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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

F.R.R., *Petitioner,* v. **JOSE RODRIGUEZ JR.**, Warden, South Texas Family Residential Center; **MIGUEL VERGARA,** Acting/Director of the San Antonio Field Office U.S. Immigration and Customs Enforcement; **TODD M. LYONS,** Acting Director of Immigration Customs Enforcement **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; and **PAMELA BONDI,** Attorney General of the United States, in their official capacities, *Respondents.*	Case No. 5:25-cv-01564 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

1. Petitioner F.R.R. is a 17-year-old minor with an approved Form I-360, Petition for Special Immigrant Juvenile Status, **Exhibit D- SIJS Approval Notice**. He is in the physical custody of Respondents at the South Texas Family Residential Center in Dilley, Texas. He now faces unlawful and indefinite detention absent intervention from this court because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have concluded Petitioner is subject to mandatory detention.
2. Petitioner was first detained and released in March 2024 under DHS's authority requiring the processing of minors to be handled by the Office of Refugee Resettlement under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008. PL 110-457 (2008) ("TVPRA").
3. Over a year-and-a-half later, on November 10, 2025, he was re-arrested and detained with his father after his father was pulled over for a traffic infraction. After issuing his father a ticket, the state trooper called Immigration and Customs Enforcement ("ICE") who then arrested the father and son and took them into custody.
4. DHS's position is that Petitioner is not subject to DHS's discretionary detention authority under 8 U.S.C. § 1226. Instead, DHS unlawfully asserts that he is subject to mandatory detention under a different statutory provision governing arriving aliens apprehended at the border–8 U.S.C. § 1225. Their decision to take F.R.R. into custody also directly violates ICE's own stated policy prohibiting ICE officers from taking minors like F.R.R. into custody. Furthermore, F.R.R. has already been granted Special Immigrant Juvenile

Status (SIJS) by DHS and was awaiting his opportunity to apply for Lawful Permanent Resident status on that basis.

5. Petitioner contends that his detention is in violation of constitutional Due Process under the Fifth Amendment of the U.S. Constitution and in violation of the Immigration and Nationality Act.

6. The present petition filed on behalf of the Petitioner is one of a number of recent lawsuits with similar facts challenging the federal government's authority to detain noncitizens during the pendency of removal proceedings under 8 U.S.C. § 1225(b). Overwhelmingly, federal district courts have ruled in favor of Petitioners. *See e.g Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*,, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser,* No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

7. Accordingly, to preserve Petitioner's statutory and constitutional rights, this Court should grant the instant petition for a Writ of Habeas Corpus for the reasons stated *infra*. Absent an order from this Court, Petitioner will continue to suffer an unconstitutional deprivation

of his right to liberty, as well as extreme irreparable harm given the personal facts of his situation. Petitioner asks this Court to find that his detention is unconstitutional and order immediate release from detention.

PARTIES

8. Petitioner, F.R.R., is a citizen of Mexico. He is a 17-year-old minor who has an approved SIJS petition and has no criminal history. Nonetheless, on November 10, 2025, ICE arrested Petitioner while he was on his way to work with his father. Petitioner's father attempted to stop the detention of Petitioner by letting ICE officers know he had an approved SIJS petition. Regardless, ICE took Petitioner into custody. He is currently detained at South Texas Family Residential Center in Frio County, Texas. He is in the custody, and under the direct control, of Respondents and their agents.
9. Upon information and belief, Respondent Jose Rodriguez Jr. is the Warden of the South Texas Family Residential Center, and as warden 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.
10. Respondent Miguel Vergara is sued in his official capacity as the Acting Field Office Director of the San Antonio Field Office of U.S. Immigration and Customs Enforcement. Respondent Vergara is a legal custodian of Petitioner and has authority to release him.
11. Respondent Todd M. Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Petitioner.
12. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem 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 / custody. Respondent Noem is a legal custodian of Petitioner.

13. 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.

JURISDICTION

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

15. 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 United States Constitution (Suspension Clause).

16. 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.

VENUE

17. Venue is proper with this Court because Petitioner is detained at South Texas Family Residential Center in Frio County, TX which is within the jurisdiction of this District.

