UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

BRAYAN JOSUE LOPEZ SARMIENTO; JHONATAN ALEX RODRIGUEZ ARGUETA; JOSUE ANTONIO RODRIGUEZ ARGUETA; WILSON EMANUEL ZELAYA CHAVARRIA, *on behalf of themselves and all others similarly situated,*

Petitioners-Plaintiffs,

v.

PAUL PERRY, *et al.*,

Respondents-Defendants.

PETITIONERS' REPLY TO FEDERAL RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS

Case No. 1:25-cv-01644

INTRODUCTION

In this case, like in countless others around the country, the government cannot justify its extreme attempt to expand its detention authority, which has no legal justification and represents a complete departure from decades of practice. Respondents' new mandatory detention policy, as applied to Petitioners, who were designated as unaccompanied minors and were on a pathway to lawful permanent residence through special immigrant juvenile status ("SIJS"), is especially cruel and unlawful, considering the broad protections afforded for such young people under federal anti-trafficking laws.

As Respondents themselves acknowledge, this Court and others have soundly rejected the government's attempt to misclassify people arrested inside the United States–people like Petitioners–as subject to mandatory detention under §1225(b)(2). *See e.g.*, *Luna Quispe v. Crawford*, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025) (Trenga, J.); *Quispe-Ardiles v. Noem*, 2025 WL 2783800 (E.D. Va. Sep. 30, 2025) (Nachmanoff, J); *Hasan v. Crawford*, 2025 WL 2682255

(E.D. Va. 2025) (Brinkema, J.); *see also Singh v. Bondi*, 1:25-cv-1525, Dkt. 8 (E.D. Va. Oct. 8, 2025) (Nachmanoff, J.); *Lopez-Sanabria v. Bondi*, 1:25-cv-1511, Dkt. 9 (E.D. Va. Oct. 3, 2025) (same); *Ortiz Ventura v. Noem*, 1:25-cv-1429, Dkt. 16 (E.D. Va. Oct. 2, 2025) (same); *Maldonado Merlos v. Noem*, 1:25-cv-1645, Dkt. 11 (E.D. Va. Oct. 9, 2025) (Brinkema, J.); *Guerra Leon v. Noem*, 1:25-cv-1634, Dkt. 12 (E.D. Va. Oct. 8) (same); *Perez Bibiano v. Lyons*, 1:25-cv-1590, Dkt. 8 (E.D. Va. Oct. 2, 2025) (same); *Diaz Gonzalez v. Lyons*, 1:25-cv-1583, Dkt. 8 (E.D. Va. Oct. 1, 2025) (same); *Gomez Alonzo v. Lyons*, 1:25-cv-1587, Dkt. 16 (E.D. Va. Oct. 1, 2025) (same); *Vargas Nunez v. Lyons*, 1:25-cv-1574, Dkt. 10 (E.D. Va. Oct. 1, 2025) (same).

As federal courts across the country overwhelmingly agree[1], Respondent's policy of categorically excluding people who entered without inspection, like Petitioners, from bond eligibility is unlawful. This case is no different, and therefore, this Court should issue Petitioners' release or require that the government provide them with bond hearings under §1226(a).

[1] *See e.g., Reyes v. Lyons*, No. C25-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Mosqueda et al. v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Doe v. Moniz*, No. 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *J.O.F. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Orellana Juarez v. Moniz*, 2025 WL 1698600 (D. Mass. June 11, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

ARGUMENT

I. Petitioners' Detention is Governed by §1226(a), not §1225(b).

For decades, it has been recognized that the detention of people like Petitioners is governed by the discretionary detention provisions in 8 U.S.C. §1226(a), which applies to noncitizens apprehended while residing in the U.S. rather than at the border. *Abreu v. Crawford*, 2025 WL 51475, at *3 (E.D. Va. Jan. 8, 2025), *appeal dismissed,* 2025 WL 2604455 (4th Cir. Apr. 22, 2025) ("There is a statutory distinction between noncitizens who are detained ***upon arrival*** into the United States and those who are detained after they have ***already entered*** the country, legally or otherwise."); *Inspection and Expedited Removal of Aliens*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). These noncitizens, including those who are present without having been admitted or paroled (formerly referred to as noncitizens who entered without inspection) and considered inadmissible under 8 U.S.C. § 1182(a), are therefore eligible for release on bond by an immigration judge.

