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

BRAYAN JOSUE LOPEZ SARMIENTO; JHONATAN ALEX RODRIGUEZ ARGUETA; JOSUE ANTONIO RODRIGUEZ ARGUETA; AXEL EDUARDO MARTINEZ UCLES, on behalf of themselves and all others similarly situated,

Petitioners-Plaintiffs,

v.

PAUL PERRY, *et al.*

Respondents-Defendants.

Case No. 1:25-cv-01644

OPPOSITION BRIEF IN RESPONSE TO RESPONDENTS-DEFENDANTS' RULE 12(b)(1) MOTION TO DISMISS AND REPLY BRIEF IN SUPPORT OF PLAINTIFFS-PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION

This case challenges a sweeping and unlawful shift in the Government's immigration detention policies and practices—one that strips unaccompanied minors and Special Immigrant Juvenile ("SIJ") recipients of statutory and constitutional protections. Under a new nationwide policy, Respondents now subject these vulnerable individuals to mandatory detention, deny them an opportunity for a hearing before their liberty and ability to work is seized by the Government, rescind previously granted deferred action and work authorization without notice, and expose them to summary removal—often years after the Government itself determined that they posed no danger or flight risk and released them into the community. That policy contravenes the Immigration and Nationality Act ("INA"), violates the Administrative Procedure Act ("APA"), and offends the Fifth Amendment's guarantee of due process.

This Court has already recognized as much. In granting habeas relief and a temporary restraining order, the Court held that Respondents' mandatory detention regime violates the INA

and its implementing regulations, that the rescission of SIJ-based deferred action is arbitrary and capricious, and that re-detaining individuals previously released from custody without pre-deprivation process violates procedural due process. *See* Dkt. No. 54.

Respondents now return with repackaged arguments—asserting that this Court lacks jurisdiction, that the case has somehow become moot because Petitioners successfully obtained emergency relief, and that Petitioners' claims are too speculative for this Court to review. Those arguments fare no better now than they did before. Courts—including this one—have repeatedly rejected precisely the theory Respondents advance: that because Petitioners challenge the constitutional and legality of policies implicating the immigration laws, the Government may evade judicial review.

For the same reasons that compelled emergency relief for the named Petitioners, the putative classes are entitled to class-wide relief. Absent that relief, class members remain subject to re-arrest and re-detention without pre-deprivation hearings, mandatory detention once detained, the loss of SIJ-based deferred action and employment authorization, and exposure to unlawful removal procedures. Because all members of the putative classes are likely to succeed on the merits, the Court should deny Respondents' motion to dismiss and grant Plaintiffs' motion for a preliminary injunction.

BACKGROUND

I. Factual Background

Respondents' immediate mandatory detention of unaccompanied minors and Special Immigrant Juvenile status ("SIJS") designees implicates the following statutory and regulatory framework.

a. Special Treatment of Unaccompanied Minors and SIJS Designees

Federal law recognizes that "unaccompanied minors"—noncitizen children who enter the country without a parent or other legal guardian—deserve special protection. If the Government seeks to place unaccompanied minors in custody, it must select the "least restrictive setting"—including "release . . . from its custody"—after considering their dangerousness and flight risk. 8 U.S.C. § 1232(c)(2)(A); 45 C.F.R. § 410.1201. The Government cannot deny an unaccompanied minor's asylum application on certain grounds, including on the basis of an "asylum cooperative agreement" ("ACA") entered pursuant to the "safe third country" provision of 8 U.S.C. § 1158(a)(2)(A). *See* 8 U.S.C. § 1158(a)(2)(E). And if the Government seeks to remove unaccompanied minors from the country, it cannot do so unless it affords them due process. *See* 8 U.S.C. § 1232(a)(5)(D) (prescribing statutory procedures). In short, federal law promises unaccompanied minors significant procedural protections as the Government processes their immigration case. Those protections remain intact even when unaccompanied minors reach the age of majority. *See Maldonado v. Olson*, 795 F. Supp. 3d 1134, 1153 (D. Minn. 2025).

Protection is even more robust for unaccompanied minors whose experiences with abuse, neglect, or abandonment justify Special Immigrant Juvenile Status (SIJS). *See Osorio-Martinez v. Att'y Gen. U.S.*, 893 F.3d 153, 163 (3d Cir. 2018). Considered "ward[s] of the United States," *id.*, SIJS designees receive affirmative benefits: Congress has granted them various forms of educational and occupational support, *see Joshua M. v. Barr*, 439 F. Supp. 3d 632, 659 (E.D. Va. 2020), and it has been DHS's standard practice to provide them with deferred action and employment authorization, *see* USCIS, *Policy Alert PA-2022-10: Special Immigrant Juvenile Classification and Deferred Action* (Mar. 7, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf. Moreover, they are deemed "paroled into the [U.S.]," 8 U.S.C.

§ 1255(h), and exempted from certain inadmissibility grounds, including presence without admission and a lack of valid entry documents, 8 U.S.C. § 1182(a)(6)(A)(i); *id.* § 1182(a)(7)(A)(i)(I).[1] SIJS designees also receive certain protections: while they can be removed on certain grounds, such as having been convicted for a serious offense, they cannot be removed simply for having entered the country. *See* 8 U.S.C. § 1227(c).

