

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

KEILY NOHEMI VELASQUEZ MORALES,

Petitioner,

v.

Joel GARCIA *et. al*,

Respondents.

Case No. 3:26-cv-00233-LS

**PETITIONER'S BRIEF IN
SUPPORT OF PETITION
FOR HABEAS CORPUS**

Introduction

The Court's request for additional briefing assumes a dichotomy applicable only—at most—to adults in immigration detention. Keily Nohemi Velasquez Morales ("Keily") is a Guatemalan youth who fled years of abuse by her aunt after her parents abandoned her at a very young age. She entered the United States by herself at age 17. Since coming to the United States, she has applied for Special Immigrant Juvenile Status. Federal law specific to young people requires that she be released from the jail she is currently in or at a minimum, receive an immediate bond hearing.

Issues Presented and Short Answers

1. The Court requested briefing on the assumption that if Keily and others like her were not apprehended according to a warrant as prescribed by 8 U.S.C. § 1226, they must then be subject to 8 U.S.C. § 1225(b)(2) and ineligible for habeas relief. But for young people like Keily, there is a third option. Since she was designated an Unaccompanied Alien Child ("UAC") on arrival, Keily is eligible for immediate release, or at a minimum a swift bond hearing, pursuant to the Trafficking Victim's Protection Reauthorization Act

(“TVPRA”) and the Due Process Clause of the United States Constitution.

2. Furthermore, while the discretionary detention statute explicitly requires a warrant, a wholly separate section of the INA limits immigration officer’s authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). No warrant existed for Keily’s arrest that she or her counsel is aware of, and the facts demonstrate that a warrant was required here.

Statement of the Law

While the detention of adults who have entered the country and been placed into removal proceedings is governed by either 8 U.S.C. § 1225 or § 1226, UACs are protected by the TVPRA which provides a separate statutory scheme for detention. UACs from non-contiguous countries are to be placed in custody of the Secretary of Health and Human Services unless or until they can be released to a trustworthy sponsor, and even after turning 18, are to be placed in the least restrictive environment available. 8 U.S.C. § 1232(c)(2)(B).

Additionally, the Fifth Amendment of the U.S. Constitution applies to all people present in the United States and allows Courts to order relief in a habeas corpus action even if a statute requires an individual to be detained. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. Depriving Keily of her right to immediate release or a prompt bond hearing under TVPRA and detaining her indefinitely, as Respondents propose to do, violates due process.

Finally, there is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). Separate from the warrant requirement for discretionary detentions, the INA requires an officer to have probable cause to believe the person is violating immigration laws “is likely to escape before a warrant can be obtained.” 8 U.S.C. §

1357(a)(2); *see also City 12* (No. 3:26-cv-00233-LS, Dkt. 1, Jan. 29, 2026), 890 F.3d at 189 (noting that detaining individuals could result in Fourth Amendment violations).

Argument

A. Keily's detention is governed by the TVPRA and thus immediate release is the most appropriate course of action.

While adult detention is generally governed by 8 U.S.C. § 1225 or § 1226, the TVPRA sets out a separate statutory scheme for the protection of unaccompanied minors. The TVPRA requires that UACs like Keily be placed in the custody of the Secretary of the Department of Health and Human Services, unless or until they can be released to a trustworthy sponsor, and placed in the least restrictive environment available even after turning 18. Keily was 17 years old when she entered the United States and was placed at SWK Trail House Residential Program, pursuant to the policy of the Secretary of the Department of Health and Human Services, until she was released to a sponsor.

Although Keily is now 20 years old, the TVPRA continues to require that Keily be placed in the least restrictive environment available, considering typical detention factors including danger to herself or others, and flight risk. 8 U.S.C. § 1232(c)(2)(B). The Fifth Circuit has also remanded an appeal of a final order of removal when the BIA failed to consider application of the TVPRA in removal proceedings to an individual who had since attained adulthood.

Velasquez-Castillo v. Garland, 91 F.4th 358 (5th Cir. 2024).

Since Keily was found to be a UAC on arrival to the United States, the protections of the TVPRA still apply to her. Accordingly, her immediate release is appropriate and complies with the requirement of detaining her in the least restrictive environment available. At a minimum, the TVPRA requires that Keily be afforded an immediate bond hearing to demonstrate that she is neither a danger nor a flight risk and is thus entitled to release.

B. Release, or at a minimum, a bond hearing, is required by the Due Process Clause of the United States Constitution.

As provided above, the United States Supreme Court established in *Zadvydas* that not only does the Due Process Clause apply to all persons present in the United States, but also that individuals may be eligible for bond or release through habeas corpus even if a statute requires the individuals detention, particularly if detention has no clear end point.

Respondents argue broadly that 8 U.S.C. § 1225 provides for mandatory detention of similarly situated individuals until removal proceedings conclude. As an SIJS applicant, Keily's removal proceedings could be on hold for a long time before they are eventually terminated when she applies for lawful permanent residency. Special Immigrant Juvenile Status allows grantees to apply for lawful permanent residency when a quota number is available and their priority date becomes current on the visa bulletin under category EB4. 8 U.S.C. § 1153(b)(4). As of February 2026, applicants in category EB-4 with a priority date on or before January 1, 2021, are eligible to apply for lawful permanent residency. Young people like Keily with SIJS often secure continuances of removal proceedings and administrative closure until proceedings conclude when they become eligible for lawful permanent residency.

Since there is no clear and definite end to Keily's removal proceedings as an SIJS applicant, and she is not responsible for the delay in the end of proceedings, her release or at minimum, a grant of a bond hearing, is required by the Due Process Clause.

C. Keily's arrest was likely warrantless and therefore unlawful.

The INA requires arrests by Immigration and Customs Enforcement ("ICE") to be executed with a warrant unless the officer has probable cause to believe the individual is violating immigration laws and that they are a flight risk. 8 U.S.C. § 1357(a)(2). The warrant requirement is wholly separate from the INA sections about mandatory and discretionary

detention and therefore applies regardless of the basis of detention. Keily reported to counsel that she was not shown or provided a warrant at the time of her arrest.

There is likewise no evidence that officers had probable cause to arrest Keily. First, messages from Keily to her attorney prior to her arrest show it was very early in the morning and dark outside, and Keily reports that a vehicle she was riding in was stopped. Officers would have little data about a vehicle passenger in transit in the dark, and thus no probable cause to arrest.

There is also evidence that Keily is not a flight risk, further supporting that a warrant was required. She is currently in removal proceedings, has attended her hearings, and is represented by counsel. She has submitted an application for SIJS. The DHS would be aware of this information. Since there was no warrant and no probable cause, Keily's arrest was unlawful.

Conclusion

Habeas relief for Keily is required under the TVPRA and to comport with the Due Process Clause of the United States Constitution. The TVPRA provides protections to individuals found to be UACs on arrival to the U.S., including Keily. The detention framework in the TVPRA requiring UACs be placed in the least restrictive environment available continues to apply even after individuals turn 18. For the foregoing reasons, this court must order Keily's immediate release, or at a minimum, a swift bond hearing where Keily may present evidence that she is neither a danger, nor a flight risk.

Date: February 13, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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