

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARJORIE JULISSA TRIPUL ALARCON,

Petitioner,

v.

JOSE RODRIGUEZ JR., in his official capacity as
Warden, Dilley Immigration Processing Center;
MIGUEL VERGARA, in his official capacity as
Field Office Director of Enforcement and Removal
Operations, San Antonio Field Office, U.S.
Immigration & Customs Enforcement; TODD
LYONS, in his official capacity as Acting Director
of U.S. Immigration and Customs Enforcement;
KRISTI NOEM, in her official capacity as U.S.
Secretary of Homeland Security; and PAMELA
BONDI, in her official capacity as Attorney
General of the United States,

Respondents.

Case No. 5:26-cv-619

**VERIFIED PETITION
FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28
U.S.C. § 2241 AND
REQUEST FOR ORDER TO
SHOW CAUSE**

INTRODUCTION

1. This case challenges the unlawful arrest and mandatory immigration detention of nineteen-year-old Marjorie Julissa Tripul Alarcon (“Petitioner” or “Marjorie”). Marjorie came to the United States as a child at the age of sixteen. She has no criminal history, has a valid grant of deferred action protecting her from removal from the United States, and has a pathway to legal permanent residency as part of her Special Immigrant Juvenile Status (“SIJS”).

2. Marjorie entered in 2022, and, after presenting herself to an immigration official, the government briefly detained her. It then released her to live with her aunt in Texas, after finding that she was not dangerous or a flight risk.

3. Now, Marjorie has Special Immigrant Juvenile Status ("SIJS"), a humanitarian immigration protection for young people who have suffered parental abuse, neglect, or abandonment, created by Congress to give these children the opportunity to remain safely and permanently in the United States.

4. Based on Marjorie's SIJS petition, the government granted her deferred action in 2024, a four-year, renewable protection from removal and permission to work lawfully while she waits in a visa backlog until she can apply for lawful permanent residence.

5. Despite Marjorie's prior release from immigration custody and her approved SIJS petition and deferred action, Respondents arrested Marjorie on October 28th, 2025, while Marjorie was attending her ICE check in. Since then, Marjorie has been locked in an immigration detention center in Dilley, Texas, deprived of her liberty and separated from her family and community in the Dallas-Fort Worth Metropolitan Area.

6. Marjorie's detention is unlawful for at least three reasons.

7. First, due process requires that the government show, in a pre-deprivation hearing, materially changed circumstances before re-detaining Marjorie. When the government released Marjorie from its custody years ago, it determined that she was neither a flight risk nor a danger to the community. Since then, nothing has changed to undermine that determination. On the contrary, support for that determination has only strengthened: Marjorie has built deep ties to the United States, graduated from high school here, has been working at Walmart, attended all of her ICE check ins, and now has a path to lawful permanent residence. She has never been arrested for criminal charges or convicted of a crime. As courts in this District have held in multiple similar cases, Marjorie's detention without any pre-deprivation process violates her procedural due process rights and this alone warrants her immediate release. *Lopez-Arevelo v. Ripa*, 801 F.Supp.

3d 668, 680 (W.D. Tex. 2025) (citing *Petgrave v. Aleman*, 529 F. Supp. 3d 665, 672, 668-69 (S.D. Tex. 2021) (finding continued detention of petitioner after IJ's bond denial was a violation of Fifth Amendment due process clause); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *5 (W.D. Tex. Oct. 16, 2025) (finding those who were paroled into United States and have established years of presences in the United States are entitled to Fifth Amendment Due Process protection). Similarly, Marjorie's grant of SIJS and deferred action created a protectable interest in her continued liberty requiring pre-deprivation process before any detention.

8. Second, the government has no legitimate interest in detaining Marjorie when she cannot be removed because of her valid deferred action grant (eliminating any flight risk concerns) and is not a danger—the only two constitutionally permissible reasons for immigration detention. Accordingly, her detention also violates her substantive due process rights, equally requiring her immediate release.

