

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

HESLER ASAF GARCIA LANZA

Petitioner-Plaintiff,

v.

KRISTI NOEM, in her official capacity
as Secretary of the U.S. Department of
Homeland Security,

PAMELA BONDI, in her official
capacity as Attorney General of the
United States,

TODD LYONS, in his official capacity
as Director of the U.S. Immigration and
Customs Enforcement,

WILLIAM JOYCE, in his official
capacity as Acting New York Field
Office Director for U.S. Immigration and
Customs Enforcement;

JOSEPH B. EDLOW, in his official
capacity as Director of U.S. Citizenship
and Immigration Services; and

ANTHONY J. LAROCCO, in his
official capacity of the Sheriff of the
Nassau County Correctional Center.

Respondents-Defendants.

Civil Action No.:

**Verified Emergency Petition for Writ of
Habeas Corpus and Complaint**

INTRODUCTION

1. This case is about a 24-year-old young man with Special Immigrant Juvenile Status who cannot be removed from the United States because he has a valid grant of Deferred Action. Nevertheless, Respondents abruptly detained him in contravention of federal law and the Constitution.

2. Hesler Asaf Garcia Lanza (“Petitioner” or “Hesler”) is a 24-year-old from Hempstead, New York who graduated Magna Cum Laude from the ~~_____~~ of ~~_____~~ in June of 2024 with a degree of Bachelor of Technology. On January 3, 2026, Immigration and Customs Enforcement (“ICE”) arrested him outside the Hempstead Library. Hesler was en route to the Hempstead LIRR train station on his way to work when, abruptly, seven ICE cars surrounded him. The ICE officers exited their vehicles and immediately arrested Hesler without asking him any questions or asking for any documentation.

3. Hesler came to the United States from Honduras when he was 9 years old, after suffering neglect and abandonment at the hands of his father. After a New York juvenile court determined that it was not in Hesler’s best interests to return to Honduras, U.S. Citizenship and Immigration Services (“USCIS”) approved Hesler for Special Immigrant Juvenile Status (“SIJS”). 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.

4. Under a USCIS policy designed to protect these vulnerable youth during this wait, on November 3, 2022, Hesler also received a four-year, renewable grant of deferred action and accompanying employment authorization. This allowed him to attend school, work legally, and build a stable life here in the United States without the threat of deportation while he waits to apply for a green card. Despite Hesler’s grant of deferred action and work authorization, and although he has no criminal history, ICE arrested and detained him without notice on January 3, 2026.

5. Moreover, deporting Hesler would completely undermine the purpose of the SIJS statute. Through his grant of SIJS, Hesler is on a path to permanent legal status, for which he must remain in the United States to access. Respondents’ efforts to block Hesler from accessing the protections Congress specifically enacted for the benefit of youth like him improperly subverts Congress’ intention that he be permitted to adjust status and establish a stable life in the United States.

6. Hesler’s arrest and ongoing detention violate his constitutional rights. Because Helser cannot be removed, his ongoing detention—particularly without any individualized review—serves no lawful purpose and runs afoul of the substantive and procedural due process protections of the Fifth Amendment.

7. Hesler respectfully asks this Court to hold that his continued detention is unlawful and order his immediate release from custody, or in the alternative, hold a bond hearing.

PARTIES

8. Petitioner-Plaintiff (hereinafter “Petitioner”) Hesler is a 24-year-old college graduate who came to the United States from Honduras at the age of 9 and settled in Hempstead, New York. He has an approved SIJS petition, has been granted deferred action, and has no criminal history. Nonetheless, on January 3, 2026, ICE arrested Hesler while he was on his way to work. Hesler is now detained at Nassau County Correctional Center in East Meadow, New York. He is currently in the custody of Respondents.

9. Respondent **Kristi Noem** is named in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, she is responsible for overseeing ICE’s day-to-day operations, leading approximately 20,000 ICE employees, including Respondent Lyons. Secretary Noem is the ultimate legal custodian of Hesler.

