other provisions "dealing exclusively with arrival or attempted arrival of noncitizens" to the United States and even includes the word "arriving" in its title. *Id.* at *9.

Moreover, Respondents' reading would render the 2025 amendments made to Section 1226 through the Laken Riley Act meaningless. *Id.* at *8. That Act amended 8 U.S.C. § 1226(c) to mandate the detention of certain "inadmissible" noncitizens accused or convicted of various crimes. 8 U.S.C. § 1226(c)(1)(E). But under Respondents' reading of § 1225(b)(2), any noncitizen who is "inadmissible" is already subject to mandatory detention simply as an "applicant for admission." This would not only render another part of the same statutory scheme entirely superfluous, but would mean that Congress passed the Laken Riley Act "for no good reasoat all." *Alvarez Ortiz*, 2025 WL 3085032, at *8-9.

Reading § 1225(b)(2) to only apply to noncitizens seeking to physically enter the country is also how the Supreme Court has repeatedly referred to the statute. *See Jennings*, 583 U.S. at 289 (contrasting § 1225(b) and § 1226(a) as involving noncitizens "seeking admission into the country" as opposed to "already in the country"); *Zadvydas*, 533 U.S. at 693 ("[O]nce [a noncitizen] enters the country, the legal circumstance changes...."). Naturally, this is also how Respondents themselves have read the statute for years. "Under the administrations of five presidents—including this one in 2016-2020—section 1225 applied to noncitizens at or near the border or those who were still seeking admission under the legal fiction of parole; section 1226, on the other hand, applied to those noncitizens found in the United States without legal status and therefore subject to removal." *Alvarez Ortiz*, 2025 WL 3085032, at *10.

The statutory scheme is therefore clear: Fernando has been present in the United States for four years and is not "seeking admission" at the border, making his detention plainly governed by § 1226(a). *See id.* This conclusion is only further bolstered by the fact that (1) Fernando was previously detained and released as a UC and (2) he has been granted SIJS, ECF No. 10 at ¶¶ 91-93, arguments Respondents completely fail to engage with, much less counter, in their motion to dismiss. Numerous decisions confirm that noncitizens previously processed as UCs, like Fernando, were never detained under § 1225(b) in the first place and thus cannot be re-detained within the United States under § 1225(b). ECF No. 10 at ¶ 91 (collecting cases). Instead, when UCs are encountered at the border, their detention and release is governed by an entirely different statutory scheme, set forth in the TVPRA, 8 U.S.C. § 1232. Indeed, UCs are not even held by DHS, but by the Department of Health and Human Services' ORR. *See* 8 U.S.C. § 1232(b)(3). And they must be held in the "least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). This remains true even for UCs who turn 18 while in ORR custody and are then transferred to DHS custody. 8 U.S.C. § 1232(c)(2)(B). This statutory scheme is entirely separate from § 1225(b) and is plainly inconsistent with mandatory detention. As Fernando was previously held and released under this scheme, his detention cannot now be under § 1225(b). Separately, several courts have held that all SIJS grantees, like Fernando, are necessarily detained under § 1226(a), as an award of SIJS confirms that they are not "seeking admission," but rather are "immigrant[s] present in the United States," 8 U.S.C. § 1101(a)(27)(J). ECF No. 10 at ¶¶ 92-93 (collecting cases); *see also Lopez Sarmiento v. Perry*, 2025 WL 3091140, *3 (E.D. Va. Nov. 5, 2025) (reaching same conclusion).

Ultimately, as Fernando has been present in the United States for four years, was previously detained and released as a UC under the TVPRA, and has a valid SIJS grant, there can be little

doubt that his detention is governed by § 1226(a). This not only means that Fernando has adequately pled his statutory and APA claims (Claims Four and Six), but it also strengthens his substantive and procedural due process claims (Claims One and Two). *See, e.g.*, *Tumba Huamani v. Francis*, 2025 WL 3079014, at *n.4 (S.D.N.Y. Nov. 4, 2025) (finding petitioner detained under § 1226(a) and thus declining to consider whether individuals detained under § 1225(b) have limited or no due process rights). And since Respondents do not even argue that Fernando's detention would not violate his substantive and procedural due process rights, those claims easily withstand dismissal.