Absent a basis for automatic revocation, 8 C.F.R. § 204.11(j)(1), the Government cannot deprive a noncitizen of SIJS without "good and sufficient cause" pursuant to 8 C.F.R. § 205.2. Under that provision, the Government must give the SIJS designee pre-revocation notice, an opportunity to offer evidence, and an opportunity to oppose the grounds alleged for revocation. *Id.* § 205.2(b). Even if the Government ultimately revokes SIJS, it must provide the designee with a written explanation and a window to appeal. *Id.* § 205.2(c)–(d).

b. Historical Availability of Pre-Detention Bond Hearings

For decades, Respondents recognized that a noncitizen detained after entering the country without inspection is entitled to consideration for release on bond. 8 U.S.C. § 1226(a); *see Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997). Under that longstanding interpretation, when ICE denied release on bond, a noncitizen could seek an individualized bond hearing before an immigration judge and explain that he is neither a flight risk nor a danger to the community. *See Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *9 (D. Md. Aug. 24, 2025). *See generally In re Guerra*, 24 I&N Dec. 37 (BIA 2006).

[1] As this Court has observed, these benefits—which endeavor to give SIJS designees a durable place in line while they seek lawful permanent resident status—call into question whether designees are removable at all. Dkt. No. 54, at 18 n.22.

Put differently, detention was non-mandatory—a noncitizen who entered without inspection could explain why the immigration system did not need to detain him while his case proceeds.

If a non-citizen was released, Respondents long acknowledged limitations on their authority to revoke an immigration bond and re-detain him. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Decades ago, the Board of Immigration Appeals (BIA) explained that "where a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance." *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). Consistent with that principle, ICE has "generally only re-arrest[ed] [non-citizens] . . . after a material change in circumstances." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia ex rel. A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

c. Respondents' New Immediate Mandatory Detention Policy

Respondents have now reversed course, adopting a sweeping, indiscriminate, mandatory detention policy. Even though 8 C.F.R. §§ 236.1, 1236.1, and 1003.19 (noncitizens are entitled to a bond hearing at the outset of their detention) were not rescinded, DHS has effectively rescinded these regulations without going through the notice-and-comment process. Specifically, in 2025, DHS, through its component ICE, established a nationwide policy claiming that all persons who entered the country without inspection shall be deemed subject to immediate mandatory detention under 8 U.S.C. § 1225(b)(2)(A). AILA, *ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission* (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. This nationwide policy aligned with novel BIA interpretations of federal law. *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Respondents' new policy and practices depart from its prior approach in a variety of ways. *First*, when the Government re-detains an unaccompanied minor or SIJS designee, it now does so

without advance notice, a showing of materially changed circumstances, or neutral review of the basis for detention. *Second*, when the Government detains noncitizens—including unaccompanied minors and SIJS designees, it now deems them ineligible for a bond hearing and the attendant opportunity for release while their immigration case is processed. *Third*, when the Government detains unaccompanied minors and SIJS designees, it routinely purports to strip them of their deferred action and deferred-action-based employment authorization. *Finally*, the Government now also seeks to summarily remove noncitizens, including noncitizens designated as unaccompanied minors and SIJS, pursuant to the "safe third country" provision of 8 U.S.C. § 1158(a)(2)(A) before hearing the merits of their claims for relief.

II. Procedural Background

In the summer of 2025, as a result of the Government's mandatory detention policy, Petitioners Brayan Josue Lopez Sarmiento, Jhonatan Alex Rodriguez Argueta, Josue Antonio Rodriguez Argueta, and Axel Eduardo Martinez Ucles were subjected to immediate immigration detention. Each petitioner had entered the United States as an unaccompanied minor, had been released to a sponsor by the Office of Refugee Resettlement ("ORR"), and either was awaiting adjudication of SIJS or had already been granted SIJS along with deferred action and employment authorization. Notwithstanding that status, and without prior notice or a pre-deprivation hearing, the Government re-detained Petitioners and charged them under 8 U.S.C. § 1182(a)(6)(A)(i) as noncitizens present without admission or parole and/or under § 1182(a)(7)(A)(i)(I) as applicants for admission without valid entry documents. In addition to the loss of physical liberty, the Government also stripped Axel, Brayan, and Jhonatan[2] of their SIJ-based attendant benefits:

[2] After his release from detention, officials at Farmville Detention Center refused to return Jhonatan's employment authorization card along with the rest of his property. He has received no formal notice, however, revoking his deferred action or employment authorization. (Dkt. No. 27-1 at 11 n.2).

notably their deferred action and/or employment authorization, without providing any basis for doing so.

The Government's actions described above led Brayan, Jhonatan and Josue to commence this lawsuit and putative class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), or alternatively as a representative habeas petition. Petitioners alleged that their detention without the opportunity for release on bond violated the Immigration and Nationality Act ("INA") (Count I), the applicable bond regulations (Count II), the Administrative Procedure Act ("APA") (Count III), and the Fifth Amendment's guarantee of substantive due process (Count IV). Dkt. Nos. 1-1, 4.

On November 5, 2025, this Court granted habeas relief, holding that the Government's no-bond policy violated the INA and its implementing regulations because Petitioners were entitled to individualized bond hearings under 8 U.S.C. § 1226(a). Dkt. No. 16. The Court ordered the Government to provide such hearings, and each of the three original Petitioners was subsequently granted bond and released from custody. *Id.*

Following the initial grant of habeas relief, Petitioners filed a Second Amended Complaint ("SAC") adding Axel and asserting additional claims. Dkt. No. 18-1 (hereinafter "SAC"). Petitioners also refined the two putative classes: one consisting of unaccompanied minors and another consisting of individuals who have obtained or will obtain SIJ status at the time of detention. *Id.* The SAC alleged that unlawful denial of bond violated the INA, its accompanying regulations, the APA, and substantive due process under the Fifth Amendment (Counts I, II, III and IV). Petitioners also challenged the Government's policy of re-arresting and re-detaining unaccompanied minors and SIJ recipients without first demonstrating changed circumstances by clear and convincing evidence, as violations of both procedural due process (Count V) and the APA (Count VI). Additionally, Petitioners asserted that the Government's rescission of deferred

action and employment authorization of putative SIJS class members violated the APA (Count III) and procedural due process under the Fifth Amendment (Count V). Finally, Petitioners asserted that the Government's policy of summarily ordering removal of putative SIJS class members under the safe third country provisions violated the APA and the Fifth Amendment's Due Process Clause (Counts VII and VIII).