10. Respondent **Pamela Bondi** is the Attorney General of the United States. As Attorney General, Respondent Bondi oversees the immigration court system, including the immigration judges who conduct bond hearings as her designees, and is responsible for the administration of immigration law pursuant to 8 U.S.C. § 1103(g). She is legally responsible for administering Hesler’s removal and bond proceedings, including the standards used in those proceedings, and as such, she is Hesler’s legal custodian. She is sued in her official capacity.

11. Respondent **Todd Lyons** is sued in his official capacity as Acting Director of ICE. As Acting Director of ICE, Respondent Lyons is the legal custodian of Hesler.

12. Respondent **William Joyce** is named in his official capacity as the acting New York Field Officer Director for U.S. Immigration and Customs Enforcement within the United States Department of Homeland Security (“DHS”). In this capacity, he is responsible for the

administration of immigration laws and the execution of detention and removal determinations and is legal custodian of Petitioner.

13. Respondent **Joseph B. Edlow** is named in his official capacity as Director of U.S. Citizenship and Immigration Services. In this capacity he is responsible for administering and overseeing the program for SIJS classification and deferred action.

14. Respondent **Anthony J. LaRocco** is named in his official capacity as Sheriff of the Nassau County Correctional Center. Hesler is currently detained at the Nassau County Correctional Center.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus); Art. I § 9, cl. 2 of the U.S. Constitution (Suspension Clause), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § (All Writs Act), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

16. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same).

17. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because, Hesler is detained within the Eastern District of New York, his immediate physical custodian is located within this District, and a substantial part of the events giving rise to this petition occurred and continue to occur within this District.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

18. Hesler was born in Honduras in 2001. As a child in Honduras, Hesler suffered neglect and abandonment at the hands of his father.

19. Hesler came to the United States in 2011, when he was 9 years old, settling in Hempstead, New York with his mother. His mother immediately enrolled him in school, where he began to learn English. In 2020, Hesler graduated from [REDACTED].

20. On February 22, 2022, the New York State Family Court in Nassau County found that Hesler had been abandoned and neglected by his father. The Family Court also found that it was in Hesler's best interests to remain in the United States because there would be no one with whom he could safely live in Honduras and because he would not be able to live openly as a member of the LGBTQ+ community. The court granted guardianship to his mother. Based on these state court findings, Hesler applied for SIJS with USCIS.

21. On November 3, 2022, USCIS¹ granted Hesler's petition for SIJS and concurrently granted him deferred action. Hesler received an I-797A Notice of Action, which stated: "USCIS has determined that you warrant a favorable exercise of discretion to receive deferred action. As a result, you have been placed in deferred action and you may be issued an employment authorization document." *See* Ex. B, I-797A Notice of Action. The notice also stated: "Your grant of deferred action will remain in effect for a period of four years from the date of this notice unless terminated earlier by USCIS." *Id.* Therefore, Hesler's deferred action does not expire until November 3, 2026.

¹ USCIS is the sub-agency of the Department of Homeland Security with exclusive jurisdiction over SIJS petitions, including both granting and revoking SIJ status. *See* 8 C.F.R. §§ 204.11(d); 205.2. Other DHS sub-agencies, such as ICE and Customs and Border Patrol, can neither grant nor revoke SIJS. *Id.*

22. Based on his grant of deferred action, Hesler was granted employment authorization on March 8, 2023. *See* Ex., C, Employment Authorization Document.

23. Because of the visa backlog impacting SIJS beneficiaries, Hesler could not immediately apply to adjust his status to become an LPR after being approved for SIJS, and instead was required to wait until a visa became available to him. Still, he made plans for his future based on his grant of SIJS, his deferred action, and his ability to work lawfully.

24. Hesler always understood how important education would be to his ability to achieve his dreams. In 2020, Hesler graduated from [REDACTED] He was then accepted into [REDACTED], which provides mentoring, financial, and administrative support to ensure that students accomplish their academic and career goals. Hesler was accepted into the [REDACTED] of [REDACTED]

[REDACTED] Through his hard work and determination, and the support of his loving family, Hesler graduated Magna Cum Laude in June of 2024 with a degree of Bachelor of Technology. *See*, Ex. E, College Diploma.