IV. RELEASE IS THE APPROPRIATE REMEDY FOR FERNANDO'S DETENTION IN VIOLATION OF HIS DUE PROCESS RIGHTS

Respondents claim that if this Court determines Fernando is detained under § 1226(a), "the only appropriate remedy is a bond hearing before an immigration judge." ECF No. 17 at 25. Respondents cite no authority for this assertion, which ignores the numerous recent cases ordering the release of individuals in precisely Fernando's circumstances. ECF No. 10 at ¶¶ 9, 68-78. While a bond hearing might have been an appropriate remedy if Fernando's arrest in July had been his first encounter with immigration officials and thus no determination about whether he presents a flight risk or danger had ever been made before, this is not the case. Instead, Fernando was previously released from custody based on a determination that he is not a flight risk or a danger. As discussed, *supra*, he was therefore constitutionally entitled to meaningful pre-deprivation process before he could lawfully be re-detained. *See id.*; *Tumba Huamani*, 2025 WL 3079014, at *9. As he has instead been detained for nearly four months with "no process at all, much less prior

notice, no showing of changed circumstances, or an opportunity to respond," the only appropriate remedy is his immediate release. *Id.* (citation omitted).[3]

Were the Court instead to order a bond hearing, the circumstances here would warrant the burden to be placed on the government to justify Fernando's detention by clear and convincing evidence, as courts in this District and numerous others in the Second Circuit have repeatedly concluded. *Alvarez Ortiz*, 2025 WL 3085032, at *12-15; *Banegas v. Decker*, 2021 WL 1852000, at *2 (S.D.N.Y. May 7, 2021) (collecting cases). This burden scheme is appropriate as a matter of due process given (1) Fernando's strong liberty interest and the potential for his lengthy detention under § 1226(a); (2) the risk of erroneous deprivation of Fernando's liberty if the burden is on him, especially when the government has been "changing the rules by fiat" and has already deprived him of his liberty with no process for nearly four months; and (3) the fact that this scheme is unlikely to "cause the government to expend more than minimal additional resources." *Alvarez Ortiz*, 2025 WL 3085032, at *12-15 (cleaned up). In any bond hearing, the immigration judge should also have to consider reasonable alternatives to detention or, if setting a bond, Fernando's ability to pay. *Id.* at *12, 14; *Alfaro v. Barr*, 426 F. Supp. 3d 6, 12 (W.D.N.Y. Dec. 9, 2019) .

V. FERNANDO'S ARREST AND CONTINUED DETENTION VIOLATED HIS FOURTH AMENDMENT RIGHTS, THE INA, AND RESPONDENTS' REGULATIONS, EQUALLY WARRANTING RELEASE

Respondents fundamentally misunderstand Fernando's Fourth Amendment and related statutory and regulatory claims (Claims Three and Five). Contrary to Respondents' suggestion, ECF No. 17-1 at 32-33 Fernando is not challenging immigration officers' authority to temporarily stop him and question him based on reasonable suspicion. Instead, he is challenging (1) whether

[3] Release, rather than a bond hearing, is also appropriate given that noncitizens granted bond by immigration judges are regularly being subjected to unconstitutional automatic stays of those decisions—rendering this relief hollow. *See J.M.P. v. Arteta*, 2025 WL 2984913, at *17-19 (S.D.N.Y. Oct. 23, 2025) (collecting cases).

immigration officers had probable cause to arrest him without a warrant, which required them to have reason to believe that he was in the country unlawfully *and* that he was likely to escape before a warrant could be obtained, 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii); (2) whether his re-arrest could ever have been justified without officers finding some changed circumstances since his prior release; and (3) whether he could lawfully be held beyond 48 hours without ever having received an individualized probable cause determination or even a custody determination under 8 C.F.R. § 287.3(d) and 8 C.F.R. § 236.1(c)(8). ECF No. 10 at ¶¶ 79-86; 122-25, 129-31.