Petitioners subsequently moved for a preliminary injunction on certain claims as to the named Petitioners and proposed classes, as well as a temporary restraining order ("TRO") on behalf of Axel. Dkt. No. 27. This Court granted the TRO as to Axel, finding that he was likely to succeed on the merits of his claims. Specifically, the Court concluded that Axel was likely to prevail on his claim that Respondents' rescission of his SIJ-based deferred action was arbitrary and capricious under the APA and violated procedural due process because deferred action and its attendant benefits conferred a protected property and liberty interest that had been deprived without due process. Dkt. No. 54. The Court further held that Axel was likely to succeed on his procedural due process claim challenging his re-detention, concluding that once Axel had been released as an unaccompanied minor and subsequently granted SIJ status, he possessed a protected liberty interest, and that the *Mathews* factors demonstrated he has the right to a pre-deprivation hearing. *Id.* This Court ordered his immediate release and enjoined the Government from re-detaining him absent a showing of changed circumstances.

Remaining before the Court now are the following requests for relief in Petitioners' Motion for Preliminary Injunction:

- Count III (Respondents' no-bond policy) – preliminary relief under the APA as to both putative classes;

- Counts V and VI (re-arrest and re-detention without pre-deprivation process) – preliminary relief under the APA and preliminary injunctive relief as to Brayan, Jhonatan and Josue and the putative unaccompanied child class;
- Count V (recission of deferred action and employment authorization without pre-deprivation process) - preliminary injunctive relief as to Brayan, Jhonatan, Josue and Axel and the putative SIJS class.

On January 23, 2026, Respondents filed a combined opposition to the Preliminary Injunction and Motion to Dismiss. *See* Dkt. No. 56. As to the Motion to Dismiss, Respondents raise only jurisdictional arguments and do not move to dismiss any of Petitioners' claims on the basis that the SAC fails to state a claim.

LEGAL STANDARD

I. Federal Rule of Civil Procedure 12(b)(1)

A motion to dismiss for lack of subject matter jurisdiction is governed by Federal Rule of Civil Procedure 12(b)(1). Motions may be brought as either a facial challenge or a factual challenge to a plaintiff's assertion of subject matter jurisdiction. *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). The plaintiff bears the burden of proving that subject matter jurisdiction exists in federal court. *See Robb Evans & Assocs., LLC v. Holibaugh*, 609 F.3d 359, 362 (4th Cir. 2010).

In a facial challenge, "the facts alleged in the complaint are taken as true, and the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Kerns*, 585 F.3d at 192. In a factual challenge, the movant may contend "that a complaint simply fails to allege facts upon which subject matter jurisdiction can be based." *Id.* (citing *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982)).

When analyzing a motion to dismiss for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), a court may consider "the factual allegations made in

the complaint" as well as "evidence outside of the pleadings." *Henry v. Appeal Div. of Med. Assistance*, No. 1:19-cv-01622, 2020 WL 9311953, at *2 (E.D. Va. Apr. 13, 2020) (citing *United States ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 348 (4th Cir. 2009)).

II. Preliminary Injunction

Petitioners are entitled to a preliminary injunction when (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm absent an injunction; (3) the balance of hardships tips in their favor; and (4) they can show that an injunction is in the public interest. *Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2023) (citing *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)). The last two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. This Court has Jurisdiction to Adjudicate Petitioners' Claims.

The Court has already considered and rejected the Government's arguments that it lacks jurisdiction to adjudicate Petitioners' claims. *See* Dkt. No. 54 at 6–7. Respondents' repackaged jurisdictional arguments should fail once again.[3]

a. Section 1252(f)(1) Does Not Deprive this Court of Subject-Matter Jurisdiction.

Having previously failed to persuade this Court it lacks jurisdiction on two other grounds, *id.*, the Government seeks out another statutory subsection, 8 U.S.C. § 1252(f)(1). Contrary to the Government's assertions however, Section 1252 does not affect the Court's ability to consider the merits of Petitioners' claims and is otherwise inapplicable to Petitioners' claims.

Section 1252(f)(1) generally prohibits lower courts from ordering federal officials to take or refrain from taking actions to enforce, implement, or otherwise carry out "the specified statutory

[3] Respondents ask the Court to incorporate its jurisdictional claims previously raised. Dkt. No. 56 at 12. Should the Court be inclined, Petitioners ask the same. *See* Dkt. No. 39-1 at 2-12.

provisions," other than on a case-by-case basis. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022). In particular, Section 1252(f)(1) "prohibits federal courts from granting classwide injunctive relief against the operation of §§ 1221–1232." *Jennings v. Rodriguez*, 583 U.S. 281, 313 (2018) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999)). The limitation on injunctive relief is cabined to only those sections of the statute.

Although Section 1252(f)(1) "withdraws a district court's jurisdiction or authority to grant a particular form of relief [i]t does not deprive the lower courts of all subject matter jurisdiction over claims brought under sections 1221 through 1232 of the INA." *Biden v. Texas*, 597 U.S. 785, 798 (2022) (citation modified). The Supreme Court differentiated between Section 1252(f)(1)'s remedial bar which "deprives courts of the power to issue a specific category of remedies: those that enjoin or restrain the operation of the relevant sections of the statute" and a "limitation on subject matter jurisdiction" when it concluded that "Section 1252(f)(1) bears no indication that lower courts lack power to hear any claim brought under sections 1221 through 1232." *Id.* The Government's citation to *Miranda v. Garland* proves the point, since there the Fourth Circuit decision "enjoined or restrained the process used to conduct § 1226(a) bond hearings." 34 F.4th 338, 346 (4th Cir. 2022). Nothing like that is at issue in this motion.