STATEMENT OF FACTS

18. Petitioner is a 17 year old native and citizen of Mexico. Petitioner entered the United States after suffering neglect at the hands of his mother, who was incapacitated by severe

depression and unable to provide him with adequate care. He entered the United States without inspection as an Unaccompanied Alien Child (UAC) on March 9, 2024. **Exhibit A- I-862 Notice to Appear**. He presented himself to immigration authorities and was taken to an Office of Refugee Resettlement shelter for UACs. On March 26, 2024, he was released to the care of his father, Fabian Reyes Gongora, under the Office of Refugee Resettlement's authority to release minors. **Exhibit B - Office of Refugee Resettlement Verification of Release.**

19. On April 3, 2024, the Department of Homeland Security filed a Notice to Appear ("NTA") initiating removal proceedings against him charging him with removability under INA 212(a)(6)(A)(i). **Exhibit A - I-862 Notice to Appear.**

20. On November 21, 2024, the 201st District Court in Travis County, Texas, found that Petitioner had been neglected by his mother in Mexico, and that it was in his best interests to remain in the United States. **Exhibit C - Final Order in Suit Affecting Parent-Child Relationship**. The court granted sole physical and legal custody to Petitioner's father. Based on these state court findings, Petitioner applied for SIJS with U.S. Citizenship and Immigration Services (USCIS).

21. On April 24, 2025, based in part on the state court's determined that it was not in F. R. R.'s best interests to return to Mexico, U.S. USCIS approved Petitioner for SIJS. **Exhibit D - SIJS Approval Notice**. SIJS is a humanitarian immigration protection enshrined in federal statute that is designed to afford certain immigrant children who have suffered parental abuse, neglect, abandonment, or similar mistreatment the opportunity to remain safely and permanently in the United States. However, because of a visa backlog, young

people with SIJS must wait—often years—before they are able to apply for a green card and gain lawful permanent resident ("LPR") status.

22. By statute and regulation, Petitioner is deemed "paroled" by virtue of his approved SIJS petition for the purpose of applying for adjustment of status. *See* 8 U.S.C. 1255(h)(1); 8 CFR 245.1(e)(3)(i).

23. On November 10, 2025, Petitioner was the passenger in the car with his father. His father was pulled over for traffic infraction and was given a ticket. Shortly thereafter, ICE agents appeared to arrest his father and take him into custody. Agents inquired if someone could pick up Petitioner. His father called a family friend who agreed to pick F.R.R. up. However, shortly thereafter, when the family friend was on his way, ICE agents informed them that they could not wait for the friend to arrive and instead took them both into custody.

LEGAL FRAMEWORK

A. SIJS Provides a Pathway to Permanent Status for Certain Vulnerable Young People

24. In 1990, Congress created SIJS to protect vulnerable immigrant children and provide them a pathway to citizenship. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (1990) (amending various sections of the Immigration and Nationality Act ("INA")); Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) ("This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future."). Since 1990, Congress has amended the INA multiple times to expand the protections of SIJS, most recently in 2008, through the

Trafficking Victims Protection Reauthorization Act, Pub. L. 110-457, § 235(d), 122 Stat. 5044 (2008).

25. To be granted SIJS, young non-immigrants like Petitioner must first "satisfy[] a set of rigorous, congressionally defined eligibility criteria." Osorio-Martinez v. U.S. Att'y Gen., 893 F.3d 153, 163 (3d Cir. 2018). Specifically, the INA provides that those eligible for SIJS designation, as relevant here, are noncitizen youth who are present in the United States; who have been declared dependent on a state juvenile court; who cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for whom it has been determined that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

26. Crucially, a noncitizen youth is eligible for SIJS only if he or she is "present in the United States." 8 U.S.C. § 1101(a)(27)(J) (emphasis added). This requirement makes perfect sense in light of the purpose of the SIJS statute. SIJS is predicated on a state court finding that the youth cannot be safely reunited with parent(s), nor safely sent back to their country of origin. The design of this program, then, "show[s] a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status." Garcia v. Holder, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds).

27. Young non-citizens can apply for SIJS upon receipt of a state court order finding they cannot be safely reunited with parent(s) nor safely sent back to their country of origin. The application process includes submitting a Form I-360 SIJS Petition to USCIS, along with the predicate state court order and other supporting evidence. See 8 C.F.R. § 204.11(b). USCIS then considers the application and supporting documentation to

determine whether to exercise its statutory "consent function" to approve the petition. See 8 U.S.C. § 1101(a)(27)(J)(iii). By exercising its statutory consent function to grant SIJS, the agency recognizes the state court's determinations, including that the child's return to their country of origin would be contrary to their best interests. 8 U.S.C. § 1101(a)(27)(J)(iii).

