UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

VALERIE YAJAIRA CHAVEZ LOPEZ, Petitioner-Plaintiff, v. SHAD RICE, Warden of the South Louisiana ICE Processing Center, MELLISSA HARPER, Field Office Director; TODD LYONS, Acting Director, U.S. Immigrations and Customs Enforcement; SIRCE OWEN, Acting Director, Executive Office PAMELA BONDI, U.S. Attorney General; For Immigration Review; and KRISTI NOEM, U.S. Secretary of Homeland Security, Respondents-Defendants.	**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 USC §2241

INTRODUCTION

1. This petition for a writ of habeas corpus is being filed on behalf of Ms. Valerie Yajaira Chavez Lopez (hereinafter "Ms. Chavez" or "Petitioner") seeking relief to remedy his unlawful detention. Ms. Chavez is currently detained at the South Louisiana ICE Processing Center in Basile, Louisiana. Ms. Chavez is a citizen and national of Guatemala. She has lived in the United States since 2017. Ms. Chavez was initially placed in expedited removal

proceedings when she entered the United States with her mother. She was twelve (12) years old at the time that she entered. Ms. Chavez's mother passed a credible fear interview, and was allowed into the United States and placed in removal proceedings. Ms. Chavez and her mother were ordered removed in absentia on November 29, 2018. A Motion to reopen was filed and subsequently denied on August 23, 2019, however a Motion to Sever Ms. Chavez from her mother's case and a subsequent Motion to reopen were granted on January 8, 2025, vacating the prior order of removal. Ms. Chavez was detained by ICE on July 21, 2025 when she was pulled over by a police officer while driving, and "record checks revealed she had received a final order of removal on 11/29/2018," even though this order of removal was vacated by a Motion to Reopen on January 8, 2025. Ms. Chavez has remained in ICE Custody since this time. A bond hearing was scheduled on August 8, 2025, where an Immigration Judge found no jurisdiction in the case based on *Matter of M-S-* and *Matter of Q. Li,* both of which state that those who the cases apply to shall be subject to mandatory detention until their removal proceedings have been completed. An order terminating removal proceedings against Ms. Chavez was granted on August 25, 2025 based on an approved I-360 application.

2. Currently the U.S. Department of Homeland Security ("DHS") and the U.S. Department of Justice ("DOJ") has been holding Ms. Chavez in detention at the South Louisiana Ice Processing Center and there is no pending removal case. Ms. Chavez possesses Special Immigrant Juvenile Status and an approved I-360 application. Ms. Chavez must now wait until a visa becomes available to adjust her status. DHS and the DOJ are attempting to detain Ms. Chavez for an indefinite period of time as she is currently not in removal proceedings, has an approved path to status, and must wait for a visa to become available, the timeline of

which is unknown. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

3. Petitioner respectfully submits that her detention is unlawful for the following reasons: (1) DHS and DOJ are attempting to detain Petitioner for an indefinite period of time; (2) Petitioner's removal proceedings have been terminated and completed and she is therefore no longer subject to mandatory detention at this time; (3) Petitioner is being deprived of her statutory right to a bond hearing before an Immigration Judge; and (4) Petitioner's prolonged detention without an individualized bond hearing violates the Due Process Clause of the Fifth Amendment.

4. Absent an order from this Court granting habeas relief, Petitioner will remain indefinitely detained without meaningful opportunity to secure release on bond, in violation of both statutory and constitutional protections.

5. Petitioner asks this Court to find that the Department of Homeland Security and Department of Justice are continuing to unlawfully detain her under 8 U.S.C. § 1225(b), and that such detention without a bond hearing violates her statutory and constitutional rights. Petitioner further asks this Court to order her immediate release or, in the alternative, to order the government to provide her with an individualized bond hearing before an Immigration Judge within seven (7) days of the Court's order.

JURISDICTION

6. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241(habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I § 9, cl. 2 of the U.S. Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

9. The Petitioner is in the physical and legal custody of Respondents. She is detained at the South Louisiana Ice Processing Center in Basile, Louisiana. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. See, e.g., *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Western District of Louisiana, the judicial district in which the Petitioner is currently detained.

11. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and/or agents of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Louisiana.

PARTIES

12. Petitioner, Valerie Yajaira Chavez Lopez, is a citizen and national of Guatemala and an approved Special Immigrant Juvenile pursuant to 8 U.S.C. § 1101(a)(27)(J).