Further, 1252(f)(1) has limited relevance to Petitioners' class claims, because it does not bar either declaratory or APA relief. First, "[t]he Supreme Court has specifically held that Section 1252(f) does not bar declaratory relief." *Make the Road N.Y. v. Wolf*, 962 F.3d 612, 635 (D.C. Cir. 2020) (citing *Nielsen v. Preap*, 586 U.S. 392, 402 (2019)). And regarding APA vacatur, the Supreme Court has described Section 1252(f)(1) as "nothing more or less than a limit on injunctive relief." *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 481. Reiterating this sentiment more recently, it noted that the title of the provision—"Limit on injunctive relief"—clarified the

"narrowness of its scope." *Biden v. Texas*, 597 U.S. at 786; *see also Nken*, 556 U.S. at 428–29 (distinguishing injunctive relief from a permissible stay which "simply suspend[s] judicial alteration of the status quo." (citation omitted)). As such, courts have found that "[e]xtending *Aleman Gonzalez* to vacatur is particularly dubious in light of the Court's caveats." *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) (per curiam).

Here, Petitioner's class-wide claims seek: declaratory relief on Count I and IV (Respondents' immediate mandatory detention policy violates the INA and due process); APA vacatur on Count II (Respondents' unlawful adoption of its immediate mandatory detention policy); APA vacatur on Count III (Respondents' no-bond policy is arbitrary and capricious); injunctive and declaratory relief on Count V (Respondents' re-arrest and re-detention of class members and rescission of deferred action and employment authorization violates Due Process); APA vacatur on Count VI (Respondents' re-arrest and re-detention of class members violates the Accardi doctrine); injunctive, declaratory and APA vacatur on Counts VII and VIII (Respondents' policy of summarily removing class members violates the APA and Due Process). *See* SAC at 28–38. Section 1252(f)(1) does not reach the majority of Petitioners' claims that seek declaratory or APA relief. The few claims that do seek injunctive relief do not implicate section 1252(f)(1) because they do not challenge the operation of Sections 1221 through 1232.

Specifically, Count V challenges the Respondents' policy of re-detaining previously released unaccompanied minors without first providing a pre-deprivation process. It neither challenges the release or detention provisions of the TVPRA, 8 U.S.C. § 1232, nor the general arrest authority under 8 U.S.C. § 1226(a)–(b). Neither of these authorities nor any provision of the INA contemplates the re-arrest of previously released unaccompanied minors. Therefore, Petitioners' challenge to legality of Respondents' re-detention policies "could not run afoul of

§1252(f)(1) because such policies are not . . . even codified in the statutory provisions that §1252(f)(1) encompasses." *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 813 (9th Cir. 2020). While 8 U.S.C. §1226(b) which authorizes the Attorney General to "revoke a bond or parole authorized under subsection (a)," and "rearrest [a noncitizen] under the original warrant," contemplates the Government's re-arrest authority, it is inapplicable to unaccompanied minor class members previously released from ORR custody. That is because the release of unaccompanied minors is neither parole nor release on bond. *See* 45 C.F.R. § 410.1201 (ORR's release criteria, prohibiting the "release [of] unaccompanied children on their own recognizance"). Therefore, to apply section 1252(f)(1) here, "would [require] the Court go beyond the plain meaning of the statute to imply a bar to actions that collaterally impact covered parts of the INA." *D.V.D. v. U.S. Dep't of Homeland Sec.*, 778 F. Supp. 3d 355, 379 (D. Mass. 2025), *opinion clarified*, 2025 WL 1323697 (D. Mass. May 7, 2025), *and opinion clarified*, 2025 WL 1453640 (D. Mass. May 21, 2025), *reconsideration denied, sub nom. D.V.D v. U.S. Dep't of Homeland Sec.*, 786 F. Supp. 3d 223 (D. Mass. 2025).

Similarly, Counts VII and VIII challenging the operation of the asylum provision do not implicate 1252(f)(1) because they deal with 8 U.S.C. §1158(a)(2), which is not one of the covered statutes. Courts have routinely rejected the Government's arguments that "*Aleman Gonzalez* prohibits injunctions of uncovered statutes that 'in the Government's view' impact its ability to enforce the covered sections listed in § 1252(f)(1)." *Texas v. U.S. Dep't of Homeland Sec.*, 123 F.4th 186, 210 (5th Cir. 2024). *See e.g.*, *O.A. v. Trump*, 404 F. Supp. 3d 109, 158 (D.D.C. 2019) (holding that section 1252(f)(1) does not bar an injunction based on 8 U.S.C. § 1158(b)(1) since it is not a covered provision), *appeal dismissed sub nom. O.A. v. Biden*, No. 19-5272, 2023 WL 7228024 (Nov 1, 2023); *Doe v. Wolf*, 424 F. Supp. 3d 1028, 1044–45 (S.D. Cal. 2020) (finding

that section 1252(f)(1) did not bar class-wide injunctive relief with regards to access to counsel during non-refoulement interviews because the relief was not governed by Sections 1221–32); *Phila. Yearly Meeting of Religious Soc'y of Friends v. U.S. Dep't of Homeland Sec.*, 767 F. Supp. 3d 293, 319 (D. Md. 2025) ("Moreover, § 1252(f)(1) does not bar injunctions affecting DHS's authority pursuant to provisions of the INA outside of §§ 1221–1232 'simply because of collateral effects on a covered provision.'" (quoting *Al Otro Lado v. Exec. Off. of Immigr. Rev.*, 120 F.4th 606, 627 (9th Cir. 2024)). Where, as here, Petitioners seek an injunction against Respondents' unlawful practice of pretermitting SIJS class members' applications for asylum, withholding, and CAT relief under 8 U.S.C. § 1158(a)(2), because *inter alia* it conflicts with the special immigrant juvenile provision, 8 U.S.C. § 1101(a)(27)(J), such relief cannot reasonably cover the provisions enumerated in section 1252(f)(1).

b. Neither the Individual Petitioners' nor the Putative Classes' Claims are Moot.