9. Third, the government's claim that Marjorie is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is untenable in light of the fact that she entered the United States without inspection, was previously detained and released from detention, has since lived in the United States for three years, and has been granted SIJS. Courts throughout the United States have overwhelmingly rejected Respondents' expansive interpretation of 8 U.S.C. § 1225(b)(2)(A). *See, e.g., Barco Mercado v. Francis*, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *13–14 (S.D.N.Y. Nov. 26, 2025) (tallying more than 350 cases reaching the same conclusion, and only 12 going the other way); *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 3687757 (D. Mass. Dec. 19, 2025) (granting summary judgment and extending declaratory relief to Massachusetts-based class of noncitizens wrongly subject to mandatory detention under the government's recent interpretation of § 1225(b)(2)(A)); *Maldonado Bautista v. Santacruz*, No. 25-cv-0187, 2025 WL

3678485 (C.D. Cal. Dec. 19, 2025) (similar, extending declaratory relief to nationwide class); *Lopez-Arevalo*, 801 F. Supp. 3d at 684-85. Also, with the grant of SIJS, Marjorie was deemed “paroled into the United States” under INA § 245(h) and therefore eligible to adjust status; as several courts have held, individuals granted SIJS are detained under INS § 236(a), not § 235(b). See, e.g., *Rodriguez v. Perry*, 747 F. Supp. 3d 911 (E.D. Va. 2024); *Del Cid v. Bondi*, No. 2:25-cv-00304, 2025 WL 2985150, *2-3 (W.D. Pa. Oct. 23, 2025) (quoting 8 U.S.C. § 1225(h)(1)). This renders Marjorie’s current detention unlawful from its inception, in violation of the Immigration and Nationality Act (“INA”) and her due process rights.

10. For these reasons, Marjorie respectfully asks this Court to hold her arrest and detention unlawful, order restoration of the status quo prior to her detention, *i.e.* release without restraints on her liberty, and enjoin Respondents from re-detaining her without meaningful pre-detention process.

11. Marjorie also respectfully asks that this Court enjoin Respondents from transferring her outside of this District for the duration of this proceeding and “forthwith issue an order directing [Respondents] to show cause why the writ should not be granted” to be returned to this Court “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” 28 U.S.C. § 2243.

PARTIES

12. Petitioner Marjorie is a 19-year-old Peruvian national who entered the United States as an unaccompanied child and has been residing here since the age of sixteen. Prior to her arrest and detention, Marjorie was living with her aunt in Plano, Texas and working with valid authorization from the U.S. government. Marjorie has an approved SIJS petition and a grant of deferred action valid through 2028.

13. Respondent Jose Rodriguez Jr. is sued in his official capacity as Warden, Dilley Immigration Processing Center. Respondent Jose Rodriguez Jr. is the immediate legal custodian of Marjorie.

14. Respondent Miguel Vergara is sued in his official capacity as Field Office Director, San Antonio Field Office, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement ("ICE"), which oversees ICE's operations in and around San Antonio, Texas. Respondent Miguel Vergara is a legal custodian of Marjorie.

15. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Marjorie.

16. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Noem is Marjorie's ultimate legal custodian.

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

JURISDICTION AND VENUE

18. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.").

19. The Court also has jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (the All Writs Act); and 28 U.S.C. § 2241 (habeas corpus).

20. This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (the Declaratory Judgment Act), to grant injunctive and declaratory relief.

21. Venue is proper in the Western District of Texas under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events giving rise to these claims occurred in this District. Venue is also proper under 28 U.S.C. § 2241(d) because Marjorie is detained at a facility within this District.

22. Administrative exhaustion is unnecessary because it would be futile: it is Respondents' position that noncitizens in Marjorie's situation are subject to mandatory detention without access to a bond hearing. Marjorie requested a bond hearing before an IJ, who determined that she lacked jurisdiction to hold one. Ex. 1 (citing *Matter of Q. LI*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025)).

23. Requiring Marjorie to appeal and "wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate [her] alleged constitutional injury—detention without a bond hearing." *Lopez-Arevelo*, 801 F. Supp. 3d at 680–81. Accordingly, Marjorie's claims are properly before the Court with no further requirement to exhaust administrative remedies.

LEGAL FRAMEWORK

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

24. In 1990, Congress created SIJS to protect another category of vulnerable immigrant children and provide them a pathway to citizenship. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (1990) (amending various sections of the INA). SIJS "alleviates

hardships experienced by some dependents of United States juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future.” Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993). Since 1990, Congress has amended the INA multiple times to expand the protections of SIJS, most recently in 2008, through the TVPRA, Pub. L. 110-457, § 235(d), 122 Stat. 5044 (2008).