13. Petitioner is currently detained by ICE at the South Louisiana ICE Processing Center, in Basile, Louisiana, which is within the jurisdiction of this District. She is in the custody, and under the direct control, of Respondents and their agents.

14. Respondent Shad Rice is employed by the GEO Group, Inc., and is the Warden of the South Louisiana ICE Processing Center, and he has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Rice is a legal custodian of Petitioner.

15. Respondent Melissa Harper is sued in her official capacity as the Acting Director of the New Orleans Field Office of U.S. Immigration and Customs Enforcement. Respondent Harper is a legal custodian of Petitioner and has authority to release him.

16. Respondent Todd Lyons is sued in his official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent Lyons is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees the U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention. Respondent Lyons is a legal custodian of Petitioner.

17. Respondent Sirce Owen is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond proceedings. Respondent Owen is a legal custodian of Petitioner.

18. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that

capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

19. Respondent Kristi Noem is the U.S. Secretary of Homeland Security and administers the Department of Homeland Security. In that capacity, she exercises ultimate authority over DHS, including U.S. Immigration and Customs Enforcement ("ICE"), which has responsibility for the detention and removal of noncitizens, and U.S. Citizenship and Immigration Services ("USCIS"), which adjudicates immigration benefits. Respondent Noem is also a legal custodian of Petitioner.

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return "within *three days* unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

21. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

STATEMENT OF FACTS

22. Petitioner is a 19-year-old citizen of Guatemala. She originally entered the United States with her mother when she was 12 years old, and her mother was found to have a credible fear

of return to her country. She has received Special Immigrant Juvenile Status and has since had an I-360 application approved and Petitioner is currently waiting on a visa to become available . Petitioner has strong community ties and is actively involved in their church. Petitioner has no criminal history.

23. Petitioner entered the United States on December 30, 2017, near Rio Grande City, TX, where she was encountered by Border Patrol and issued an Expedited Removal order. Petitioner's mother was given a Credible Fear Interview and an asylum officer determined that Petitioner's mother had a credible fear of returning to Guatemala. Petitioner was issued a Notice to Appear[1], which was signed by her mother on her behalf as she was twelve years old at the time, and released on her own recognizance pending immigration proceedings. On November 19, 2018, an immigration judge ordered Ms. Chavez and her mother removed from the United States in absentia. On August 23, 2019, Ms. Chavez and her mother's Motion to Reopen was denied. On January 8, 2025, an Immigration Judge severed Ms. Chavez from her mother's case and Ms. Chavez's immigration case was reopened.

24. On July 21, 2025, Petitioner was stopped by police officers in Fryeberg, Maine for an undisclosed reason. The police officers requested assistance to identify Ms. Chavez and determined that she had an outstanding order of removal, despite a Motion to Reopen being granted six months prior to this incident.

25. Petitioner was scheduled for a bond hearing on August 5, 2025. At the outset of that hearing, however, the Immigration Judge declined jurisdiction, citing *Matter of M-S-* and

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[1] The Petitioner has been placed in removal proceedings and charged with being removable pursuant to INA §§ 212(a)(6)(A)(i) that is, an alien present in the United States without having been admitted and 212 (a)(7)(A)(i)(I), that is, an alien present in the United States without having been admitted or paroled and an immigrant who, at the time of application for admission, is not in possession of a paroled and an immigrant who, at the time of application for admission, is not in possession of an unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document EOIR required by the Act.

Matter of Q.Li, 29 I&N Dec. 985 (BIA 2025), thereby denying Petitioner the opportunity for an individualized bond determination[2].

26. Petitioner's removal proceedings were subsequently terminated on August 25, 2025.

LEGAL FRAMEWORK

A. The History of SIJ Status supports protecting vulnerable children and permitting presence through the adjudication of adjustment of status.

27. Congress created Special Immigration Juvenile Status in 1990 to provide immigration relief for noncitizen children living in the United States, who have been abused, neglected, or abandoned, or similarly mistreated by one or both parents.[3] The statute set forth specific eligibility criteria, which included being the subject of a state juvenile court judicial determination that it would not be in their best interests to return to their country of origin or country of last habitual residence. [4]

28. Given that a number of these immigrant children had various admissibility issues, including unlawful entry or unlawful presence, in 1991, Congress amended the INA to address this issue by providing that SIJ beneficiaries "shall be deemed, for purposes of [adjustment of status], to have been paroled into the United States," and exempting them from bars to adjustment based on failure to maintain status or unauthorized employment.[5] Congress also explicitly excluded SIJ beneficiaries from specific grounds of excludability, or