Respondents fail to address the second two arguments at all and thus concede them. With respect to Fernando's warrantless arrest argument, Respondents merely state that "he is present in this country without valid status and was so at the time of his arrest and detention." ECF No. 17 at 32. But this does not satisfy 8 U.S.C. § 1357(a). To execute a warrantless arrest, immigration officers must not only have reason to believe, at the time of arrest, that a noncitizen is in the country unlawfully, but must *also* determine that the noncitizen is likely to escape before a warrant can be obtained. 8 U.S.C. § 1357(a). This determination must be based on "the totality of the circumstances," "including the officer's ability to determine the person's identity, knowledge of that individual's prior escapes or evasions of immigration authorities; attempted flight from an ICE officer; and the person's ties to the community (such as a family, home, or employment)." *Castanon Nava v. DHS*, 2025 WL 2842146, at *4 (N.D. Ill. Oct. 7, 2025) (collecting cases). This is confirmed by ICE's own nationwide policy regarding warrantless arrests, which also provides that "[t]he specific, particularized facts supporting the conclusion that the individual was likely to escape" must be contemporaneously documented in a Form I-213. *See Castanon Nava v. DHS*, No. 1:18-cv-03757, ECF No. 155-1 (N.D. Ill. Feb. 7, 2022). Here, Respondents fail to even suggest they made an escape determination, which is notably absent from Fernando's I-213, ECF No. 10-

8. And the relevant factors clearly weighed in Fernando's favor—as Fernando did not try to flee, had stable home and employment addresses, and the government had already determined him not to be a flight risk when it released him from ORR custody and terminated his removal proceedings.

Finally, Respondents contend that whether Fernando's arrest "was legally sound is a question he may raise in removal proceedings" and thus it should not be raised here. ECF No. 17-1 at 32. At most, a noncitizen can seek suppression of alienage by raising arguments about unlawful arrest in removal proceedings. *See Almeida–Amaral v. Gonzales,* 461 F.3d 231, 235 (2d Cir. 2006). Fernando cannot remedy the ongoing deprivation of his liberty without any probable cause or custody determination in those proceedings. This is the fundamental purpose of habeas, and this is why several courts have ordered petitioners' release from immigration detention based on the same Fourth Amendment violations alleged here. *See* ECF No. 10 at ¶ 86.[4]

VI. THE TERMINATION OF FERNANDO'S DEFERRED ACTION WAS ARBITRARY AND CAPRICIOUS, VIOLATED AGENCY POLICY, AND DEPRIVED FERNANDO OF DUE PROCESS

When it comes to Fernando's claims challenging USCIS's termination of his deferred action (Claims Seven, Eight, and Nine), Respondents do not dispute that USCIS's policy of terminating SIJS deferred action when ICE detains an SIJS beneficiary for lacking lawful status is wholly arbitrary—as the very reason SIJS youth like Fernando are granted deferred action in the first place is that—in the government's view—they lack lawful immigration status and need to be protected from removal while they wait to become lawful permanent residents. ECF No. 10 at ¶¶ 100-106. Instead, Respondents contend that the Court cannot review USCIS's termination

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[4] The only case Respondents cite on this point, *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008), is entirely inapposite. First, the case did not involve warrantless arrests at all. It involved a Fourth Amendment challenge to an immigrant registration program in which noncitizens were required to produce documents and answer questions about their immigration status that were later used against them in removal proceedings. 544 F.3d at 433-34. Second, the case did not involve detention at all, and it was not a habeas case; the only remedy petitioners sought was suppression of evidence and termination of their removal proceedings. *Id.*

decision under the APA; that Fernando has not identified how USCIS's decision violated agency policy; and that Fernando was not entitled to any process around the termination of his deferred action because it purportedly did not even prevent his removal in the first place. ECF No. 17 at 20-21. None of these arguments has any merit.