25. Hesler's dream job was to be a theatrical lighting designer. He achieved that dream when he began working at the Latin American Theater Experiment Associates, Inc as a theatrical lighting designer.

26. Hesler lives with his mother, step-father, and three United States Citizen siblings. Hesler's family depends on him to help pay rent and household expenses. Further, his three younger siblings, the youngest of whom is 4 years old, rely on Hesler for emotional support.

27. Upon information and belief, Hesler—other than his current detention by ICE—has never been arrested or incarcerated in the United States. Hesler has never been placed in removal proceedings.

28. Upon information and belief, on January 3, 2026, Hesler was walking to the Hempstead LIRR train station on his way to work when around seven federal vehicles surrounded him in a circle. The ICE agents got out of their cars and arrested Hesler. They never asked him for his name or any documentation. Hesler was petrified and confused by the abrupt and intimidating manner in which ICE agents arrested him.

29. Hesler was arrested on a Form I-200 warrant, indicating that he is detained under INA § 236(a). *See* Ex. A, Form I-200 Warrant. However, on information and belief, DHS may take the position that Hesler is detained under INA § 235(b).

30. Hesler is currently detained at the Nassau County Correctional Center. *See* Ex. D, VINE Inmate Lookup.

LEGAL FRAMEWORK

The INA's Custody Statutes

31. The INA describes three detention authorities that pertain to the majority of detained noncitizens in removal proceedings.

32. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a; *see also Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (“Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of [a noncitizen] ‘pending a decision on whether the [noncitizen] is to be removed . . . [and] [e]xcept as provided in [1226(c)],’ the Attorney General

‘may release’ [a noncitizen] detained under § 1226(a) ‘on ... bond’”). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

33. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals who are “seeking admission,” described under § 1225(b)(2).

34. Lastly, the INA also provides for detention of noncitizens who have a final administrative order of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

36. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

37. As a result, for nearly 30 years, most people who entered without inspection and were placed in removal proceedings received bond hearings, unless their criminal history

rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at the prior § 1252(a)).

DHS and DOJ’s Abrupt Policy Change on Bond Eligibility

38. On July 8, 2025, ICE, “in coordination with” the Department of Justice (DOJ), announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”[1] claimed that all persons who entered the United States without inspection were now subject to no-bond detention under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

39. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

40. Since Respondents adopted these new policies, federal courts have uniformly rejected their new interpretation of the INA’s detention authorities, including within the jurisdiction of the Second and Third Circuits. *See Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *8 (D.N.J. Sept. 26, 2025) (“Petitioner has the far better argument.”); *see also Mata Velasquez v. Kurzdorfer*, No. 25-cv-493 (LJV), 2025 WL 1953796 (W.D.N.Y. July 16, 2025);

Lopez Benitez, No. 25 Civ. 5937, 2025 WL 2371588; *Samb v. Joyce*, No. 25-cv-6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Savane v. Francis*, No. 1:25-cv-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *J.U. v. Maldonado*, No. 25-CV-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Artiga v. Genalo*, No. 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025).

41. Similarly, dozens of district courts around the country have rejected this interpretation. *See, e.g., Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 2782499, at *1 n.3 (W.D. Wash. Sept. 30, 2025) (citing over 20 district court decisions rejecting the government’s position); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (collecting 20 cases in note 8 and accompanying discussion); *see also Hyppolite*, 2025 WL 2829511, at *12 (noting that the government conceded at oral argument that they were not “aware of *any* Article III court that had adopted their interpretation” of the statute).

42. Courts uniformly have rejected DHS’s and DOJ’s new interpretation because it defies the plain text of the INA. *See Mugliza Castillo v. Lyons*, No. 25-cv-16219 (MEF), 2025 WL 2940990, at *1 (D.N.J. Oct. 10, 2025) (“But as a matter of plain-text reading, it is § 1226(a) that applies to people situated like the Petitioner, not § 1225(b)(2)(A).”). Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” 8 U.S.C. § 1229a(a)(1).

43. The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond

hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025).