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[2] Respondents may rely on Matter of Yajure Hurtado, 28 I&N Dec. 878 (BIA 2025), to strip the Immigration Judge of jurisdiction over bond proceedings in the future. This would be contrary to law, and will exceed agency authority and violate Petitioner's statutory and constitutional rights. The Board of Immigration Appeals' interpretation in Hurtado impermissibly deprives detained noncitizens of a statutory right to seek bond redetermination, contrary to the plain text of 8 U.S.C. § 1226(a), and unlawfully expands the Department of Homeland Security's unilateral detention authority.

[3] Immigration Act of 1990 ("1990 Act"), Pub. L. 101-649, § 153, 104 Stat. 4978 5005-06 (1990) (codified at 8 U.S.C. § 1101(a)(27)(J)).

[4] *Id.*

[5] Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MTINA"), Pub. L. No. 102-232, § 302(d)(2)(A), (B), 105 Stat. 1733, 1744 (1991) (codified at 8 U.S.C. § 1255(h)(1), (2)).

as they are now known as, grounds of inadmissibility.[6] This prevented broad disqualification of SIJS beneficiaries from adjustment of status due to numerous admissibility issues common to SIJ beneficiaries.

29. By creating a pathway for SIJ to adjust status due to being considered paroled, Congress showed that it intended SIJ beneficiaries to receive permanent legal protection, and consequently, that the SIJ process is not complete unless and until an SIJ beneficiary can apply for and be considered for LPR status. This necessarily requires that SIJ beneficiaries be present in the United States, because there is no statutory mechanism that allows SIJ beneficiaries to gain lawful permanent residence other than the filing of a Form I-485 Adjustment of Status Application. SIJ beneficiaries may file that application only when an immigrant visa is immediately available and they are present in the United States.[7]

30. Congress expanded the SIJ program in 1994 to include children whom a court "has legally committed to, or placed under the custody of, a[] [state] agency or department. This amendment also increased the potential eligibility pool to include not only those in foster care and other court-dependent children, but also children in juvenile facilities. The Immigration Naturalization Service ("INS"), the agency then tasked with administration of the INA, similarly passed regulations that increased eligibility to those individuals who were under the age of 21.

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[6] *See*, 1990 Act.

[7] USCIS Policy Manual, Vol. 7, Part F, Ch.7.C (stating that SIJS beneficiaries must be "physically present in the United States at the time of filing and adjudication of an adjustment application")' *Id.*, vol. 7, pt. A, ch. 1.B. ("Adjustment of status to lawful permanent residence describes the process by which an alien obtains U.S. LPR status while physically present in the United States."); 22 C.F.R. pt. 42.11 (denoting SIJS as an "adjustment-only" category). See also "9 FAM 502.5-7(C) (U) Certain Juvenile Court Dependents (CT:VISA-1829; 09-12-2023) (U) The Department of State and Related Agencies Appropriations Act, 1998 changed the definition of a Special Immigrant Juvenile (SIJ) and divested consular officers of the authority to issue SIJ visas. Due to this change, since November 26, 1997, SIJ has been an adjustment-only category as reflected in 22 CFR 42.11. Under no circumstances should you issue an SIJ visa."

31. In 2008, Congress unanimously passed the TVPRA, which expressly codified longstanding regulatory policy where SIJ eligibility could come from dependency on a state juvenile court or placement in the custody of an individual or entity appointed by a state or juvenile court.[8] Consistent with academic research that found that children are best served by living with a non-offending relative when compared with those in foster care, Congress included children living in various custody and guardianship arrangements. Eligibility was also now conditioned on the non-viability of reunification with a parent and eliminated language requiring children seeking SIJ status to demonstrate that they were "eligible for long-term foster care."[9]

32. At the same time, the TVPRA also explicitly exempted SIJ beneficiaries from inadmissibility based on having entered the United States without admission or parole or at an unauthorized time or place, making SIJ beneficiaries eligible to adjust their status even if they had entered the country without inspection or without the necessary travel documents.[10]

33. To qualify for SIJS, petitioners must be under the age of 21 at the time of filing, unmarried, and physically present in the United States.[11] A state court of competent jurisdiction must have issued an order either (1) declaring the petitioner dependent upon the court, or (2) committing the petitioner to the custody of a state agency or department, or placing the petitioner under the custody of an individual or entity appointed by the state or court.[12] Petitioners must also submit to USCIS a predicate state court order making specific findings that (1) it is not viable for the petitioner to reunify with their parent or parents due to