Section §1226(a) provides the "default rule" for the detention of those who, like Petitioners, are "already present in the United States." *Jennings*, 583 U.S. at 288–89. Section 1226(a) states that, "[e]xcept as provided in subsection (c)," detained noncitizens may be released on bond pending a decision in their removal proceedings. 8 U.S.C. § 1226(a). Under Respondents' new policy, however, all persons "present in the United States without being admitted or paroled" and charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) must instead be detained under § 1225(b)(2). *See* ECF 12 at 15-16. This policy relies on a statutory interpretation that entirely ignores the plain language of §1226, and Respondents offer a series of arguments that contravene this plain language and the overall statutory scheme providing for civil detention of noncitizens.

At the outset, this Court and others have rejected the Respondents' overbroad interpretation of the term "applicant for admission," upon which their entire argument rests. Respondents'

interpretation runs afoul of basic principles of grammar and statutory construction. As this Court has explained:

> "The term 'application for admission' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa." As this Court has previously recognized, this definition, when read together with the present tense formulation of § 1225(b)(2)(A), requiring a determination by the immigration officer that "an alien seeking admission is not clearly and beyond a doubt entitled to be admitted," 8 U.S.C. § 1225(b)(2)(A), brings within its scope only those individuals actively seeking admission into the country, and not those that have already entered the county (albeit unlawfully). Indeed, as Respondents recognize, other federal courts around the country have found that in order to be detained under § 1225(b)(2), applicants for admission must be actively "seeking admission" and not be just "present" in the U.S.

Luna Quispe, 2025 WL 2783799, at *5. (citations omitted) (cleaned up).

Respondents cite *Jimenez-Rodriguez v. Garland*, which they suggest, casts doubt on the Court's interpretation of "seeking admission." ECF 12 at 13; 996 F.3d 190 (4th Cir. 2021). However, the Fourth Circuit does not address the detention provisions at issue in its analysis of whether an immigration judge has the authority to issue a waiver for inadmissibility under 8 U.S.C. §1182(d)(3)(A)(ii) to a person actively seeking a U visa during removal proceedings. *Id.* "The mere fact that the *Jimenez* court interpreted the phrase 'seeking admission' does not require its holding to apply to other provisions of the INA, nor does it invalidate the contrary interpretations of *Luna-Quispe* or the numerous district courts that have previously decided this issue." *Gurveer Singh, v. Todd M. Lyons* No. 1:25-CV-01606-AJT-WBP, 2025 WL 2932635, at *2 (E.D. Va. Oct. 14, 2025)[2]

[2] Respondents' reliance on *Lopez-Sorto v. Garland,* 103 F.4th 242, 251 (4th Cir. 2024), is similarly unavailing as it is inapplicable to the issues in this case. ECF 12 at 11-12. There, the Fourth Circuit considered whether a deferral of removal can be reinstated after removal has already been effectuated and whether the appellant could be "lawfully admitted," under 8 U.S.C. §1182(a). The Court declined to consider whether the appellant "might establish physical presence in the country through improper entry" because such a violation would not render the appeal moot. The case neither mentions "seeking admission" nor the detention provisions at issue here. *Id.*

Second, Respondents do not contest that the references in § 1226 to inadmissible persons necessarily mean the statute covers persons who have not been admitted and are charged as inadmissible in removal proceedings. Nor could they: the statute explicitly states that removal proceedings determine deportability for those previously admitted, and inadmissibility for those not admitted. *See* 8 U.S.C. § 1229a(a)(3), (e)(2). The most natural reading of the statute, then, is that § 1226 covers noncitizens like Petitioners – those present in the United States who have not been admitted and are alleged to be inadmissible because, for example, they entered the country without inspection.

Third, § 1226 provides for discretionary detention of noncitizens, but then contains certain exceptions for classes of people subject to mandatory detention. For example, subsection (c) specifically exempts from § 1226(a)'s default rule individuals who are "inadmissible under paragraph (6)(A) . . . of section 1182(a)"—i.e., those who entered the U.S. without admission or parole, and who also have been arrested for, charged with, or convicted of certain crimes. *Compare id.* § 1226(c)(1)(E), with *id.* § 1182(a)(6)(A). The statute also identifies certain other classes of inadmissible noncitizens. *See id.* § 1226(c)(1)(A), (D). These references demonstrate the clear intent and understanding that § 1226(a) covers inadmissible persons like Petitioners. This is because "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1256–57 (W.D. Wash. 2025) (*citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

But under Respondents' argument, §1225(b)'s mandatory detention provisions apply to all persons who have not been admitted in the United States, rendering the mandatory detention

provisions of §1226 that apply to certain categories of inadmissible people, such as 1226(c)(1)(A), (D), and (E), redundant. *See* ECF 12 at 15. Clearly, "mandatory detention under §1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to §1225(b)'s mandatory detention provisions." *Hasan*, 2025 WL 2682255, at *8. It would make little sense for Congress in enacting the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996 to mandate the detention of an entire group of noncitizens and, at the same time, also include more specific provisions that impose mandatory detention on a subset of the very same group. But under Respondents' view, this is exactly what Congress did.