A. The Court Has Jurisdiction to Review, and Fernando Has Adequately Pled, an APA Claim Challenging His Deferred Action Termination

The APA establishes a "basic presumption of judicial review for one suffering legal wrong because of agency action." *Regents*, 591 U.S. at 16-17. The only exceptions to this presumption are set forth at 5 U.S.C. § 701(a)(1) and (2), neither of which applies here. Starting with § 701(a)(1), no separate statute precludes judicial review of the process for deferred action or employment authorization terminations, including 8 U.S.C. § 1252(g). As explained *supra*, § 1252(g) only narrowly bars challenges to the executive's decisions to commence removal proceedings, adjudicate cases, or execute removal orders. *Ozturk*, 136 F.4th at 396-397. Here, Fernando is challenging none of these things—he is challenging the fact that USCIS based its decision to terminate his deferred action solely on the irrelevant fact that he has been detained while DHS pursues his removal for lacking lawful immigration status. Critically, he does not dispute DHS's decision to initiate removal proceedings against him, nor does he argue that USCIS must ultimately come to a different conclusion about whether he merits deferred action. Rather, the crux of his APA claim is that USCIS cannot base its decision to terminate this benefit on an entirely arbitrary factor and fail to provide a good reason for its abrupt change in position. ECF No. 10 at ¶¶ 99-109. As courts in this District have stressed, while they do not "have the power to second-guess the wisdom of the executive branch's exercise of its discretion," they can "review *how* the respondents exercise their discretion" to ensure it "accords with the Constitution and the laws of this country." *Mata Velasquez*, 2025 WL 1953796, at *6 (cleaned up) (emphasis added).

This is all Fernando's APA claims involves, and like his unlawful detention claims, they "may be resolved without affecting pending [removal] proceedings," taking it squarely outside the purview of § 1252(g). *Ozturk*, 136 F.4th at 398; *see also Inland Empire - Immigrant Youth Collective v. Nielsen*, 2018 WL 4998230, at *11-12 (C.D. Cal. Apr. 19, 2018) (denying motion to dismiss APA claim challenging USCIS's termination of plaintiffs' DACA, finding § 1252(g) inapplicable).

As for § 701(a)(2), this exception is "very narrow" and applies only "in those rare instances where statutes are drawn in such broad terms that in a given case there is no law to apply," or "no meaningful standard against which to judge the agency's exercise of discretion." *Heckler v. Chaney*, 470 U.S. 821, 830, 832 (1985). This is not one of those rare instances. The SIJS deferred action adjudication process, as established by agency policy, involves clear standards against which to assess the agency's discretion. Indeed, as another court in this Circuit recently found, SIJS deferred action is not a purely discretionary "nonenforcement policy," but "a standardized process" for "conferring affirmative immigration relief," requiring applicants "to meet certain enumerated criteria." *A.C.R. v. Noem*, 2025 WL 3228840, at *7 (Nov. 19, 2025) (finding that § 701(a)(2) did not bar APA challenge to rescission of SIJS deferred action policy). Under the SIJS deferred action policy—which was rescinded earlier this year but is now back in effect—to be granted SIJS deferred action, noncitizens like Fernando must, among other criteria, meet certain age requirements and obtain a state court order making specific determinations about parental maltreatment and the youth's best interest. *See id.* at *6, 18. USCIS must also "weigh all relevant positive and negative factors in the person's case," with "[o]ne particularly strong positive factor" being that the individual "has an approved [SIJS petition] and will be eligible to apply for adjustment of status."[5] Inter-agency guidance further explains that "[i]f background and security

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[5] USCIS Policy Manual as of April 18, 2025, vol. 6, pt. J, ch. 4, https://web.archive.org/web/20250418205752/https://www.uscis.gov/policymanual/volume-6-part-j-chapter-4. This

checks indicate that an SIJ-classified individual may be subject to an inadmissibility ground … that would make them ineligible for SIJ-based adjustment of status, this would generally be a strong negative factor weighing against the favorable exercise of discretion," as would "serious unresolved criminal charge(s)." ECF No. 10-14, USCIS-ICE Memo at 2.