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[8] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). Pub. L. 110-457, § 235(d)(1)(A), 122 Stat. 5044, 5079-80 (2008) (codified at 8 U.S.C. § 1101(a)(27)(J)).
[9] *Id.*
[10] *Id.* at 5080 (codified at 8 U.S.C. § 1255(h)(2).))
[11] 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.
[12] *See* 8 C.F.R. § 204.11(c)

abuse, neglect, abandonment, or a similar basis under state law, and (2) it would not be in the petitioner's best interest to be returned to their or their parent's country of nationality or last habitual residence.[13]

B. The Third Circuit Has Issued a Persuasive Opinion in *Osorlo-Martinez*, with regard to SIJS and Habeas Corpus

34. In 2018, the Third Circuit heard *Osorlo-Martinez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018), a case involving a number of children who had approved SIJ petitions. Their mothers brought a case challenging the expedited removal orders that DHS had entered against the children, arguing that their approved SIJ petitions entitled them to some level of procedural and due process protections. However, review was barred under the expedited removal statute. 8 U.S.C. § 1252(e)(2)

35. The Third Circuit held that denying habeas corpus review of expedited removal orders for SIJ beneficiaries constitutes an unconstitutional suspension of the writ of habeas corpus, as protected by Article I, Section 9, Clause 2 of the United States Constitution ("the Suspension Clause").

36. The Third Circuit distinguished the petitioners' circumstances from the general class of noncitizens in expedited removal, recognizing that SIJS confers statutory protection and strong ties to the United States not present in most immigration cases. In doing so, the Third Circuit relied on the extensive statutory protections granted to SIJ beneficiaries and Congress's express intentions for the SIJ program.

37. The Third Circuit noted that "the requirements for SIJ status that 'show a congressional intent to assist a limited group of abused children to remain safely in the country with a

[13] *Id.*

means to apply for LPR status,' and that, in effect, establish a successful applicant as a ward of the United States with the approval of both state and federal authorities." *Id* at 168. (citing *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) and *Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)). The court also noted that, "SIJ status also reflects the determination of Congress to accord those abused, neglected, and abandoned children a legal relationship with the United States and to ensure they are not stripped of the opportunity to retain and deepen that relationship without due process." *Id.* at 170.

38. To that end, the Third Circuit explained that Congress also afforded these aliens a host of procedural rights designed to sustain their relationship to the United States and to ensure they would not be stripped of SIJ protections without due process. SIJ status may be revoked only for what the Secretary of Homeland Security deems 'good and sufficient cause.' Even then, revocation must be 'on notice,' meaning that the agency must provide the SIJ designee with 'notice of intent' to revoke an 'opportunity to offer evidence…in opposition to the grounds alleged for revocation,' a 'written notification of the decision that explains the specific reasons for the revocation,' and the option to file an appeal within the agency.' *Id.* at 171 (citing 8 U.S.C. § 1155; 8 C.F.R. § 205.2; *see also* 7 USCIS Policy Manual, Part F, Ch. 7 (Mar. 21, 2018)).

39. The Third Circuit further explained that expedited removal would revoke SIJ statutory rights "without cause, notice, or judicial review," leaving the SIJ beneficiaries without any method to return to the United States, and would thereby render SIJ status "a nullity" *Id.* at 172.

40. Like the petitioners in *Orsolo-Martinez*, the Petitioner now faces indefinite detention and potential removal from the United States without cause, notice, or judicial review, leaving

her without any method to return to the United States, and would thus render her SIJ status "a nullity." The Petitioner in this matter is similarly entitled to constitutional protections as expressly intended by Congress. These protections must include, at a minimum, the ability to have the potential nullification of her SIJ status reviewed by a higher authority. The Third Circuit recognized that the benefits granted to a SIJ beneficiary cannot be stripped without review and that the detention of those petitioners was not proper.

C. Detention and Removal of SIJ Beneficiaries Violates the Due Process Rights of Vulnerable Populations

41. The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Elridge*, 424 U.S. 319, 332 (1976). Procedural due process "imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the fifth or Fourteenth amendment." *Id.*

42. Once a petitioner has identified protected liberty or property interest, the Court must determine whether constitutionally sufficient process has been provided. *Id.* In making this determination, the Court balances (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural requirement would entail;" and (3) "the government's interest, including the function involved and the fiscal and administration burdens that the additional or substitute procedural requirement would entail." *Id* at 335.