Next, the Government argues that Petitioners' detention claims are moot as the Court has already granted habeas relief. Dkt. No. 56 at 10–12; *see also* Dkt. No. 16 (ordering a bond hearing under Section 1226(a) and its implementing regulation) and issued a TRO (enjoining the Government from detaining Axel absent a pre-deprivation hearing in which the Government establishes changed circumstances). Dkt. No. 54. This curious argument finds no basis in the case law and misconstrues the procedural posture of this case.[4]

[4] The Respondents do not attempt to argue that any of the claims raised in the Second Amended Complaint are moot as to the putative classes. Even if this Court were to determine that one or more of the individual Plaintiffs' claims were moot at this point, it should still deny Respondents' motion to dismiss because the claims at issue are "by their nature are so 'inherently transitory' that class claims remain justiciable even if the underlying individual claims become moot before the court can rule on class certification." *See J.E.C.M. by & Through His Next Friend Saravia v. Lloyd*, 352 F. Supp. 3d 559, 578 (E.D. Va. 2018) (citing *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980). "Where a named plaintiff's individual claim becomes moot before the district court has an opportunity to certify the class, the certification

At the outset, although the Court has ordered certain temporary relief—including bond hearings and the immediate release of one named Petitioner—it has not ordered *any* permanent relief at all. And it has issued no relief whatsoever for certain claims that apply to both the named Petitioners and one or both of the putative classes, including relief that would address the rescission of deferred action and employment authorization, or the use of summary removal proceedings and third-country removals, for example. Because the merits of certain claims and the scope of relief available to the named Petitioners and putative classes are live issues that the Court has not yet adjudicated, Petitioners' claims are not moot.

Respondents' compliance with the Court's orders granting preliminary relief do not render this case or any claims moot. Courts have rejected mootness claims advanced by the Government in similar circumstances, finding there would be "perverse incentives if compliance with a district court's order, while [litigating] that order, mooted the [claim]." *Miranda v. Garland*, 34 F.4th 338, 357 n.7 (4th Cir. 2022). Moreover, the TRO that this Court afforded Axel is temporary and applies only "during the pendency of a lawsuit." *See Miranda v. Garland*, 34 F.4th 338, 357 n.7 (4th Cir. 2022) (citing *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017)). Finding the Petitioners' claims moot would "transform success on a motion for a [TRO] to final relief." *Miranda v. Garland*, 34 F.4th 338, 357 n.7 (4th Cir. 2022). This the Court should not do.

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may 'relate back' to the filing of the complaint if other class members 'will continue to be subject to the challenged conduct . . . .'" *Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 325 (4th Cir. 2022) (citing *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013)). Courts of appeals throughout the country and courts in the Eastern District of Virginia have recognized and applied the inherently transitory exception to putative class claims. *See Jonathan R.*, 41 F.4th at 325–26 (collecting circuit cases); *J.E.C.M. by & Through His Next Friend Saravia v. Lloyd*, 352 F. Supp. 3d 559, 578 (E.D. Va. 2018) (recognizing that even where individual claims may have become moot, they will not moot class-based claims that are justiciable as "inherently transitory").

The series of district court cases cited by Respondents in support of their argument are inapposite here. *See* Dkt. No. 56 at 12–13. Each of these cases involves petitions for writs of mandamus compelling USCIS to adjudicate pending applications for immigration benefits such as asylum or adjustment of status. While the cases were pending, USCIS adjudicated each application. Thus, the cases were dismissed as moot, because the action the court was asked to compel had already been taken by the defendant without any court intervention. *See, e.g.*, *Tu v. Mayorkas*, No. 23-CV-3137 (PKC), 2024 WL 2111551, at *2 (E.D.N.Y. May 10, 2024). In this case, Petitioners seek declaratory, injunctive, and APA relief on behalf of themselves and putative classes. The Court has not issued final relief, nor have the Respondents changed their challenged practices or withdrawn the challenged policies. Therefore, the procedural posture of this case is very different than the postures of the cases cited by Respondents. Petitioners' claims remain live cases or controversies and are not moot simply by virtue of the preliminary relief already granted by this Court.

c. The Individual Petitioners' and the Putative Classes' Claims are Ripe for Adjudication.

Respondents further argue Counts VII and VIII fail on standing and ripeness grounds because Petitioners are improperly seeking to challenge their removal orders before they are ordered removed to a third country. Once again, the Government misunderstands Petitioners' claims.

Petitioners are not challenging their removals, but rather the lawfulness of DHS policies and procedures which deny SIJS and unaccompanied minors standard removal proceedings that apply when seeking relief from deportation either to their home countries or to an alternative third country. *See* SAC ¶¶ 135–138. The Government has filed motions in immigration courts to

pretermit applications for asylum and withholding of removal by claiming that removal to a third country with an ACA obviates the need to provide a pre-deprivation hearing prior to removal. *See* SAC ¶¶ 51–52. However, unaccompanied minors cannot be removed to a third country unless the Government affords them due process first. *See* 8 U.S.C. § 1232(a)(5)(D). Because no such process has been provided, these policies and procedures violate both the APA and due process.