28. SIJS may be revoked only for what the Secretary of Homeland Security deems "good and sufficient cause." 8 U.S.C. § 1155; 8 C.F.R. § 205.2. According to USCIS regulations, such revocation must be made upon notice to the youth in question, who must be permitted the opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. See 8 C.F.R. § 205.2. If status is ultimately revoked, the youth is entitled to notice and the opportunity to appeal the decision. See 8 C.F.R. § 205.2(c) & (d). Revocation of a SIJS petition may only be performed by a USCIS officer authorized to approve such petition in the first instance. See 8 C.F.R. § 205.2(a).

29. The main benefit of SIJS—and indeed, its core purpose—is that it confers on vulnerable young people like Petitioner the right to seek Lawful Permanent Resident status while remaining in the United States, through a process called adjustment of status. *See* 8 U.S.C. 1255(h).

30. To facilitate this process, Congress removed numerous barriers to adjustment of status for SIJS beneficiaries through amendments to the SIJS provisions in 1991 and again in 2008. For example, SIJS youth are "deemed . . . to have been paroled into the United States" for the purposes of adjustment of status. 8 U.S.C. § 1255(h)(1). Further, Congress exempted SIJS youth from many common inadmissibility grounds and created a generous waiver of many of the non- exempted inadmissibility grounds. 8 U.S.C. § 1255(h)(2). And,

Congress explicitly provided that certain grounds for removal "shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title [the SIJS statute] based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status." 8 U.S.C. § 1227(c).

31. Although SIJS renders youth eligible to apply for adjustment, they can only do so when a visa is immediately available to them. 8 U.S.C. § 1255(h). However, there is an annual limit on visas available to SIJS beneficiaries. 8 U.S.C. § 1153(b)(4). And since 2016, the number of SIJS beneficiaries has surpassed the supply of available visas for most countries, leaving what has been estimated to be more than 100,000 young people in a backlog, waiting to apply for a green card.

32. Despite the immediate unavailability of visas, waitlisted SIJS beneficiaries are the same vulnerable young people that the SIJS statute was designed to protect. The fact that no visa is currently available because a numerical limit has been reached changes nothing about their eligibility determination by USCIS, or Congress's intent that they be afforded a pathway to LPR status and, eventually, citizenship. These are the same individuals whom state courts have determined cannot safely be reunited with their parent(s) or returned to their home country.

33. On March 7, 2022, USCIS updated its policy guidance to provide that the agency would automatically consider granting deferred action on a case-by-case basis to aliens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visas. **Exhibit F - 2022 USCIS Policy Alert**. Although at the time his petition was approved, this policy was in effect, F. R. R. was not considered for deferred action. On June 6, 2025, the policy was formally rescinded. **Exhibit G - 2025**

USCIS Policy Alert. On November 19, 2025, however, the government's rescission of the 2022 SIJS Deferred Action Policy was stayed, rendering the 2022 policy back in effect. *See A.C.R. et al., v. NOEM*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *18 (E.D.N.Y. Nov. 19, 2025).

34. Taken together, the structure of the SIJS program—including the requirement that recipients remain in the United States to move forward in the process, the grant of parole for the purpose of adjustment, and the waiver of grounds of inadmissibility and removability—evinces Congress' intent that SIJS recipients remain safely in the United States until they can adjust to become Lawful Permanent Residents. Further, now that the 2022 SIJS Deferred Action is back in effect, F.R.R. must be considered for deferred action. Given his absence of any criminal history or other negative factors, there is no reason to doubt that he would be approved for deferred action.

B. Relevant Detention Authorities and ICE Policy

35. Two statutes principally govern the detention of noncitizens pending removal proceedings: 8 U.S.C. §§ 1225 and 1226. Section 1225 applies to "applicants for admission," who are, as relevant here, noncitizens "present in the United States who [have] not been admitted." 8 U.S.C. § 1225(a)(1). All applicants for admission must be inspected by an immigration officer. Id. § 1225(a)(3). Certain applicants for admission are then subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108-09 (2020). In other cases, if the examining immigration officer determines that an applicant for admission is not "clearly and beyond a doubt entitled to be admitted," Section 1225(b)(2) provides that the applicant for admission "shall be detained for" standard removal proceedings. 8 U.S.C. §

1225(b)(2)(A); *see Jennings v. Rodriguez*, 583 U.S. 281, 287-88 (2018). A noncitizen detained under Section 1225(b)(2) may be released only if he is paroled "for urgent humanitarian reasons or significant public benefit" under 8 U.S.C. § 1182(d)(5)(A). *Jennings*, 583 U.S. at 300 ("That express exception to detention implies that there are no other circumstances under which aliens detained under § 1225(b) may be released.").