43. Due process cases recognize a broad liberty interest rooted in the fact of deportation, not just the process of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (holding that deportation "visits a great hardship on the individual and deprives him of the

right to stay and live and work in this land of freedom."); *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) (finding a "strong liberty interest" where being deported means being separated from home and family). While this liberty interest typically arises in removal proceedings, various courts have found procedural due process violations for persons not in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (forms issued to noncitizens charged with civil document fraud violated due process clause); *Rojas v. Johnson*, No. C16-1024 RSM, 2018 WL 1532715, at *8 (W.D. Wash. Mar. 29, 2018) (concluding that "Agency Defendants do not provide sufficient notice of the one-year deadline to satisfy the Due Process clause" to asylum-seeker subclasses both in and out of removal proceedings).

44. The Petitioner has a liberty interest at stake in this matter. USCIS has approved her I-360 petition, designating her as an SIJ, a class of young people to whom Congress has granted significant protections. Despite her SIJ status and the numerous protections Congress created for SIJ beneficiaries, Respondents intend to remove the Petitioner from the United States and have subjected her to detention to effectuate that goal.

45. If removed, the Petitioner will lose the benefits of her SIJ approval, and she will not be able to pursue the lawful permanent resident status for which she is entitled to apply as an SIJ beneficiary. If removed, the Petitioner will be barred from reentry to the United States for at least five years. 8 U.S.C. § 1182(a)(9)(A)(i); 22 C.F.R. § 40.91(a). She will not be able to adjust status to that of lawful permanent resident, as adjustment of status is not available through consular processing.

46. Interpreted in light of the Constitution, pursuant to the INA and its implementing regulation, deportation is improper while an individual is engaged in the process of

attempting to regularize her immigration status subsequent to a grant of Special Immigration Juvenile Status.

47. Due process protects a noncitizen's liberty interest in the adjudication of applications for relief and benefits made available under the immigration laws. *See Arvealo v. Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself.").

48. The Petitioner has protected a due process interest in her ability to retain and benefit from her SIJ classification and grant of deferred action, and a right to remain in the United States to apply for lawful permanent residence when an immigrant visa becomes available.

D. Protections under the Administrative Procedures Act and the *Accardi* Doctrine are Applicable to SIJ Beneficiaries

49. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess…whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; it must "examin[e] the reasons for agency decisions–or, as the case may be, the absence of such reasons. *Judalong v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

50. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes such that agencies must follow their own "existing valid regulations," even where government officers have broad discretion, such as in the area of immigration. *United States ex. Rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954) (reversing an immigration case after review of warrant for deportation); *see also Morton v. Rulz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to follow their own procedures…even where [they] are possibly more rigorous than

otherwise would be required"); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005) ("*Accardi* has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others").

51. Breaches of *Accradi*'s rule constitute violations of both the Fifth Amendment's Due Process Clause and the APA. *See also*, *Rowe v. United States AG*, 545 Fed.Appx. 888,890 (11th Cir. 2013) (recognizing the *Accardi* doctrine entails that to ensure due process an agency is required to follow its own regulations when exercising discretion and issuing a decision) and *Mayers v. United States INS*, 175 F.3d 1289, 1300 (11th Cir. 1999) (recognizing that a review of statutory questions implicates due process, that *Accardi* supports using habeas to ensure due process and that the "crucial question" is whether the Attorney General's conduct deprived an individual the rights guaranteed under a statute or regulation) (internal citations omitted).

52. The Respondents, in pursuing detention and removal of SIJ beneficiaries, including those with deferred action from removal like the Petitioner, fail to comply with their own rules and regulations. The Respondents have provided the Petitioner with benefits under the law (SIJ and deferred action) and have not rescinded or revoked those benefits. Governing statutes and regulations provide the mechanism for the revocation of SIJ status, both automatically and for cause, which have not and cannot be followed in this case. Respondents are attempting to unlawfully revoke the SIJ status of the Petitioner via detention and removal, and not through any authorized process found in the statute or regulations.

53. The Petitioner remains a member of a vulnerable population and has the right to remain in the United States for the purpose of pursuing adjustment of status to lawful permanent residence.

E. Detention of SIJ Beneficiaries Remains Improper without Hearing or Review for those persons with SIJ status and a grant of Deferred Action.