25. To be granted SIJS, youths must first “satisf[y] 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, to be eligible for SIJS, a noncitizen youth must be present in the United States and obtain judicial determinations in a state juvenile court order that they are dependent on the juvenile court or placed by the court under the custody of a state agency or an individual; cannot be reunified with one or both parents because of abuse, neglect, abandonment, or other similar basis; and that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

26. The application process for SIJS includes submitting a Form I-360 SIJS Petition to USCIS, along with the state juvenile court order and other evidence. *See* 8 C.F.R. § 204.11(b). USCIS then considers whether to exercise its statutory “consent function” to approve the petition. *See* 8 U.S.C. § 1101(a)(27)(J)(iii). By doing so, the agency recognizes the state juvenile court’s determinations, including that the child’s return to their country of origin would be contrary to their best interests. 8 U.S.C. § 1101(a)(27)(J)(iii).

27. The main benefit of SIJS—and indeed, its core purpose—is that it confers on vulnerable young people the right to seek lawful permanent resident (“LPR”) status, while remaining in the United States, through a process called adjustment of status. *See* 8 U.S.C. §

1255(h). To facilitate this process, Congress has removed numerous barriers to adjustment of status for SIJS beneficiaries. Typically, a noncitizen seeking to adjust to LPR status in the United States must show they are admissible under immigration law or have entered the country with inspection or parole by an immigration officer. But Congress exempted SIJS youth from many inadmissibility grounds, made them eligible for adjustment regardless of their actual manner of entry into the United States, and created a generous waiver of other non-exempted inadmissibility grounds. 8 U.S.C. § 1255(h). Congress also explicitly provided that certain grounds for removal “shall not apply” to SIJS beneficiaries. 8 U.S.C. § 1227(c). Accordingly, the SIJS statute “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).

28. Although SIJS renders youth eligible to apply for adjustment to LPR status, 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 SIJS backlog, waiting to apply for a green card.¹

29. Nonetheless, the government takes the position that SIJS youth in the visa backlog remain subject to removal for their purported lack of lawful immigration status in the United States while they wait for the ability to apply for LPR status.

B. Deferred Action Furthers Congress’ Intent That SIJS Beneficiaries Be Protected

¹ See R. Davidson et al., *False Hopes: Over 100,000 Immigrant Youth Trapped in the SIJS Backlog* (2023), <https://perma.cc/J75S-4DRR>.

30. In March 2022, to address the harms being caused by the SIJS visa backlog, USCIS announced that all young people granted SIJS would also be considered for a discretionary grant of deferred action, meaning that they would be protected from deportation and eligible for work authorization 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

31. 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. In November 2025, a federal court stayed the government’s decision to rescind the SIJS deferred action policy, thus restoring the 2022 policy during the litigation’s pendency. *A.C.R. v. Noem*, No. 25-CV-3962, 2025 WL 3228840 (E.D.N.Y. Nov. 19, 2025). The government’s unlawful attempt to rescind the program had no impact on SIJS beneficiaries, like Marjorie, who had already received deferred action. See USCIS Policy Alert, PA-2025-07, “Special Immigrant Juvenile Classification and Deferred Action” (June 6, 2025), available at: <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/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.”).

32. 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

² USCIS Policy Alert, PA-2022-10, “Special Immigrant Juvenile Classification and Deferred Action” (March 7, 2022), <https://perma.cc/8CTL-QAQY> (“2022 USCIS Policy Alert”).

States. See USCIS Policy Manual, Vol. 1, Pt. H, Ch. 2.A.4, <https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2>; *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) (“AADC”). Individuals with deferred action are also eligible to apply for employment authorization under 8 C.F.R. § 274a.12(c)(14). In the case of SIJS beneficiaries awaiting visas, USCIS granted deferred action for a renewable period of four years.

RELEVANT FACTS AND PROCEDURAL HISTORY

Marjorie is detained and released because she is not dangerous or a flight risk.

33. Marjorie is a nineteen-year-old from Peru who came to the United States for fear for her life and safety when she was sixteen, after facing abuse from her father and her mother’s former partner.

34. She arrived on December 20, 2022, presented herself to an immigration agent shortly after entering the United States, and was detained for a couple days.

35. Marjorie was released and instructed to check into an ICE office, which she did.

36. DHS issued Marjorie a Notice to Appear (“NTA”), the charging document that initiates removal proceedings, in October 2023, approximately a year after she came to the United States. The NTA charged her as removable under 8 U.S.C. § 1182(a)(6)(A)(i) for being present without being admitted or paroled and as an arriving alien under 8 U.S.C. 1182(a)(7)(A)(i)(I).