Fourth, Respondents' new interpretation of §1226(a) also contradicts Congress's clear understanding of the statutory framework, which is reflected in the recently-enacted Laken Riley Act ("LRA")—a new statute that expressly contemplates that people who entered without inspection are subject to discretionary detention under § 1226. *Lopez-Campos v. Raycraft*, --- F.Supp.3d ----, No. 2:25-cv-12486, 2025 WL 2496379, *8 (E.D. Mich. Aug. 29, 2025) (If "Congress had intended for [§] 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently" enacted new mandatory detention provisions denying bond eligibility to those previously eligible under §1226(a)). Under Respondents' view, Congress merely duplicated an existing mandatory detention authority for people already subject to mandatory detention, making those provisions entirely redundant. But statutory amendments are presumed to "have real and substantial effect." *Ross v. Blake*, 578 U.S. 632, 642 (2016) (citation omitted). And while limited redundancy may occasionally occur, it is also a "cardinal rule of statutory interpretation that no provision should be construed to be entirely redundant." *Dorsey Trailers, Inc. v. N.L.R.B.*, 233 F.3d 831, 843 (4th Cir. 2000) (citation omitted). Respondents offer no real support for their interpretation of § 1226, but instead rely on what amounts to a "naked

policy appeal[]." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 680 (2020). Specifically, Respondents assert that applying § 1226(a) to those who enter without inspection and have since resided here places them in a better position than those who are arrested at a port of entry. ECF 12 at 10. But such "policy preferences are not a source of . . . statutory authority," *ACA Connects v. Bonta*, 24 F.4th 1233, 1243 (9th Cir. 2022), and courts "[can]not alter the text in order to satisfy the policy preferences of the [agency]," *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 462 (2002).

Moreover, Petitioners' position is entirely consistent with Congress's stated intent, and Respondents' reliance on *Thuraissigiam* and caselaw addressing the constitutional right to admission of noncitizens apprehended immediately upon entry is misplaced. *See* ECF 12 at 21-24. In passing IIRIRA, Congress focused on the perceived problem of recent arrivals to the U.S. who do not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at 157–58, 228–29 (1996); H.R. Rep. No. 104-828, at 209 (1996) (Conf. Rep.). Those who are apprehended immediately upon entering are treated as being on the "threshold" of entry and subject to mandatory detention, placing them on the very same footing as other arriving noncitizens. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020). Furthermore, this aligns with Congress's explanation that the new § 1226(a) in IIRIRA preserved "the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same). Respondents' view disregards this important history.

Accordingly, cases concerning the rights of people who are apprehended at the border or immediately after entry to challenge their admission or removal have no application to this case. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953) (noncitizen held on Ellis Island who represented security risk to the United States); *Kaplan v. Tod*, 267 U.S. 228 (1925)

(noncitizen who was stopped at border, issued an exclusion order, and who was allowed to reside until her deportation could be effectuated). In contrast to these cases, Petitioners were all unaccompanied minors who came to the United States years ago. Petitioners were afforded the protections of the Trafficking Victims Protection Reauthorization Act ("TVPRA"), which governed their initial apprehensions. *See* 6 U.S.C. §1232. As such, the Department of Homeland Security (DHS) did *not* have "the discretion to choose between processing [them] for expedited removal under 1225(b)(1)" and was required to placed them in standard removal proceedings under 8 U.S.C. 1229a. 6 U.S.C. §1232(a)(D)(i); *see also* ECF 12 at 9 n.12. After their initial apprehension, the government released them to sponsors within the United States and they pursued "permanent protections" to lawful permanent residency through SIJS. ECF 4 ¶¶50, 60, 71; 6 U.S.C. §1232(d). The government's subsequent re-detention of Petitioners follows years of lawful presence in the United States.[3] These are very different facts from those present in *Thuraissigiam*, rendering that case inapplicable here.

Finally, Respondents make the troubling argument that the Due Process Clause provides no protection against *unlawful detention* to noncitizens who have long resided here. ECF 12 at 20-22. The very cases Respondents cite make clear that with respect to detention, "once a[] [noncitizen] enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mezei*, 345 U.S. at 212 (acknowledging those who enter "illegally" are entitled to due process).

[3] *See* 8 U.S.C. §§1182(a)(9)(B)(iii)(I), 1255(h) (waiving of grounds of inadmissibility for special immigrant juveniles).