54. On September 5, 2025, the BIA published *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that IJs do not have the authority to hear custody redetermination requests or grant bond to noncitizens who are present in the United States without having been admitted.

55. In that decision, the BIA explained that inspection, detention, and removal of noncitizens who have not been admitted to the United States is governed by INA § 235, as codified at 8 U.S.C. § 1225. Under that section, all applicants for admission are effectively subject to indefinite, mandatory detention.

56. This is compared to 8 U.S.C. § 1226, which authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229(a). Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

57. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

58. Following the enactment of the IIRIRA, the Executive Office for Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of

Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

59. Thus, in the decades that followed, most people who entered without inspection who were detained were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

60. On July 8, 2025, ICE, purportedly advised by the U.S. Department of Justice announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

61. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225,and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). *See Id.* The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades. These policy decisions culminated in *Matter of Yajure Hurtado*, which solidified the agency's petition on mandatory detention for applicants for admission.

62. ICE and EOIR have adopted this position even though several federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington immigration court stopped providing bond hearings for persons who entered the United States without inspection

and who have since resided here, the District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, — F.Supp. 3d — 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-115751-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on the same conclusion).

63. The Respondents' statutory interpretation violates the plain language of the statute. As the *Rodriguez Vasquez* court explained, the plain text of the statutory provisions demonstrated that § 1226(a), not § 1225(b), applies to people like the Petitioner.

64. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

65. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vasquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

66. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

67. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the

border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

68. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like the Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

69. Further, the INA detention provision is silent about special immigrant categories, for whom Congress intended to have various other forms of special protections and relief. However, there is no indication that Congress intended SIJ beneficiaries, as a default, to be detained for the duration of their petition and adjustment period. Such an outcome flies in the face of Congress's goals of protecting and nurturing SIJ beneficiaries and instead treats them like common criminals, isolating them from society, rather than encouraging them to deepen their connections with the United States. This reading of the INA is not supported by either the literal text of the statute or the spirit of the law enacted by Congress.

E. Mandatory Detention under *Matter of M-S-* and *Matter of Q. Li* are not applicable.

70. Petitioner cannot be subject to mandatory detention as Petitioner is no longer in removal proceedings at this time.

71. *Matter of M-S-* and *Matter of Q. Li* both indicate that detention of Petitioner is mandatory, pending the completion of removal proceedings.

72. On information and belief, Petitioner was not, at the time of arrest, paroled into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A), and therefore Petitioner could not "be returned"

under that provision to mandatory custody under 8 U.S.C. § 1225(b) or any other form of custody. Petitioner is not subject to mandatory detention under § 1225 for this reason, as well.

73. Once removal proceedings have been terminated, Petitioner is no longer subject to mandatory detention under INA § 235.

74. Further, ICE no longer has the lawful authority to detain the Petitioner under INA §§ 236 or 241.

75. INA § 236 permits detention only "pending a decision on whether the alien is to be removed."

76. INA § 241 authorized detention only where there is an outstanding removal order; Here, no removal order exists as the prior removal order was vacated by the motion to reopen granted January 8, 2025.

77. As a person arrested inside the United States and held in civil immigration detention, if Petitioner is subject to detention, her detention is pursuant to 8 U.S.C. § 1226. *See Aguiriano*, 2025 WL 2403827, at *1, 8-13 (collecting cases).

78. Petitioner is not lawfully subject to mandatory detention under 8 U.S.C. § 1226(c), including because she has not been convicted of any crime that triggers such detention. *See Demore v. Kim*, 538 U.S. 510, 513-14, 531 (2003) (allowing mandatory detention under § 1226(c) for brief detention of persons convicted of certain crimes and who concede removability).

79. Accordingly, Petitioner is subject to detention, if at all, under 8 U.S.C. § 1226(a).

80. As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon her request, receive a custody redetermination hearing (colloquially called a "bond hearing") with strong procedural protections. *See Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021); *Doe v.*

Tompkins, 11 F.4th 1, 2 (1st Cir. 2021); *Brito v. Garland*, 22 F.4th 240, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment); 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

81. Petitioner requests such a bond hearing.

82. Petitioner is being irreparably harmed by her ongoing unlawful detention without a bond hearing. *See Aguiriano*, 2025 WL 2403827, at *6-8 (no exhaustion required because "[o]bviously, the loss of liberty is a . . . severe form of irreparable injury" (internal quotation marks omitted)); *Flores Powell v. Chadbourne*, 677 F. Supp. 2d 455, 463 (D. Mass. 2010) (declining to require administrative exhaustion, including because "[a] loss of liberty may be an irreparable harm"); *cf. Brito v. Garland*, 22 F.4th 240, 256 (1st Cir. 2021) (citing *Bois v. Marsh*, 801 F.2d 462, 468 (D.C. Cir. 1986), for proposition that "'[e]xhaustion might not be required if [the petitioner] were challenging her incarceration . . . or the ongoing deprivation of some other liberty interest'").