36. Whereas Section 1225(b) "authorizes the Government to detain certain aliens *seeking admission* into the country," Section 1226 "authorizes the Government to detain certain *aliens already in the country* pending the outcome of removal proceedings." *Jennings*, 583 U.S. at 289 (emphases added). Section 1226(a) establishes a discretionary detention framework for noncitizens arrested and detained "[o]n a warrant issued by the Attorney General." For such individuals, the Attorney General (1) "may continue to detain the arrested alien," (2) "may release the alien on ... bond of at least $1,500," or (3) "may release the alien on ... conditional parole." 8 U.S.C. §§ 1226(a)(1)-(2). The arresting immigration officer makes an initial custody determination, but noncitizens have the right to request a custody redetermination (i.e., bond) hearing before an Immigration Judge. See 8 C.F.R. §§ 1236.1(c)(8), (d)(1).

37. In addition to bond, the government may release a noncitizen detained under Section 1226(a) on an Order of Recognizance, which is a form of conditional parole. *See* 8 U.S.C. § 1226(a)(2)(B); *Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 747 (B.I.A. 2023) ("The respondents were ... released on their own recognizance pursuant to DHS' conditional parole authority under ... 8 U.S.C. § 1226(a)(2)(B)[.]"); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the [government] used

the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a)."); *Cruz-Miguel v. Holder*, 650 F.3d 189, 191 (2d Cir. 2011) (similar).

38. Section 1226(c) is the sole exception to Section 1226(a)'s discretionary detention framework. *See* 8 U.S.C. § 1226(a) ("Except as provided in subsection (c) ... the Attorney General ... may"); id. § 1226(c)(1) Section 1226(c) requires the detention of noncitizens who are inadmissible or deportable and who have been arrested, charged with, or convicted of certain crimes. *See* id. §§ 1226(c)(1)(A)-(D).

39. This case concerns whether Petitioner is lawfully detained under Section 1225(b)(2), or is instead subject to discretionary detention under Section 1226(a).

40. Section 1226(a) "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings," *Jennings*, 583 U.S. at 289, and it applies when a noncitizen is "arrested and detained" "[o]n a warrant issued by the Attorney General," 8 U.S.C. § 1226(a); *See Matter of Cabrera-Fernandez*, 28 I. & N. Dec. 747, 749 (B.I.A. 2023) (holding that an immigration judge erred in treating release on recognizance of non-citizens "detained soon after their unlawful entry" as constructive humanitarian parole where Government had not followed the "procedures for parole under [section 1182(d)(5)]").

41. The position of Respondents is that F.R.R. is subject to mandatory detention without a bond hearing under the plain language of 8 U.S.C. § 1225(b), despite being released to his father, living in the U.S. for over a year after his entry, and being arrested in the interior of the U.S. This position has been repeatedly and resoundingly rejected by federal district courts across the country, including courts in the Fifth Circuit and the Western District of Texas. *See Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL

2496379, at *8 n.5 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions); *see, e.g., Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278, at *5 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-CV-01093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, (W.D. Tex. Sept. 22, 2025).

42. ICE has also issued policy regarding the appropriate enforcement actions that should be carried out against non-citizens who are the primary caretakers of minor children. ICE Directive 11064.4, effective since July 2, 2025, provides that "Absent indications of abuse or neglect, ICE personnel should accommodate a [Non-citizen parent's] efforts to make alternative care arrangements for their minor child(ren) prior to detention. " *See* **Exhibit E- ICE Policy Memorandum 11064.4**. ICE's actions in the present case have been inconsistent with their own policies providing that "Unless ICE is effectuating an enforcement action against the minor child(ren)"–which is not the case here– "ICE personnel should not, under any circumstances, take custody of or transport the minor child(ren)." *Id.*

43. Respondents' own documents and actions, the plain text of the statute, traditional canons of statutory construction, and DHS' longstanding practices all establish that 1225(b) cannot govern Petitioner's detention.

44. Petitioner was initially detained on March 9, 2024. He was released into the care of his father a few days later by the Office of Refugee Resettlement pursuant to the TVPRA and 8 U.S.C. 1232. He was then re-detained on November 10, 2025, while residing in the

United States, despite ICE's unequivocal policy prohibiting the detention of minor children like Petitioner.