37. Marjorie’s proceedings were venued in the Dallas Immigration Court. ICE set the initial appearance date for June 22, 2028.

38. At that time, ICE also issued Marjorie an Order for Release on Recognizance. It noted that she was being released “[i]n accordance with section 236 of the Immigration and Nationality Act.”

Marjorie obtains SIJS and deferred action.

39. After obtaining legal representation, Marjorie applied for SIJS. First, on December 21, 2023, a court in Collin County, Texas, issued a Special Findings Order finding that Marjorie had been neglected by her father and that it was in her best interests to remain in the United States. The court also appointed Marjorie's mother as her legal guardian.

40. Marjorie then submitted a SIJS petition to USCIS in February 2024, supported by his Special Findings Order from the Collin County court.

41. USCIS approved Marjorie's SIJS petition on April 17, 2024. Ex. 2, Approved SIJS Petition. USCIS also granted Marjorie deferred action for a four-year period, until April 17, 2028. *Id.* This protected her from removal while she waited in the backlog to apply to adjust her status. It also allowed her to apply for employment authorization, which she obtained to help support herself and her family while she pursued her studies.

42. According to the USCIS January 2026 Visa Bulletin, there are currently sufficient visas available for people who filed for SIJS on or before March 15, 2021, to immediately apply for LPR status. Marjorie's filing date (also called a priority date) is April 16, 2024. Ex. 2. Therefore, Marjorie will likely be eligible to apply to adjust to LPR status before her deferred action expires.

Marjorie is arrested without changed circumstances and purportedly held in mandatory detention.

43. During the time Marjorie was living in the DFW area, she proved herself to be a hardworking and law-abiding member of the community. She graduated from high school and began working full-time at Walmart. She was a reliable and trustworthy employee who built community among her co-workers. She also was compliant with her order of supervision and requirements to check-in with ICE. She has a community of friends and family in the DFW area, and was working hard to save up money to continue her education.

44. On October 27, 2025, Respondents arrested Marjorie without any notice or warning while she was checking in with ICE. Marjorie was not accused of violating any vehicle and traffic law. She had no prior arrests. She had a stable address, a stable job, a work permit, and path to permanent status. She did not run or try to evade the officers. Rather, she was being cooperative and going to her regular ICE check in. Nonetheless, they arrested her and transferred her to Dilley Immigration Processing Center.

45. On January 20, 2026, the Immigration Judge issued an order denying Marjorie's request for bond "for lack of jurisdiction." It stated that Marjorie was "subject to mandatory detention under INA Section 235(b)(2)," citing *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025). Ex. 1

46. Attached to that order was a document from the Department of Justice issuing "A WARNING TO SELF-DEPORT." It cited purported benefits to self-deporting as well as consequences to not doing so, including "immediate deportation," "fines and penalties," "possible imprisonment," and being "barred from returning." *Id.* It did not mention that such consequences could be avoided if Marjorie was found to have a valid defense or was granted relief from deportation.

47. She has now been detained for more than three months and is being held hundreds of miles from her home and community.

48. Marjorie's detention has been very difficult for both her and her family. She is being held in a jail-like setting, where it is difficult for her to maintain her physical and mental health. Women are consistently sick in her dorm room, and it is difficult to sleep or access healthy food. In the past week with increasing public attention to this detention center, rules have been tightened even further, restricting Marjorie's access to food service, commissary, and phone calls, among

other things. Marjorie also feels frustrated about her inability to continue to work, provide for herself and her family, and continue her education.

CAUSES OF ACTION

FIRST CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Procedural Due Process

49. Marjorie repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

50. Even “[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *Salerno*, 481 U.S. at 746.

51. Courts use the three-factor *Mathews v. Eldridge* test to determine what process is due to noncitizens challenging detention. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). The *Mathews* factors assess: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

52. The first *Mathews* factor weighs heavily in Marjorie’s favor. Marjorie has a strong liberty interest in light of (1) her prior release and freedom to live in the community for nearly three years and (2) her valid grant of SIJS.