Once SIJS beneficiaries meet these criteria and are granted deferred action, agency policy also dictates they "generally retain" that benefit until it expires. USCIS Policy Manual, vol. 6, part J, ch. 4, https://www.uscis.gov/policymanual/volume-6-part-j-chapter-4. Only USCIS may terminate a SIJS beneficiary's deferred action before that point, and only if the agency engages in an individualized review and determines, for example, that a favorable exercise of discretion is no longer warranted; the individual's SIJS petition was approved in error and is revoked; or the prior deferred action was granted in error. *Id.*; *see also* Exh. 14, USCIS-ICE Memo at 2 (confirming that "USCIS has the sole authority to grant and terminate deferred action for noncitizens with SIJ classification" and that "USCIS may terminate deferred action if the SIJ-classified individual was not eligible at the time of the initial grant of deferred action, the SIJ Form I-360 is revoked, or if they are no longer eligible based on new information, including new information about criminal activity that impacts the discretionary determination to grant SIJ deferred action"). These are all clear standards against which this Court can assess how the agency exercises its discretion.[6]

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is the version of the USCIS Policy Manual in effect prior to the rescission of the SIJS deferred action policy on June 6, 2025. That rescission has now stayed, restoring the prior policy. *A.C.R.*, 2025 WL 3228840, at *18.

[6] The only case Respondents cite in support of their position to the contrary, *Kapoor v. DeMarco*, 132 F.4th 595 (2d Cir. 2025), does not help them. That case was about a district court's ability to exercise habeas jurisdiction over a petitioner's claim that her extradition would violate the Convention Against Torture (CAT). The court concluded that because, under 8 U.S.C. § 1252(a)(4), only courts of appeals can hear CAT claims, the petitioner could not "circumvent this jurisdictional bar by invoking the APA," given 5 U.S.C. § 701(a)(1). *Id.* at 607, n.10. The case thus in no way supports the proposition Respondents cite it for, that "the revocation of deferred action status is wholly discretionary and thus no APA claim can stand," ECF No. 17-1 at 22. And as explained, *supra*, no statute bars this court from reviewing Fernando's APA claim challenging his deferred action termination.

On the merits of Fernando's APA claim, Respondents do not even try to rebut any of his arguments.[7] First, the Supreme Court has made clear that any agency decision with respect to discretionary relief must reflect reasoned decision-making related to the underlying purpose of that relief—otherwise the agency fails to "exercise its discretion in a reasoned manner." *Judulang v. Holder*, 565 U.S. 42, 55 (2011); *see also Biden v. Texas*, 597 U.S. 785, 815 (2022) (Kavanaugh, J., concurring) (The APA mandates "an executive agency's exercise of discretion be reasonable and reasonably explained."). Here, Respondents do not contest the unreasonableness of USCIS's decision to terminate Fernando's deferred action based solely on his detention incident to removal proceedings for lack of lawful immigration status. ECF No. 10 at ¶ 100. The courts, too, have viewed such agency action as irrational. In *Inland Empire-Immigrant Youth Collective v. Duke,* 2017 WL 5900061, at *6 (C.D. Cal. Nov. 20, 2017), the plaintiffs brought a similar challenge to USCIS's termination of a noncitizen's DACA based solely on his placement in removal proceedings for lack of lawful immigration status The court there found that because DACA was "specifically designed for persons without lawful immigration status," the agency's decision was necessarily "arbitrary and irrational." (granting preliminary injunction); *see also Inland Empire - Immigrant Youth Collective v. Nielsen*, 2018 WL 4998230, at *17-18 (C.D. Cal. Apr. 19, 2018) (denying government's motion to dismiss). So, too, here.