83. The Immigration Court lacks jurisdiction to adjudicate the constitutional claims raised by Petitioner, and any attempt to raise such claims would be futile. *See Flores-Powell*, 677 F. Supp. 2d at 463 (holding "exhaustion is excused by the BIA's lack of authority to adjudicate constitutional questions and its prior interpretation" of the relevant statute).

84. Accordingly, there is no requirement for Petitioner to further exhaust administrative remedies before pursuing this Petition. *See Portela-Gonzalez v. Sec'y of the Navy*, 109 F.3d 74, (1st Cir. 1997) (explaining that, where statutory exhaustion is not required, administrative exhaustion not required in situations of irreparable harm, futility, or predetermined outcome). *See Also Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299, at *4 (D. Mass. July 7, 2025) ("[E]xhaustion is not required by statute in this context.").

CLAIMS FOR RELIEF

COUNT I

Violation of Fifth Amendment Right to Due Process

85. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 652 (2001).

86. Courts have long recognized that removal implicates substantial liberty interests, such that 'the Due Process Clause protects an alien subject to a final order of deportation." *Id.*; see also *Wong Wine v. United States*, 163 U.S. 228, 238 (1896).

87. First, Petitioner has a fundamental interest in liberty and being free from official restraint.

88. Second, noncitizens who have been adjudicated to be SIJs have significant benefits and procedural protections set forth by Congress, including "for cause" protections against revocation of their classification as SIJs.

89. The Petitioner has been classified as a Special Immigrant Juvenile and was granted that benefit by the Respondents and issued deferred action from removal. Neither benefit has been properly rescinded or revoked. She should be considered paroled into the country for the purpose of adjustment and should be allowed to remain until her visa is current. 8 U.S.C. § 1255(h)(1). However, as physical presence in the United States is a condition of SIJ Status, her SIJ status is nullified once she is removed. 8 U.S.C. 1101(a)(27)(J)(i).

90. The Petitioner has a property and liberty interest in remaining in the United States and awaiting adjustment of status. If removed, the Petitioner will lose her SIJ status and be unable to avail herself of the benefits afforded to SIJS beneficiaries to remain safely in the

United States for the purpose of adjustment of status to lawful permanent residence. See *Osorlo-Martinez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018).

91. The Respondents' continued detention of the Petitioner without a bond hearing to determine whether she is individually a flight risk or a danger to others violates her right to due process by effectively stripping her of SIJ status without notice, an opportunity to respond, or review.

92. Respondents have not, from the Petitioner's detention to the date of this Petition, provided the Petitioner with either notice or an opportunity to challenge her detention, alleging a lack of jurisdiction.

93. The Petitioner's continued detention without an individualized determination as to whether she presents a danger to the community or a risk of nonappearance constitutes a deprivation of her interest in personal liberty.

94. By failing to provide the Petitioner with an opportunity to show that she does not present a danger to the community or a risk of nonappearance, and by failing to make an individualized determination as to whether the Petitioner satisfied those requirements prior to deciding to detain her, Respondents failed to provide the Petitioner with due process of law.

95. The Petitioner has no adequate remedy, as the Respondents have taken the position that the Petitioner is subject to mandatory detention, even though she is no longer in removal proceedings at this time. This subjects the Petitioner to detention for an indefinite period of time until the priority date for her approved I-360 becomes current.

96. For the foregoing reasons, Respondents' detention of the Petitioner violates the rights guaranteed to her by the Due Process Clause of the Fifth Amendment to the United States Constitution.

COUNT II

Violation of the INA

97. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are applicants for admission.

98. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

99. The application of § 1225(b) to the Petitioner unlawfully mandates her continued detention and violates the INA.

100. Further, SIJ beneficiaries are a special class of noncitizens present in the United States. Numerous grounds of inadmissibility do not apply to them under the express text of the INA and the TVPRA. Substantial benefits have been afforded to the Petitioner in light of her grant of SIJS, including her right to remain for the purpose of adjustment of status. See *Osorlo-Martinez v. Attorney General*, 893 F.3d 153 (3d. Cir. 2018).