45. As district courts across the country have repeatedly concluded, Respondents' "interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (citing *Alejandro v. Olson*, 2025 WL 2896348, at *6 (S.D. Ind. Oct. 11, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588, at *8 (S.D.N.Y. Aug. 13, 2025) ("[T]he line historically drawn between sections 1225 and 1226, which makes sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.' ") (cleaned up) *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme would apply to non-citizens 'already in the country,' as compared to those 'seeking admission into the country,' is consonant with the core logic of our immigration system.") (cleaned up) (citing *Jennings*, 583 U.S. at 289).

46. Furthermore, in detaining Petitioner unlawfully without the possibility of requesting release, DHS has ignored Petitioner's unique legal position as a non-citizen approved for Special Immigrant Juvenile Status. Indeed, several courts have already considered that a grant of Special Immigrant Juvenile Status transforms a non-citizen who is arriving in the United States under §1225 to an "alien present" in the U.S. whose detention must be considered only in the context of §1226. In *Rodriguez v. Perry*, the District Court for the

Eastern District of Virginia engaged in a detailed examination of the very issue at stake in this petition. *See Rodriguez v. Perry*, 747 F.Supp.3d 911 (EDVA 2024). In the exact context of a non-citizen with an approved SIJS petition who requested habeas relief as to his detention determination, the Court noted that SIJS status confers a host of legal protections on the grantee, largely due to Congress' intent to bolster the humanitarian nature of the status. *Id.* at 917-918. The Court found that although the petitioner in that case may have been properly included in 8 U.S.C. 1225(b) when he initially entered the U.S., his subsequent grant of SIJS status converted him from "arriving alien" status to an "alien present" in the U.S. who was entitled to a bond hearing under § 1226. *Id.* at 916. Thus, though Petitioner asserts that any application of §1225 to detain him is an unconstitutional imposition of the law, his particular legal status makes it even more clear that he cannot be mandatorily detained under §1225. *See also Hasan v. Crawford*, 2025 WL 2682255 (EDVA 2025) (*Petitioner's SIJS status required application of §1226 to him as an "alien present" in the U.S., and the government made no compelling arguments as to detention pursuant to §1225*).

C. Due Process

47. Noncitizens are entitled to due process of the law under the Fifth Amendment. *Demore v. Kim*, 538 U.S. 510, 523 (2003). "To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976)." *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). Those factors are: (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 safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.

48. As to the first element, "'[t]he interest in being free from physical detention' is 'the most elemental of liberty interests.' " *Martinez v. Noem,* 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004)). Petitioner possesses a cognizable interest in his freedom from detention because he spent almost two years at liberty in the United States. *See Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025) ("Because he spent nearly three years at liberty in the United States, Lopez-Arevelo possesses a cognizable interest in his freedom from detention.")

49. Under the second *Mathews* factor, the Court considers "whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Martinez v. Noem*, 2025 WL 2598379, at *3 (quoting *Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. 2025)). Here, the risk of erroneous deprivation of his liberty under the current procedures is extraordinarily high. Petitioner unquestionably has a due process right to his liberty, which may not be abridged absent adequate procedural protections. The Supreme Court has explained that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Due process requires that immigration detention "'bear[] a reasonable relation to the purpose for which the individual was committed.'" *Demore v. Kim*, 538 U.S. 510, 527 (2003) (quoting

Zadvydas, 533 U.S. at 690). Specifically, immigration detention must be reasonably related to the government's goals of preventing flight and protecting the community from harm, and be accompanied by adequate procedural protections to ensure that those goals are being served. *See Zadvydas*, 533 U.S. at 690-91. There is a high risk that Petitioner has been and will continue to be erroneously deprived of his liberty, without regard to any "reasonable relation" to any legitimate government purpose, and is therefore in violation of his right to substantive due process.

50. Here, Petitioner's only recourse would be to request a custody redetermination hearing before the immigration judge. This would be a completely futile exercise because the immigration judge is mandated to follow the Board of Immigration Appeals decision in *Yajure Hurtado* which deprives the judge of jurisdiction over any request for release on bond. *See Matter of Yajure-Hurtado* 29 I&N Dec. 216 (BIA 2025)

51. On the final factor, Respondents cannot identify any meaningful countervailing interest, other than perhaps their generalized interest in enforcing the INA as they interpret it. "But the decision to release [Petitioner] on his own recognizance [nearly two] years ago, in and of itself, 'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.'" *Lopez-Arevelo*, 2025 WL 2691828, at *11 (citing *Saravia v. Sessions,* 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd 905 F.3d 1137 (9th Cir. 2018)). Overwhelmingly, federal courts have sided with immigrant detainees challenging their detention on similar grounds, on statutory and constitutional grounds, including courts in this district. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025);

PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.,, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser,* No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

52. "The appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to *status quo ante*, i.e., the last uncontested status which preceded the pending controversy." *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). "With regard to the specifics of the relief that might be ordered, in recent weeks many federal district courts" –including the Western District of Texas– "have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights." *Id; See Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at *13 (W.D. Tex. Oct. 1, 2025); *See also J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *M.S.L. v.*

Bostock, 2025 WL 2430267, at *1(D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025).

53. Alternatively, the court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasco Lopez,* 978 F.3d at 855 n.14 (citations omitted). "Allocating the burden in this manner reflects the concern that '[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" (citing *German Santos*, 965 F.3d at 214). "And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence." *Id.* ; *Velasquez Salazar v. Dedos,* No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo,* No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); Espinoza, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar,*, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025).

D. Exhaustion

54. Petitioner is not required to exhaust administrative remedies by requesting a custody re-determination hearing before the immigration judge. Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be waived if "'administrative remedies are

inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result.'" *Id.* at 1000. Administrative remedies would be futile, inadequate, and not efficacious for F.R.R. Exhausting his constitutional claim would be futile because the agency does not have the authority to rule on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) ("the inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion"). Exhausting his statutory claim would also be futile because immigration judges are bound by *Matter of Yajure-Hurtado*, an incorrectly decided Board of Immigration Appeals ("BIA") decision that holds that immigration judges lack jurisdiction to consider bond requests for individuals like Petitioner. *See Matter of Yajure-Hurtado* 29 I&N Dec. 216 (BIA 2025). Even if exhaustion were not futile, waiver is warranted because Petitioner's claim presents purely legal issues and no purpose is served by requiring an administrative bond hearing or any subsequent appeal. *See Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017). Requiring exhaustion before EOIR and the BIA will cause Petitioner irreparable harm in the form of additional detention. *See Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (habeas petitioner "'suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention'"); *See also Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *6 (W.D. Tex. Sept. 22, 2025) (finding exhaustion was not required); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *7 (W.D. Tex. Oct. 21, 2025) (same); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025) (same).

CAUSES OF ACTION

COUNT ONE
Violation of 8 U.S.C. § 1226(a)
Unlawful Re-detention after initial release

1. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
2. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge violates the Immigration and Nationality Act.

COUNT TWO
Violation of Fifth Amendment Right to Due Process

1. Petitioners repeat, re-allege, and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.
2. 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 653 (2001).
3. Petitioner has a fundamental interest in liberty and being free from official restraint.
4. The government's arbitrary subjection of Petitioner to mandatory detention pursuant to 8 U.S.C. 1225, after releasing him to his father, arresting him in the interior of the U.S., and after DHS has granted him SIJS status, without affording him any opportunity to contest his detention within the agency violates his right to Due Process pursuant to the Fifth

Amendment.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter and maintain jurisdiction to the extent necessary to ensure Respondents' compliance with any order this Court may issue;

(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 the refusal to allow Petitioner a bond redetermination hearing before an immigration judge violates the INA and the Due Process clause of the Fifth Amendment;

(4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release the Petitioner, or, in the alternative, provide a custody redetermination hearing before an impartial Immigration Judge within 2 days where the Government bears the burden to prove by clear and convincing evidence that the detainee poses a danger or flight risk;

(5) Order further relief as this Court deems just and appropriate.

Respectfully submitted,

/s/ Mark Kinzler
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Attorney for Petitioner

Dated: November 24, 2025

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, F.RR, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 24st day of November, 2025.

/s/ Mark Kinzler
Mark Kinzler, Esq.
Oregon State Bar No. 05298-8
Attorney for Petitioner

CERTIFICATE OF SERVICE
F.R.R. v. Rodriguez Jr. et al.
5:25-cv-01564

I hereby certify that on November 24, 2025, I have mailed by United States Postal Service the Verified Petition for Writ of Habeas Corpus by certified mail to the following:

Stephanie Rico
Civil Process Clerk Office of the United States Attorney for the Western District of Texas
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U.S. Attorney General Pamela Bondi
950 Pennsylvania Ave NW
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The above respondents were also named in the CM/ECF habeas corpus filing with the Western District of Texas court

/s/ Mark Kinzler