Second, whether a noncitizen is afforded discretionary relief should not "rest on the happenstance of an immigration official's charging decision." *Judulang*, 565 U.S. at 57. Yet Respondents do not contest that this is precisely the case here, where whether Fernando continued to warrant deferred action depended entirely on the actions of ICE officers who—unlawfully—

[7] The government cannot make any arguments on the merits of Fernando's APA claim since they have not produced the administrative record, and the Court only takes into consideration the pleadings at the motion to dismiss stage. Fernando has more than sufficiently pled the APA and *Accardi* claims.

arrested and detained him. *See* ECF No. 10 at ¶¶ 101-102; *see also Inland Empire-Immigrant Youth Collective*, 2017 WL 5900061, at *7 (similar agency action likely arbitrary and capricious where "everything hung on the fortuity of one [immigration] officer's decision").

Third, because the termination of Fernando's deferred action represented a change in the agency's position, USCIS should have offered "good reasons" for that change and should have considered Fernando's reliance interests before changing course. *Food & Drug Admin. v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 569-70 (2025). Yet Respondents do not even try to contend that the mere fact of Fernando's detention incident to removal proceedings for lacking lawful immigration status represents a good reason for terminating his deferred action, nor do they even hint that they took his reliance interests into consideration. *See* ECF No. 10 at ¶¶ 103-106; *see also Inland Empire-Immigrant Youth Collective*, 2017 WL 5900061, at *7 (reaching similar conclusion). For each of these reasons, Fernando has adequately pled an APA claim challenging USCIS's arbitrary and capricious decision to terminate his deferred action.

B. Fernando Has Adequately Pled an *Accardi* Claim Based on USCIS's Violation of Its Own Policy

The only issue Respondents raise with Fernando's *Accardi* claim is that he purportedly does not specify which regulations USCIS failed to follow in terminating his deferred action. ECF No. 17-1 at 21. But Fernando does not allege that USCIS failed to follow regulations, as the adjudication of SIJS deferred action is not governed by regulations, but by binding agency policy. *See* ECF No. 10 at ¶¶ 54-62; *A.C.R.*, 2025 WL 3228840, at *2-3 (explaining the background of the SIJS deferred action policy). That policy can be found in USCIS's Policy Manual, which provides that SIJS beneficiaries will generally retain their deferred action until it expires unless—on a case-

by-case basis—USCIS determines deferred action is no longer appropriate. USCIS Policy Manual, vol. 6, pt. J, ch. 4, https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4.[8]

Under *Accardi*, this policy is just as binding on USCIS as any regulation, particularly because it "affects 'the rights and interests'" of SIJS youth like Fernando. *A.C.R.*, 2025 WL 3228840, at *15 (citing *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Indeed, in *A.C.R.*, the court found an *Accardi* violation where the government failed to adjudicate SIJS deferred action claims in accordance with this policy, stressing that *Accardi*'s "ambit is not limited to rules attaining the status of formal regulations" and collecting cases in which plaintiffs successfully brought *Accardi* claims challenging agencies' violations of internal policies like this one. *Id.*

Beyond this, Respondents offer no counter to the detailed allegations in Fernando's Petition, which explain how USCIS, by failing to provide Fernando the case-by-case, individualized review the SIJS deferred action policy requires, blatantly violated its own procedures. *See* ECF No. 10 at ¶¶ 108-109. This claim thus survives dismissal as well.