101. Holding the Petitioner indefinitely without bail violates the INA and Congressional intent behind the SIJ program, and such detention cannot be squared with the waiver of inadmissibility for approved SIJ beneficiaries in the statute.

COUNT III

Unlawful Detention Under the INA 8 U.S.C. §§ 1225, 1226 and Violation of the Administrative Procedure Act (5 U.S.C. § 706)

98. Petitioner's continued detention is not authorized by statute. Petitioner cannot be lawfully detained under 8 U.S.C. § 1225(b)(1) because she does not meet the statutory criteria for expedited removal, nor under § 1225(b)(2) because, as a person already present in the United States, she is not "seeking admission." Petitioner is not subject to mandatory detention under 8 U.S.C. § 1226(c), as she has not been convicted of any removable crime. ICE no longer has the authority to continue to detain Petitioner as her removal proceedings have been terminated, and detention under INA § 236 permits detention only "pending a decision on whether the alien is to be removed." As proceedings have been terminated, there is no pending removal determination. Instead, if Petitioner is lawfully subject to detention at all, it is only lawful under § 1226(a), which requires access to an individualized custody redetermination hearing. The refusal to provide such a hearing is ultra vires and unlawful.

99. Petitioner's continued detention without reasoned explanation, is in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2).

100. For these reasons, Petitioner's detention violates 5 U.S.C. § 706.

COUNT IV

5 U.S.C. § 706(2)(A) - Violation of Accardi Doctrine

101. "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Rulz*, 415 U.S. 199, 235 (1974). This principle is known as the *Accardi* doctrine. See *United States Ex Rel. Arradi v. Shaughnessy*, 347 U.S. 260 (1954); *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004).

102. The "procedures" that agencies are required to follow include both formal agency regulations and informal operating procedures and guidance. *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487, (9th Cir. 1990). The Accardi doctrine applies "even

where the internal procedures are possibly more rigorous than otherwise would be required." *Alcaraz*, 384 F.3d at 1162 (quoting *Morton*, 415 U.S. at 235).

103. The Respondents' intention to detain and seek removal of SIJS beneficiaries with deferred action without cause or process represents a sudden and unexplained departure from the agency's own guidance and regulations in violation of the *Accardi* doctrine.

104. In violating the *Accardi* doctrine, Respondents have irreparably injured the Petitioner depriving her of relief from removal, depriving her of liberty, and depriving her of her ability to remain in the United States for the purpose of adjustment, as well as a host of additional protections. See *Osorlo-Martinez v. Attorney General*, 893, F.3d 153 (3d Cir. 2018).

COUNT V

28 U.S.C. §§ 2201 and 2202 - Declaratory Judgment

105. The Declaratory Judgment Act, 28 U.S.C. § 2201, allows the court, "[i]n a case of actual controversy within its jurisdiction," to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

106. The Petitioner seeks a declaration from this Honorable Court that the process of detention and removal without review of SIJS beneficiaries, as applied to the Petitioner by the Respondents, violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations, is in excess of Respondents' statutory authorization, is an unlawful taking of the Petitioner's statutorily authorized benefits without appropriate process, and is arbitrary and capricious, an abuse of discretion and contrary to law.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;

2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

3. Declare that Petitioner's detention under 8 U.S.C. § 1225(b) is unlawful and ultra vires, and that Petitioner is lawfully subject, if at all, only to detention under 8 U.S.C. § 1226(a);

4. Declare that Petitioner's continued detention without an individualized custody redetermination hearing violates the Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process Clause of the Fifth Amendment to the United States Constitution;

5. Order Respondents to provide Petitioner with an individualized custody redetermination (bond) hearing before an Immigration Judge within seven (7) days of this Court's order, with the procedural safeguards required by law, including the government's burden to justify detention by clear and convincing evidence;

6. Alternatively, Order Petitioner's immediate release from immigration custody under reasonable conditions of supervision; and

6. Grant any further relief this Court deems just and proper.

Respectfully submitted,

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Dated: 10/29/2025

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Dated: 10/29/2025

VERIFICATION

On this 28th day of October, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of Petitioner, Valerie Yajaira Chavez Lopez, because the Petitioner is currently detained and due to the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing Petitioner, Valerie Yajaira Chavez Lopez.

/s/ Allyson Page
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