53. First, because she was previously released from custody and not even subject to government monitoring beyond occasional ICE check-in meetings that she attended, Marjorie possessed a weighty interest in her continued liberty. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d

668, 686 (W.D. Tex. 2025) (finding that because Petitioner spent “nearly three years at liberty in the United States,” he possessed a cognizable interest in his freedom from detention); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *9 (W.D. Tex. Oct. 21, 2025) (same); *Chinchilla v. De Anda-Ybarra*, No. EP-25-CV-00548-DB, 2025 WL 3645178, at *4 (W.D. Tex. Dec. 16, 2025) (“Petitioner possess a strong liberty interest in his freedom from detention because he has established a life here[.]”). Second, to be approved for SIJS and deferred action, Marjorie had to meet stringent eligibility criteria and she was promised that, in return, she would be given a meaningful path to LPR status in this country. That came with the expectation that she could build a life here without risking arbitrary arrest, detention, and removal that would strip her of the very permanency Congress created SIJS to provide vulnerable youth like her. *See Rodriguez v. Perry*, 747 F. Supp. 3d 911 (E.D. Va. 2024); *Sarmiento v. Perry*, No. 25-CV-01644, 2025 WL 3091140, at *3 (E.D. Va. Nov. 5, 2025); *Campos-Flores v. Bondi*, No. 25-cv-797, 2025 WL 3461551, at *6 (E.D. Va. Dec. 2, 2025); *see also Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) (finding Deferred Action for Childhood Arrivals recipient had protected interest in continued liberty).

54. And this is precisely what Marjorie did, building a home with her family; attending and eventually graduating from high school; working and contributing to her community; and making plans for the future.

55. The second *Mathews* factor also weighs in Marjorie’s favor. Marjorie was previously released from detention after being found that she is neither a danger nor a flight risk, and her re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, make the risk of erroneous deprivation of liberty not just high, but certain. The immigration judge declined to hold a bond hearing. Her detention is the direct result of

insufficient safeguards and lack of procedure. Under these circumstances, the risk of erroneous deprivation of his liberty is high and the second factor weighs heavily in Marjorie's favor.

56. The third factor favors Marjorie, as well. Marjorie's erroneous detention imposes high fiscal and administrative burdens on Respondents. Releasing Marjorie and requiring the government to provide a pre-deprivation hearing before re-detaining her stands to save the government money and effort wasted on erroneous detention. And unlawful detention and violation of noncitizens' constitutional rights disserve the public interest.

57. Respondents violated procedural due process by re-detaining Marjorie without adequate procedural protections before or after deprivation of her liberty. Therefore, this Court should order Marjorie's release without any restraints on her liberty and prohibit any re-detention absent pre-deprivation process.

SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Substantive Due Process

58. Marjorie repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

59. 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 v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

60. Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only

within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)).

61. Immigration detention is civil detention and must “bear[s] a reasonable relation to the purpose for which the individual was committed” so that it remains “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (citation modified); see also *Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective); *Nguyen v. Bondi*, No. EP-25-CV-323-KC, 2025 WL 3120516, at *3 (W.D. Tex. Nov. 7, 2025) (quoting *Zadvydas*).

62. Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. See *Zadvydas*, 533 U.S. at 690-91. But if a person cannot actually be removed, “preventing flight” is a “weak or nonexistent” justification. *Id.* at 690; see also *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *12 (W.D. Tex. Oct. 2, 2025) (“Where an individual is protected from removal through deferred action, their detention serves no valid purpose.”); cf. *Phan v. Reno*, 56 F. Supp. 2d 1149, 1156 (W.D. Wash. 1999) (“Detention by the INS can be lawful only in aid of deportation.”). Detention for community safety, in turn, is only permissible “when limited to specially dangerous individuals and subject to strong procedural protections.” *Zadvydas*, 533 U.S. at 691.

63. Marjorie’s deferred action under SIJS—valid until April 17, 2028—prevents DHS from removing her for more than two years from today.

64. Here, the government’s inability to lawfully remove Marjorie given her deferred action eliminates any justification of flight risk, which the government could not show in any event, given Marjorie’s three-year residence in the United States, her deep ties to her family and

community in Texas, and her ability as an SIJS beneficiary to eventually adjust to lawful permanent resident status and then gain citizenship. *See Osorio*, 893 F. 3d at 173-75. And Marjorie's lack of any criminal record eliminates any possible justification of danger.

65. Instead, the government appears to be detaining Marjorie to encourage her to self-deport, as the warning issued by the Immigration Judge indicates.

66. Because the government is not detaining Marjorie to serve legitimate interests in protecting against danger or flight risk, her detention violates substantive due process under the Fifth Amendment, and this Court should order her immediate release.