C. The Termination of Fernando's Deferred Action and Employment Authorization Also Violated His Due Process Rights

As their only defense against Fernando's due process claim, Respondents make the startling assertion that Fernando had no protected interest in his deferred action because it did not actually protect him from removal. ECF No. 17 at 21. If deferred action did not protect Fernando from removal, then why did the government need to terminate it in the first place? This preposterous contention flies in the face of decades of Supreme Court precedent, the USCIS Policy Manual, and the government's position in numerous other cases. The Supreme Court has described deferred action as meaning "no action will thereafter be taken to proceed against an apparently

[8] *See also* USCIS Policy Manual as of April 18, 2025, vol. 6, pt. J, ch. 4, https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4 (detailing relevant discretionary factors); ECF No. 10-14, USCIS-ICE Memo at 2 (same, explaining USCIS's policy to ICE).

deportable alien, even on grounds normally regarded as aggravated." *AADC*, 525 U.S at 484; *see also Regents*, 591 U.S. at 27 ("The defining feature of deferred action is the decision to defer removal…."). Unsurprisingly, lower courts agree, including specifically with respect to SIJS deferred action. *See, e.g.*, *A.C.R.*, 2025 WL 3228840, at *16 (finding that individuals "who received SIJS without being considered for deferred action face a looming risk of deportation"); Order, *Guerra Leon v. Noem*, No. 3:25-cv-01495, ECF No. 21 at 6-7 (W.D. La. Oct. 30, 2025) (concluding that SIJS petitioner was "non-removable while his deferred action status remains in effect"); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880 (W.D. Tex. Oct. 16, 2025) (noting that SIJS "[d]eferred action is a discretionary determination … to defer immigration enforcement against an individual as an act of prosecutorial discretion"); *Santiago v. Noem*, 2025 WL 2792588, at *12 (W.D. Tex. Oct. 2, 2025) (determining that "an individual is protected from removal through deferred action").

In fact, the only case Respondents cite in support of their position, *Sepulveda Ayala v. Bondi*, 2025 WL 2084400, at *8 (W.D. Wash. July 24, 2025), explicitly rejected that position, concluding that "the term 'deferred action' has carried consistent meaning 'for decades' as the Government's 'formal determination not to remove a particular individual.'" (citation omitted); *see also Ayala v. Bondi*, 2025 WL 2209708 (W.D.N.Y. Aug. 4, 2025), at *3 (confirming that "[d]eferred action is an immigration benefit that prevents removal").

Respondents' position is also flatly contradicted by its own Policy Manual, which makes clear that "[d]eferred action is an act of prosecutorial discretion that defers proceedings to remove an alien from the United States for a certain period of time."[9] As explained, *supra*, the government is bound by this and cannot now take a contrary position. The government's argument here is also

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[9] USCIS Pol'y Manual, vol. 6, p. J, ch. 4G. (archived April 18, 2025),
https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4

inconsistent with its position in other deferred action cases. *See, e.g.*, *Texas v. United States*, 126 F.4th 392, n.3 (5th Cir. 2025) ("The government describes deferred action as 'a form of enforcement discretion not to pursue [ ] removal'"); *A.C.R. v. Noem*, No. 25-cv-03962, ECF No. 42 at 10 (E.D.N.Y. Aug. 18, 2025) (government admits SIJS deferred action is "a decision to 'decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation'") (citation omitted); *Santiago v. Noem*, 2025 WL 2792588, at *12 (government acknowledges removal was "prohibited while [petitioner] is protected by DACA").

Ultimately, the longstanding "interpretation of deferred action—that the Government will refrain from executing [a noncitizen's] removal—finds strong support in Supreme Court precedent, circuit authority, and USCIS policy," *Sepulveda Ayala*, 2025 WL 2084400, at *9, while Respondents' interpretation is baseless. Respondents' interpretation also makes no sense in light of the termination of Fernando's deferred action.

Respondents fail to address any other aspect of Fernando's due process claim, which notably also challenges the processless revocation of his employment authorization. *See* ECF No. 10 at ¶¶ 110-117. Given the "serious loss" inflicted by the termination of both these benefits, Fernando should at least have been afforded notice, a reasoned explanation for the termination of his deferred action, and a meaningful opportunity to respond. *Mathews*, 424 U.S. at 328, 333.