44. As district courts have found, the statutory bars to a bond hearing for inadmissible noncitizens with specific types of criminal history would all be rendered surplusage if in fact, *no* inadmissible noncitizens were eligible for bond. See *Artiga*, 2025 WL 2829434, at *7; *Hyppolite*, 2025 WL 2829511, at *10.

45. In contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). See *Rivera Zumba*, 2025 WL 2753496, at *8. Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings*, 583 U.S. at 287.

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

Detention Without Individualized Review

47. DHS officers must make an individualized determination of all persons detained under 8 U.S.C. § 1226(a) that takes into consideration whether the person (1) is a “danger to property or persons” and (2) is “likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8).

48. Likewise, when government action affects an individual liberty interest, the Due Process Clause of the Fifth Amendment requires consideration (1) the private interest to be affected, (2) the risk of erroneous deprivation of the procedures used, and (3) the government’s interests, including the burden of any additional procedural safeguards imposed. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Accordingly, courts have held that re-detention absent an individualized determination as to flight risk and dangerousness violates due process. *See, e.g., Hyppolite*, 2025 WL 2829511, at *13-15 (holding that ICE’s arrest of a noncitizen at his immigration court hearing without an individualized determination of danger and flight risk violated his procedural due process rights); *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (holding that ICE’s re-detention of the petitioner at her immigration court hearing after she had previously been released on recognizance violated her procedural due process rights); *cf. Arias Gudino v. Lowe*, 785 F.Supp.3d 27, 44-46 (M.D. Pa. 2025) (finding re-detention without notice likely violated procedural due process under *Mathews*).

Remedies in Immigration Habeas Petitions

49. The “flexible nature” of habeas relief affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *See Rivera Zumba*, 2025

WL 2753496, at *11; *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020). The most appropriate remedy for a due process violation like this one, where a person living peacefully in the community was abruptly detained with no pre-deprivation notice, is release on recognizance without the use of alternatives to detention or other conditions. *See Zumba*, 2025 WL 2753496, at *11 (ordering release and enjoining respondents from re-arresting petitioner under § 1225(b)); *Mata Velasquez v. Kurzdorfer*, --- F. Supp. 3d ---, No. 25-cv-493 (LJV), 2025 WL 1953796 (W.D.N.Y. July 16, 2025) (ordering release and that petitioner could not be re-detained without a pre-deprivation hearing); *Hyppolite*, 2025 WL 2829511, at *17 (same).

50. In the alternative, the habeas court can hold its own custody hearing and determine whether the government can prove by clear and convincing evidence that Hesler must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. *See L.G.M. v. LaRocco*, 788 F.Supp.3d 401, 405-07 (E.D.N.Y. 2025) (ordering a bond hearing held by the habeas court, as this would be more efficient than delegating the task to the agency and ensure proper constitutional oversight).

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

51. In 1990, Congress created SIJS to protect vulnerable immigrant children and provide them a pathway to lawful permanent residence and 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 Juvenile Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) (“This rule alleviates hardships experienced by some dependents of the 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 SIJ status, most recently in 2008, through the Trafficking Victims Protection Reauthorization Act, Pub. L. 110-457, § 235(d), 122 Stat. 5044 (2008).

52. To be granted SIJS, youth like Hesler 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 reunited 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).

53. Crucially, a noncitizen youth is eligible for SIJ status and may only maintain SIJ status 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. SIJ status is predicated on a state court finding that the youth cannot be safely reunited with one or more 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).

54. Youth, like Hesler, can apply for SIJS upon receipt of the aforementioned state court findings. 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. *Id.*

55. 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. Revocation of an approved SIJ 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).

56. The main benefit of SIS—and indeed, its core purpose—is that it confers on vulnerable young people like Hesler the right to seek LPR status while remaining in the United States. *See* 8 U.S.C. § 1255(h). Accordingly, youth with SIJ status must be “provide[d] . . . an opportunity to pursue adjustment of status.” *Del Cid, et al., v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *4 (W.D. Pa. Oct. 23, 2025).

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

58. 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.

59. Despite the immediate unavailability of visas, waitlisted SIJS beneficiaries are the same vulnerable young people that the SIJ 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 who state courts have determined cannot safely be reunited with their parent(s) or returned to their home country.