Respondents have not provided any special justification to warrant Petitioners' continued detention without bond. And "[a]ny interest that the federal respondents may have in securing [Petitioners'] presences at immigration proceedings [would] be[] accounted for by the IJ's imposition of bond." *Hasan*, 2025 WL 2682255, at *10; *see also Leal-Hernandez*, 2025 WL 2430025, at *13 (concluding that any flight risk concerns were accounted for by the IJ's imposition of a $10,000 bond on the petitioner's release); *Herrera v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792, at *12 (D. Nev. Sept. 5, 2025) (finding that respondents had not articulated "*any* interest—let alone a compelling interest" to justify the petitioner's continued detention through the automatic stay regulation); *Ardiles v. Noem*, 2025 WL 2783800, at *8 (E.D. Va. Sep. 30, 2025)(finding that petitioner's detention was "the precise kind of arbitrary detention that the Due Process Clause guard against.").

II. Petitioners' Unaccompanied Minor Designations Require that their Re-detention be Governed by §1226(a).

Beyond the fact that Respondents' no-bond policy is unlawful generally, there are additional reasons that it is unlawful specifically as applied to Petitioners and others who were designated as unaccompanied minors. Unaccompanied minors are afforded additional protections under federal law. Once a child is designated as an unaccompanied minor, their detention, custody, and release into the United States is governed by the Homeland Security Act ("HSA"), 6 U.S.C. §279, and the TVPRA, 8 U.S.C. §1232. Under the TVPRA, the Department of Health and Human Services ("HHS') is responsible for all placement decisions for unaccompanied minors in its custody, and for conducting suitability assessments pertaining to those placements. *Id.* §1232(c). It requires that unaccompanied minors in HHS custody be "promptly placed in the least restrictive setting that is in the best interest of the child," subject to considerations of danger to self, danger to community, and risk of flight. *Id.*

In 1997, the United States entered into the Flores Settlement Agreement, which established a "nationwide policy for the detention, release, and treatment of minors in the custody of the INS." *Flores v. Sessions*, 862 F.3d 863, 866 (9th Cir. 2017). The Flores Settlement Agreement set minimum standards for the detention, housing, and release of non-citizen juveniles who were detained by the government and obliged the government to pursue a "general policy favoring release" of such juveniles. *Id.* The settlement also provided that minors in deportation proceedings would be afforded a bond redetermination hearing before an immigration judge. *Id.*

"The overarching purpose of the HSA and TVPRA was quite clearly to give unaccompanied minors more protection, not less." *Flores*, 862 F.3d at 880. Petitioners were all unaccompanied minors, subject to the protections of HSA, TVPRA, and the Flores Settlement Agreement. While in HHS custody, they were afforded "special treatment under the our immigration laws and policies" representing Congressional intent to protect them as children who "have been abandoned, are fleeing persecution, or are escaping abusive situations at home[]" by providing "comprehensive services to address the special needs of newcomer children ... tailored to address the[ir] cultural, linguistic, legal, and developmental needs." 148 Cong. Rec. S8180 (daily ed. September 4, 2002). With these protections, Congress gave unaccompanied minors, like Petitioners, the ability to develop "substantial connections with this country" for which constitutional protections attach. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990); *see also Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 n.5(1953) ("The [noncitizen], to whom the United States has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society.")

The implication of Respondents' arguments is that unaccompanied minors become subject to redetention—at any time for any reason—under §1225(b)(2)(A) on the day they turn 18.

However, if unaccompanied minors are considered to be "seeking admission" "on the day they turn eighteen, subjecting them to rearrest and near-indefinite detention, then Section § 1232 (c)(2)(B) of the TVPRA would lose the force of law." *Lopez v. Sessions*, 2018 WL 2932726, at *13 (S.D.N.Y. June 12, 2018). Adopting Respondents' arguments as applied to unaccompanied minors like Petitioners, released from government custody after being found neither dangerous nor a flight risk, would put them "on equal due process footing as immigrants arriving at the border." *Id.*

As the Ninth Circuit noted in upholding the right to a bond hearing for unaccompanied minors, "[n]owhere does the legislative history of the HSA [or TVPRA] suggest that, in providing such services, Congress intended to reduce the rights already granted to unaccompanied minors." *Flores*, 862 F.3d at 880. Subjecting unaccompanied minors to §1225 detention is clearly in direct conflict with Congressional intent, constitutional due process, and common sense.

III. As Special Immigrant Juveniles, Petitioners Cannot be Detained Under §1225(b)

For similar reasons, Respondents' no-bond as applied to Petitioners who have applied for or obtained SIJS also violates the Due Process Clause.