There is nothing speculative about Petitioners' injury or entitlement to relief under these claims. The allegations in the SAC—which Defendants provide no basis to dispute, and must therefore be taken as true—establish Petitioners have suffered ripe injuries-in-fact. *See* SAC ¶¶ 70, 136, 137 (alleging that the Government has sought to summarily order the removal of unaccompanied minors Petitioners Josue and Jhonatan to Honduras and SIJS Petitioner Axel). Another court that considered DHS's removal of SIJ protections found that "[t]he government is . . . incorrect to suggest that the Individual Plaintiffs cannot rely on heightened fear of deportation or removal to establish injury-in-fact." *A.C.R. v. Noem*, No. 25-CV-3962, 2025 WL 3228840, at *6 (E.D.N.Y Nov. 19, 2025), *appeal filed, A.C.R. v. Noem*, No. 26-236 (2d Cir. Feb. 2, 2026). In *A.C.R.*, as is the case here, "the risk of harm is real, and it does not depend on a 'chain of contingencies.'" *Id.* (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013)). The Government has stripped the individual Petitioners of their legal status and has found them removable, which is consistent with the objective of the rescission of SIJS status. *Id.* (citing USCIS Internal Memorandum dated June 6, 2025 at 8); *see also Joshua M. v. Barr*, 439 F. Supp. 3d 632, 679 (E.D. Va. 2020) ("removal may likely cause Joshua to lose his SIJ status and the benefits such status confers . . . establishing protection and a pathway to permanent residency for a specific subset of immigrant children.").

Petitioners and putative class members face an increased risk and heightened fear of removal to a third country due to the Government's policies and procedures. Removal would cause SIJS to lose their status, as they would no longer satisfy the requirement of being "present in the United States." *See Joshua M. v. Barr*, 439 F. Supp. 3d 632, 679 (E.D. Va. 2020) (8 U.S.C. § 1101(a)(27)(J)). Courts have recognized that heightened fear of removal and deprivation alone can establish injury-in-fact. *See A.C.R. v. Noem*, 2025 WL 3228840, at *6; *Joshua M. v. Barr*, 439 F. Supp. 3d at 679. Thus, the risk of harm is real and redressable by a decision from this Court vacating the policy under the APA and requiring due process. *A.C.R. v. Noem*, 2025 WL 3228840, at *7 (citing *Mantena v. Johnson*, 809 F.3d 721, 731 (2d Cir. 2015) (effectively collapsing the injury-in-fact and redressability inquiries where the alleged injury was the lost opportunity to pursue a green card)).[5]

For all of these reasons, this Court is not deprived of jurisdiction.

II. This Court Should Grant Petitioners' Motion for Preliminary Injunction.

[5] The Government asks this Court to revisit its argument that the Court lacks jurisdiction under Sections 1252(g) and 1252(b)(9), now in the context of Petitioner's APA and due process claims in Counts VII and VIII. *See* Dkt. 56 at 13 (citing Dkt. No. 38). This Court has already found it did not lack jurisdiction under Section 1252(b)(9) because "Petitioner does not challenge any removal order . . . . Rather, he challenges the lawfulness of his detention and the policies related to it." Dkt. No. 54, at 6. That same logic applies to Counts VII and VIII—Petitioners are not challenging a removal order but rather the lawfulness of removing unaccompanied minors and SIJ recipients to safe third countries because it is contrary to the statute and a violation of due process. *See Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018) (rejecting the argument that § 1252(b)(9) deprives district courts of jurisdiction to review constitutional challenges to an immigrant's detention). Section 1252(b)(9) does not limit the Court's jurisdiction to hear such claims. Section 1252(g) is also not a bar to jurisdiction because Petitioners challenge to policy does not fall within the three narrow categories of discrete actions that courts will apply to Section 1252(g). *See Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 482 (limiting reach of Section 1252(g) to the Attorney General's "'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'").

The putative SIJ and UC classes are entitled to preliminary injunctive relief because the same legal and equitable considerations that compelled emergency relief for Axel Martinez Ucles apply with equal force to all similarly situated class members. *See* Dkt. Nos. 49, 54. Under the *Winter* framework, Petitioners satisfy each factor. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008).

As a threshold matter, the Government's assertion that Petitioners seek relief subject to heightened scrutiny is incorrect. *Contra* Dkt. No. 56 at 5–6. Petitioners seek **prohibitory relief** to preserve—and restore—the last lawful status quo that existed before Respondents implemented their immediate mandatory detention regime and rescinded SIJ-based protections, not a mandatory injunction compelling novel agency action.[6] *See* SAC ¶¶ 36–38, 139–143. The requested relief would merely halt continued enforcement of the challenged policies during the pendency of this litigation; it does not require the Court to direct immigration judges to undertake new adjudications or revisit discretionary determinations, notwithstanding Respondents' contrary characterization. Dkt. No. 56 at 5–6. Courts have repeatedly held that an injunction restoring the last lawful status quo is prohibitory even where compliance requires the Government to change course. *See Pashby v. Delia*, 709 F.3d 307, 320–21 (4th Cir. 2013) (holding that an injunction is prohibitory—not mandatory—where it preserves the "last uncontested status between the parties which preceded the controversy," (citation omitted) even if it requires the Government to reverse recently implemented policies). Accordingly, no heightened showing applies.

A. Likelihood of Success on the Merits

Petitioners are likely to succeed on the merits of their claims for both putative classes.

1. SIJ Class

[6] Respondents reference a "USCIS asylum officer's credibility determination" that forms no part of Petitioners claims. Dkt. No. 56 at 5. It is not clear what this is intended to mean.

Petitioners are likely to prevail on their APA and due process challenges to Respondents' rescission of SIJ-based deferred action.

As this Court has already held, rescission of deferred action that confers concrete benefits is reviewable under the APA and must be supported by a reasoned explanation that accounts for reliance interests. *See* Dkt. No. 54 at 14–15; *see also DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 25–26 (2020). Respondents' principal rejoinder—that deferred action is a discretionary, non-reviewable act of enforcement forbearance—was already squarely rejected by this Court and is foreclosed by *Regents*. Dkt. No. 54 at 14–15.