60. 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 SIJ status recipients remain safely in the United States until they can adjust to become LPRs. Because SIJS is an adjustment-of-status pathway pursued from within the

United States, removing a SIJ beneficiary before a visa becomes available would effectively nullify the protection Congress created. *See* 8 U.S.C. §§ 1101(a)(27)(J), 1255(h)(1)–(2), 1227(c).

Deferred Action Gives Meaning to Congress’ Intent That SIJS Beneficiaries be Protected

61. In March 2022, to address the SIJ visa backlog, USCIS announced that all young people granted SIJ status would also be considered for a discretionary grant of deferred action, meaning that they would be protected from deportation while waiting for a visa to become available. In enacting this policy, USCIS acknowledged that “Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available. . . .”² Persons granted deferred action are shielded from deportation and are eligible to apply for employment authorization under 8 C.F.R. § 274a.12(c)(14).³

62. Importantly, “USCIS has the sole authority to grant and terminate deferred action for noncitizens with SIJS classification.”⁴ And, generally, USCIS may only terminate deferred action “if the SIJ-classified individual was not eligible at the time of the initial grant of deferred action, the SIJ Form I-360 is revoked, or if they are no longer eligible based on new information.” *Id.*

63. In June 2025, USCIS rescinded the SIJS deferred action policy, deciding to no longer consider granting deferred action to SIJS youth waiting to apply for a green card.

² USCIS, Policy Alert PA-2022-10, at 1 (Mar. 7, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf> (“2022 Policy Alert”); *see also* USCIS, Training regarding SIJ Deferred Action Background, at 11–12, <https://www.ilrc.org/sites/default/files/2025-09/FOIA%20Results%20on%20SIJS%20Deferred%20Action%20Policy.pdf>.

³ 2022 Policy Alert, at 2.

⁴ Solcyré Burga, *Young Immigrants Who Have Faced Abuse and Neglect Sue Trump Administration for Exposing Them to Deportation*, TIME (July 2025), <https://time.com/7303651/immigration-youth-sue-trump-lawsuit-sijs/> (reporting that, “[b]eginning in April, [USCIS] began neither approving or denying SIJ status recipients’ work permit applications,” and only later issued a policy alert ending automatic deferred-action consideration).

However, this policy change has no impact on SIJS beneficiaries who already received deferred action. *See* USCIS Policy Alert, PA-2025-07, “Special Immigrant Juvenile Classification and Deferred Action” (June 6, 2025), available at: 20250606-SIJDeferredAction.pdf (stating that noncitizen “with current deferred action based on their SIJ classification will generally retain this deferred action . . . until the current validity periods expire.”).

64. Deferred action is an act of prosecutorial discretion that defers efforts to deport a noncitizen from the United States for a certain period of time. In the case of SIJS recipients awaiting visas, USCIS granted deferred action for a period of four years. *See id.*

65. Deferred action does not confer lawful status and does not prevent an immigration judge from issuing a removal order. However, unless and until terminated, a grant of deferred action prevents immigration authorities from physically removing a noncitizen from the United States. *See* USCIS Policy Manual, Vol. 6: Immigrants, Part J: Special Immigration Juveniles, Ch. 4: Adjudication; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (“AADC”).

66. Once deferred action is granted, fundamental procedural due process protections attach to the recipient, such as the right to notice and an opportunity to contest the revocation of deferred action. *See Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *2 (S.D. Tex. June 5, 2025) (finding that Petitioner was “likely to succeed on his Due Process claim” because he was denied “notice, a hearing, or any opportunity to contest the revocation of his deferred action.”).

CLAIMS FOR RELIEF

CLAIM I

Fifth Amendment: Violation of Procedural Due Process

67. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

68. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “Freedom 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*, 533 U.S. at 690.

69. Under the familiar *Eldridge* Due Process test, then, the government’s decision to arrest Hesler without any notice or an opportunity to respond, and continue to detain him without any opportunity to meaningfully challenge that detention, clearly violates his procedural due process rights.

70. First, Hesler has a substantial, legally protectable liberty interest, created by his reliance on his SIJS and deferred action, at stake.