In 1990, Congress established SIJS "to protect abused, neglected or abandoned children who ... illegally entered the United States...." *Osorio-Martinez v. Att'y Gen. United States of Am.*, 893 F.3d 153, 163 (3d Cir. 2018) (internal quotation marks and citations omitted). In creating SIJS, Congress included in the INA certain protections against removal for this class of young immigrants. *See* 8 U.S.C. § 1227(c) (certain grounds for deportation "shall not apply to a special immigrant described in section 101(a)(27)(J) based upon circumstances that existed before the date the alien was provided such special immigrant status."). Accordingly, although a juvenile with SIJS can be removed on certain grounds, such as having been convicted of a serious criminal offense, they cannot be removed for having entered the country illegally. *See id.*

To obtain SIJS, a noncitizen child must meet a set of rigorous, congressionally defined eligibility criteria, including that a juvenile court find it would not be in the child's best interest to return to their country of nationality and that they cannot be reunified with one or both of parents because of abuse, abandonment, neglect or similar basis under state law. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

"Once attained, SIJ[S] classification conveys a host of important benefits." *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 659 (E.D. Va. 2020) (explaining that "the INA automatically exempts SIJ[S] designees from a set of generally applicable grounds of inadmissibility and provides that other grounds of inadmissibility also may be waived at the Attorney General's discretion"). "Additionally, Congress has granted SIJ[S] designees various forms of support within the United States, such as access to federally funded educational programming and preferential status when seeking employment-based visas." *Id.* (citing 8 U.S.C. §§ 1232(d)(4)(A), 1153(b)(4)). These benefits reflect Congress' intent "to assist a limited group of abused children to remain safely in the country ... as a ward of the United States with the approval of both state and federal authorities." *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 918 (E.D. Va. 2024) (citing *Osorio-Martinez*, 893 F.3d at 168).

Like unaccompanied minors, "Congress also afforded these [noncitizens] 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." *Id*; 8 U.S.C. § 1155; 8 C.F.R. § 205.2; 7 USCIS Policy Manual, pt. F, ch. 7 (Mar. 21, 2018).

In *Rodriguez v. Perry*, the Court granted the habeas petition of a noncitizen who was initially designated as an "arriving [noncitizen]" subject to §1225(b)(2), finding that his SIJS "converted him from being an arriving [noncitizen] to an [noncitizen] present in the United States"

entitled to a bond hearing under §1226(a). 747 F. Supp. 3d 911, 916 (E.D. Va. 2024). In finding that the petitioner was entitled to a bond hearing under the Due Process clause, the Court relied on the Third Circuit's reasoning in *Osorio-Martinez*, explaining that "SIJ designees enjoy at least minimum due process rights by virtue of their status, and that their statutory rights and attendant constitutional rights ... bespeak a substantial legal relationship between them and the United States that distinguishes them from arriving [noncitizens] who cannot lay claim to constitutional rights. *Rodriguez*, 747 F. Supp. 3d at 918 (cleaned up) (citations omitted). As this Court noted, *Rodriguez v. Perry,* has since been "clarified that its opinion should not be read to hold that section 1226(a) applies *only* to individuals with lawful status, and such an interpretation lacks both statutory and precedential basis." *Luna Quispe*, 2025 WL 2783799, at *5 (emphasis added) (*citing Hasan*, 2025 WL 2682255, at *6).

Like the Petitioner in *Rodriguez v. Perry,* Petitioners Brayan Lopez Sarmiento, Jhonatan Rodriguez Argueta, and Wilson Zelaya Chavarria have been granted SIJS, and Josue Rodriguez Argueta's application is pending. They have all met "a set of rigorous, congressionally defined eligibility criteria, including that a juvenile court [found] it would not be in the [their] interest to return to [their] country of nationality and that [they] cannot be reunified with one or both of parents because of abuse, abandonment, neglect or similar basis under state law." *Rodriguez v. Perry*, 747 F. Supp. 3d at 917 (citing 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c)). Because of the protections afforded to them under the TVPRA, Petitioners have "a substantial legal relationship between them and the United States" entitling them to prompt individualized bond hearings under §1226(a).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant the writ and order Petitioners' release, or in the alternative set aside Petitioners' denials of bond and order Respondents to promptly provide new bond hearings pursuant to 8 U.S.C. §1226(a). Additionally, should Petitioners be released, prohibit Respondents from re-detaining Petitioners absent changed circumstances and without prior notice to counsel and this Court.

Dated: October 16, 2025

Respectfully submitted,

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