Here, Respondents are regularly rescinding deferred action of putative class members pursuant to their June 6, 2025 policy through unexplained, post-hoc notices issued only after arrest, without individualized findings, contemporaneous reasoning, or consideration of alternatives—precisely the type of arbitrary and capricious action *Regents* prohibits. SAC ¶¶ 33 n.3, 87, 116–118; Dkt. No. 39-1 at 6–9. The Government's attempt to recast these rescissions as incidental to detention decisions does not cure the absence of reasoned decision making or reliance analysis.

Petitioners are also likely to succeed on their Fifth Amendment procedural due process claims. As this Court has already recognized, once the Government confers deferred action and releases a SIJ beneficiary into the community, it creates a protected liberty interest that cannot be withdrawn without notice and an opportunity to be heard. *See Bell v. Burson*, 402 U.S. 535, 539 (1971); *Inland Empire–Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG, 2018 WL 4998230, at *19 (C.D. Cal. Oct. 15, 2018). Respondents argue that any due process violation is cured by subsequent custody or bond proceedings, but this Court has already rejected that position, holding that post-deprivation process cannot remedy a constitutionally required pre-

deprivation hearing where such process was feasible. Dkt. No. 54 at 17. Respondents' conduct toward the SIJ class is materially indistinguishable.

2. **UC Class**

Petitioners are likewise likely to succeed on their procedural due process and APA claims challenging Respondents' re-detention practices.

Respondents' primary defense—that re-detention is authorized by statute and rendered lawful by subsequent bond hearings—misapprehends the nature of Petitioners' claims. Petitioners do not challenge the outcome of any bond determination; they challenge Respondents' **failure to provide constitutionally required pre-deprivation process before re-detaining individuals who had already been released into the community**.

Long standing Supreme Court precedent establishes that once the Government releases an individual from custody, it may not revoke that liberty absent constitutionally adequate pre-deprivation process. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). Courts applying these principles in the immigration context have consistently required notice and an opportunity to be heard before re-detention. *See Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032–35 (N.D. Cal. 2025); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *10 (W.D. Tex. Oct. 21, 2025).

Respondents' practices also violate the *Accardi* doctrine and the APA. Agency precedent and longstanding policy require a showing of materially changed circumstances before re-arrest following release. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017). Respondents have not identified—let alone established—any such changes before re-detaining UC class members. SAC ¶¶ 124–134. Their failure to follow binding agency rules independently renders the re-detention policy arbitrary and capricious.

This Court has already found that Axel is likely to succeed on these same claims and that post-deprivation bond hearings cannot cure the initial constitutional violation. Dkt. No. 54 at 17–18. The Government offers no meaningful basis to distinguish Axel's claims from those of the UC class; the same legal defects pervade Respondents' conduct across the board.

B. Petitioners And The Putative Class Members Continue To Suffer Irreparable Harm

The Government's contention that there is no irreparable harm is legally flawed and rests on an incomplete and selective reading of the record. First, Respondents' argument that irreparable harm is absent because Petitioners are unlikely to succeed on the merits improperly collapses the irreparable-harm inquiry into the merits analysis, contrary to Fourth Circuit precedent requiring the *Winter* factors to be analyzed separately. *Pashby v. Delia*, 709 F.3d 307, 329 (4th Cir. 2013); *Legend Night Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011). Second, the Government's assertion that irreparable harm is speculative or extinguished by the temporary release of some named Petitioners is incorrect as to both the individual Petitioners and the putative classes under the challenged policies, as explained below.

1. SIJ Class

Members of the SIJ class suffer irreparable harm from Respondents' rescission of SIJ-based deferred action and attendant employment authorization without notice, explanation, or pre-deprivation process. As alleged in the Second Amended Complaint, SIJ beneficiaries—including named Petitioners—were granted deferred action following approval of their SIJ petitions, relied on that status to live and work lawfully in the community, and were later arrested, detained, and stripped of deferred action under Respondents' new enforcement regime. SAC ¶¶ 2–6, 60–91.

The Court has already rejected the Government's premise that these injuries are speculative or cured by later release. To the contrary, the Court found that SIJ-based deferred action created a

reasonable expectation of continued liberty and that its unilateral rescission exposed recipients to detention and removal in violation of due process. Dkt. No. 54 at 17–18. That constitutional deprivation itself constitutes irreparable harm as a matter of law. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022).

Loss of deferred action and work authorization is independently irreparable. It strips SIJ recipients of lawful presence and the ability to work, destabilizes housing and family support, and exposes them to immediate re-detention and removal—all harms that cannot be remedied through post-hoc relief or damages. *See Pashby v. Delia*, 709 F.3d 307, 329 (4th Cir. 2013) (loss of benefits and disruption of established legal protections constitute irreparable harm).

The Government's reliance on *Direx Israel* and *Scotts Co.* is inapposite. Dkt. No. 56 at 16. Those cases concern speculative economic injuries in private commercial disputes, not completed and ongoing constitutional violations involving physical liberty and vested governmental benefits. Here, SIJ class members have already suffered unlawful detention and the deprivation of both their liberty interest in freedom from arbitrary detention and, for the SIJS class, a protected property interest in previously conferred SIJ-based deferred action. They remain subject to renewed enforcement under the same challenged policies. Temporary release does not erase irreparable harm where, as here, Petitioners remain exposed to the same unlawful deprivations absent injunctive relief.

These harms are ongoing and systemic. Respondents have repeatedly terminated deferred action only after arrest and detention, using identical form notices that provide no individualized justification and no opportunity to contest the deprivation. *See* SAC ¶¶ 77, 87; Dkt. No. 39-1 at 5–8. Exposure to unlawful detention and loss of lawful status pending adjudication constitutes irreparable injury as a matter of law. *See Pashby v. Delia*, 709 F.3d at 329.