VII. THE COURT SHOULD ENJOIN FERNANDO'S TRANSFER WHILE THESE PROCEEDINGS REMAIN PENDING

Respondents argue that this Court should not grant Fernando's request to enjoin his transfer because the government has the right to detain him where they would see fit and transfer is simply a matter of "inconvenience" for Fernando. *See* ECF No. 17 at 24-25. But that is not the proper legal standard. Instead, habeas courts evaluate transfer requests based on the "interest of justice." *See Ozturk v. Trump*, 779 F. Supp. 3d 462, 495 (D. Vt. May 7, 2025), *amended sub nom. Ozturk*

v. Hyde, 136 F.4th 382 (2d Cir. 2025) (ordering return transfer to district of habeas court in the "interest of justice"). Under this standard, factors used by courts in this Circuit in decisions ordering return transfer or injunctions of transfer include preserving access to local legal counsel, protecting the habeas court's ability to conduct fact-finding and legal analysis, preserving the petitioner's right to participate in the habeas proceeding, and minimizing threats to health and safety. *See e.g. id.* (ordering return transfer because "it would assist the Court's exploration of the important constitutional questions in this case, would allow the Court to conduct appropriate fact-finding including to support a potential bail hearing, and would otherwise have no impact on removal proceedings" and because at place of detention petitioner is "suffering from severe asthma attacks"); *Alvarez Ortiz v. Freden*, 2025 WL 3085032, *n.3 (W.D.N.Y. Nov. 4, 2025) (finding "that the petitioner's interests in participating in further proceedings before this Court and in maintaining adequate access to legal counsel through these proceedings warrant an order enjoining transfer"); *Barillas Resinos v. Noem*, No. 6:25-cv-06689-EAW, ECF No. 2 (W.D.N.Y. Nov. 21, 2025) (same). Notably, the Second Circuit has found that these factors "outweigh[] the government's purported administrative and logistical costs." *Ozturk v. Hyde*, 136 F.4th at 388.

Based on these factors, Fernando merits an order precluding his transfer for the pendency of this case so that he can maintain adequate access to legal counsel and meaningfully participate in the proceedings as provided by 28 U.S.C. § 2243. Enjoining transfer will also ensure that Fernando is available for testimony going to the heart of important constitutional questions before this Court, including whether the Respondents violated the Constitution when they arrested him. Fernando's vulnerability and young age further counsel in favor of ensuring that he remain in New York, as this will preserve his access to his family and counsel's support, thereby aiding his

meaningful participation in these proceedings and promoting the interests of justice.

Respondents do not meaningfully engage with these facts. Instead, they cite cases within this district that have permitted transfer from the Buffalo Federal Detention Facility to another facility after a petition for a writ of habeas corpus had been filed. See ECF No. 17 at 25. But those cases do not clearly address the factors Fernando raises. In *Walker v. Searls*, 2024 WL 1735213 (W.D.N.Y. Apr. 23, 2024), no mention of the legal standard for transfer or the appropriate factors is made. In *Shaikh v. Barr*, 2020 WL 7021443, at *3 (W.D.N.Y. Nov. 30, 2020), the pro se petitioner's request for injunction of transfer was denied because it was "based primarily on Petitioner's mistaken belief that if he is transferred this action will be dismissed and/or that he will be subject to less-favorable caselaw outside of the Second Circuit." And neither *Garland v. Aleman Gonzalez*, 596 U.S. 543, 570 (2022) nor *Demore v. Kim*, 538 U.S. 510, 554 (2003) dealt with a request to compel or enjoin transfer, so they do not dictate a denial of Fernando's request.

CONCLUSION

For all the foregoing reasons, the Court should deny Respondents' Motion to Dismiss in its entirety.

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New York, New York

Respectfully Submitted,

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