THIRD CLAIM

Violation of the Immigration and Nationality Act and Procedural Due Process

67. Marjorie repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

68. The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. First, 8 U.S.C. § 1226 “authorizes the Government to detain certain [noncitizens] already in the country pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8 U.S.C. § 1226(c).

69. Second, the INA provides for brief mandatory detention of noncitizens with final orders of removal. *See* 8 U.S.C. § 1231.

70. Third, the INA also provides for mandatory detention of two groups of noncitizens encountered “at the Nation’s borders and ports of entry.” *Jennings*, 583 U.S. at 288. The first group

consists, generally, of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1).

71. The second group subject to mandatory detention consists of anyone alleged to be an “applicant for admission” who is “seeking admission” and whom an “examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).

72. Respondents claim that Marjorie is mandatorily detained under 8 U.S.C. § 1225(b)(2)(A). But this statute does not apply to Marjorie, who was previously released from custody under an order citing 8 U.S.C. § 1226(a), has resided in this country for years and has been granted SIJS and deferred action.

73. A person with SIJS cannot be detained under § 1225(b)(2)(A). Because “the INA defines a ‘special immigrant’ as ‘an immigrant who is present in the United States,’” an award of SIJS confirms that a noncitizen is not “arriving” or “seeking admission.” *Rodriguez*, 747 F. Supp. 3d at 916 (concluding that a noncitizen who had entered the United States years earlier as an “arriving alien” but had then been granted SIJS was not detained under § 1225(b)(2)(A) (citing 8 U.S.C. § 1101(a)(27)(J)); see also *Sarmiento*, 2025 WL 3091140, at *3 (similar). Moreover, SIJS status “‘bespeak[s] a substantial legal relationship between [SIJS beneficiaries] and the United States—a relationship far more significant than’ the relationship possessed between an initial entrant into this country.” *Del Cid v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150, at *16 (W.D. Pa. Oct. 23, 2025) (quoting *Osorio-Martinez*, 893 F.3d at 174); see also *Oliveira v. Hyde*, No. 25-CV-13733-FDS, 2025 WL 3653826, at *2–3 (D. Mass. Dec. 17, 2025) (holding that detention was

governed by INA § 236, not INA § 235, where the petitioner had lived in the United States since 2022 and the government “ha[d] not treated petitioner as an applicant for admission: U.S. Citizenship and Immigration Services granted him Special Immigrant Juvenile status, deferred action, and employment authorization”); *Del Valle Castillo v. Wamsley*, No. 2:25-CV-02054-TMC, 2025 WL 3524932, at *5 (W.D. Wash. Nov. 26, 2025) (holding that the petitioners, who had been granted Special Immigrant Juvenile status, were not “seeking admission” under INA § 235(b) and were instead subject to detention under INA § 236(a)); *Moradel v. Noem*, No. 3:25-CV-327, 2025 WL 3718729, at *4 (W.D. Pa. Dec. 23, 2025) (holding that the petitioner, who had been living in the United States for twenty-five years and had been granted SIJs, was detained under INA § 236(a), not INA § 235(b)(2)).

74. Accordingly, Marjorie’s current detention under 8 U.S.C. § 1225(b)(2)(A)—without access to a bond hearing as required by § 1226(a)—violates both the INA and Marjorie’s procedural due process rights. As this renders her detention unlawful from its inception, she should be released.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Issue an order to show cause to be returned within three days;
- c. Enjoin the Respondents from transferring Petitioner away from the jurisdiction of this District pending these proceedings;
- d. Declare that Petitioner’s arrest and detention violates the Due Process Clause of the Fifth Amendment; and the INA and implementing regulations;
- e. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner

from custody without restraints on her liberty beyond those that existed prior to her unlawful re-detention;

- f. Order that Respondents cannot re-detain Petitioner without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence;
- g. Grant bail pending the conclusion of the habeas review; *see, e.g., Mapp v. Reno*, 241 F.3d 221 (2d Cir. 2001); and
- h. Grant such further relief as this Court deems just and proper.

DATED: February 2, 2026

Respectfully Submitted,

/s/ Sara Zampierin

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*Application for admission forthcoming

** Qualified Law Students under Tex.
Gov't Code § 81.102

*** Plaintiff is represented by a clinic
operated by Texas A&M University
School of Law, but this document does not
purport to present the school's
institutional views, if any.

28 U.S.C. § 2242 VERIFICATION STATEMENT

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 the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Petition are true and correct to the best of my knowledge.

DATED: February 1, 2026
Dallas, Texas

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