2. **UC Class**

Members of the UC class face irreparable harm from Respondents' practice of re-detaining individuals who were previously released from federal custody—often years earlier—without any pre-deprivation hearing or showing of changed circumstances. As alleged in the SAC, all Petitioners designated as unaccompanied minors were released from ORR custody after the Government determined they posed no danger or flight risk, yet were later re-arrested without notice or process. SAC ¶¶ 2, 60–76; *see also* 8 U.S.C. § 1232(c)(2)(A).

The Government argues that irreparable harm is absent because Petitioners have since been released and because § 1226(a) bond procedures are constitutionally adequate under *Miranda*. That argument misunderstands both Petitioners' claim and *Miranda* itself. Petitioners do not challenge the adequacy of post-detention bond hearings; they challenge the **absence of constitutionally required pre-deprivation process** where liberty had already been conferred. *Miranda* expressly did not hold that post-hoc bond hearings cure unlawful detention or that pre-deprivation process is never required. *See Miranda*, 34 F.4th at 352–53 (confirming courts retain jurisdiction over constitutional challenges to detention procedures).

Courts have consistently recognized that loss of physical liberty through detention—particularly where imposed without required process—constitutes irreparable harm, even if the individual is later released. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Pineda-Medrano v. Perry*, No. 1:25-cv-01870, 2025 WL 3472152, at *3 (E.D. Va. Dec. 3, 2025). This Court expressly relied on this principle in granting Axel's TRO, concluding that re-detention without pre-deprivation process inflicted ongoing irreparable injury that was not cured by subsequent release. Dkt. No. 54 at 18-19.

Absent class-wide relief, UC class members remain subject to repeated unlawful re-detention under the same challenged policies, prolonged incarceration, and separation from family

and community—harms that are neither speculative nor remediable by later release or damages. The continuing threat of re-detention under an unconstitutional regime is itself irreparable harm warranting injunctive relief.

C. **Balance of Equities and Public Interest**

The Government's claim that the public interest favors immigration enforcement and that relief would intrude on Executive authority simply repeats the argument it made in opposing Axel's TRO—an argument this Court rejected. *See* Dkt. No. 56 at 17-18; Dkt. No. 38 at 26-27. That argument was squarely presented to—and rejected by—this Court. *See* Dkt. No. 49; Dkt. No. 54 at 19 (finding that "the balance of equities and the public interest considerations also weigh in Petitioners' favor," and citing *Sajous v. Decker,* No. 18-CV-2447, 2018 WL 2357266, at *13 (S.D.N.Y. May 23, 2018) ("[W]here a plaintiff alleges constitutional violations, the balance of hardships tips decidedly in the plaintiff's favor.")); *see also* Dkt. No. 49.

Respondents' effort to repackage that same enforcement rhetoric cannot overcome the settled principle—recognized by the Fourth Circuit and repeatedly applied by district courts—"upholding constitutional rights surely serves the public interest" in the preliminary injunction context. *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002). District courts within the Circuit have repeatedly applied this principle, emphasizing that "the public undoubtedly has an interest in seeing its government institutions follow the law," and that the Government "is in no way harmed" by refraining from enforcing restrictions likely to be found unconstitutional. *Am. Fed'n of Tchrs. v. Dep't of Educ.*, 779 F. Supp. 3d 584, 622 (D. Md. 2025) (citing *Roe v. Dep't of Def.*, 947 F.3d 207, 230–31 (4th Cir. 2020) & *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021)). Courts have likewise recognized that "[t]here is generally no public interest in the perpetuation of unlawful agency action" and that, to the contrary, "there is a substantial public interest in having governmental agencies abide by the federal laws that

govern their existence and operations." *Am. Fed'n of State, Cnty. & Mun. Emps., AFL-CIO v. Soc. Sec. Admin.*, No. 25-1411, 2025 WL 1249608, at *62 (4th Cir. Apr. 30, 2025).. Where the Government has means to pursue its objectives without jeopardizing constitutional rights, "the greater public interest" lies in protecting those rights. *United States v. Broncheau*, 759 F. Supp. 2d 694, 697 (E.D.N.C. 2010).

The equities likewise overwhelmingly favor the putative SIJ and UC classes. Class members face the same irreparable harms that compelled relief for Axel: loss of physical liberty through detention or re-detention without pre-deprivation process; exposure to removal under an unlawful policy regime; and, for SIJs, the loss of deferred action and employment authorization that Congress intended to stabilize their lives while they await visa availability. *See* SAC ¶¶ 2–6, 60–91; Dkt. No. 27-1 at 11–13, 20–22. These injuries are ongoing and systemic, not speculative, and continue to threaten putative class members notwithstanding the individualized relief already granted. By contrast, Respondents suffer no cognizable hardship from an injunction that merely requires them to provide the process the Constitution, the APA, and their own rules demand. *See* Dkt. No. 54 at 19 ("[T]he balance of equities and the public interest considerations also weigh in the Petitioners' favor.").

The public interest analysis is especially weighty in this context. Congress enacted specific statutory protections for unaccompanied children and special immigrant juveniles because of their unique vulnerability. *See* 8 U.S.C. §§ 1232, 1101(a)(27)(J). Allowing Respondents to detain or re-detain such individuals without pre-deprivation hearings, or to rescind SIJ-based deferred action without reasoned explanation or procedural safeguards, would undermine—not advance—the public interest Congress sought to protect. *See* Dkt. No. 54 at 16–17 (recognizing protected liberty interests arising from SIJ-based deferred action and prior release).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court deny Respondents' motion to dismiss for lack of subject-matter jurisdiction and issue the relief requested in Petitioners' motion, on behalf of themselves and the putative classes.

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Respectfully Submitted,

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