71. Second, the risk of erroneously depriving Hesler of that interest is severe. At only 24 years old, he is separated from his family and missing work. Despite his best efforts to set himself on a good track, he has been thrown into sudden instability. He has been afforded absolutely no process, let alone constitutionally sufficient process, prior to or since this deprivation, making the value of additional process high. *See Eldridge*, 424 U.S. at 343.

72. Third, the government's interest in detaining Hesler is minimal. Hesler cannot be deported and does not present any flight risk or danger: he is firmly settled in New York, has a stable job that he attends regularly, and he has absolutely no criminal history. Meanwhile, additional process would entail little to no burden on the government. *See Eldridge*, 424 U.S. at 347.

73. Hesler's continued detention without an opportunity to be heard violates his procedural due process rights under the Fifth Amendment of the Constitution.

COUNT II

Fifth Amendment: Violation of Substantive Due Process

74. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

75. The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas*, 533 U.S. at 693; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976.). Substantive due process requires that there be a reasonable relation between an individual's detention and the government's purported interests in that detention. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). Because Hesler's removal is not reasonably foreseeable and there is no other justification for his detention, his detention is in violation of the substantive due process protections of the Fifth Amendment.

76. Here, the government cannot remove Hesler from the United States for at least three reasons. First, Hesler has a valid grant of deferred action, which precludes his removal. His grant of deferred action remains valid until November 3, 2026.

77. Second, Hesler has a procedural due process right under the INA and DHS regulations not to have his SIJS revoked without notice and an opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. 8 U.S.C. § 1155; 8 C.F.R. § 205.2. Because the INA requires that a youth be present in the United States to have SIJS, 8 U.S.C. § 1101(a)(27)(J), forced removal from the United States would constitute a *de facto* revocation of SIJS. See 8 U.S.C. § 1101(a)(27)(J). Therefore, removing Hesler from the United States (regardless of his deferred action grant) would be unlawful.

78. Third, removing Hesler (regardless of his deferred action grant) would contravene the very purpose of the SIJS statute. As discussed *supra*, the core purpose of SIJS protection is to provide beneficiaries like Hesler with a means to adjust their status to become a lawful permanent resident from within the United States. Because physical presence in the United States is required to adjust status pursuant to SIJS, Hesler must remain present in the United States to avail himself of that process. See 8 U.S.C. § 1101(a)(27)(J). Allowing Hesler to be removed from the United States after he has already been granted SIJS would thus eviscerate Congress' goal in creating the status in the first place.

79. For all of the foregoing reasons, the government cannot lawfully remove Hesler from the United States. Accordingly, Hesler's detention violates his substantive due process rights under the Fifth Amendment.

CLAIM III

Violation of the Immigration and Nationality Act

80. Petitioner incorporates by reference the allegations in the preceding paragraphs.

81. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States, such as Hesler.

82. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention without review and violates the INA.

CLAIM IV

Violation of the Bond Regulations

83. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

84. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and Detention of [Noncitizens],” the agencies explained that “[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

85. Nonetheless, pursuant to *Matter of Yajure Hurtado*, EOIR has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

86. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Eastern District of New York, or in the alternative, the New York-New Jersey area, while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- d. Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner without conditions of supervision or alternatives to detention; or, in the alternative, provide Petitioner with a bond hearing within seven days at which the government bears the burden to justify that his continued detention is necessary by clear and convincing evidence;
- e. Declare that Petitioner's detention is unlawful; and
- f. Grant any other and further relief that this Court deems just and proper.

DATED this 4th day of January, 2026

Respectfully Submitted,

/s/ Sandra Cordoba
/s/ Tania Gabrielle Cohen
Safe Passage Project
Sandra Cordoba
Tania Gabrielle Cohen*
Safe Passage Project
185 West Broadway
New York, NY 10013

T: (212) 324-6558
scordoba@safepassageproject.org
tcohen@safepassageproject.org

Counsel for Petitioner

**Reciprocity admission application
forthcoming. Admitted in SDNY.*

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

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Dated this 4th day of January, 2026.

/s/ Tania Gabrielle Cohen
Tania Gabrielle Cohen