UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

MARIA ESMERALDA ROSA LOPEZ, Petitioner, v. **SAM OLSEN,** Chicago Field Office Director U.S. Immigration and Customs Enforcement; **TODD M. LYONS,** Acting Director of Immigration and Customs Enforcement, **IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE); MARKWAYNE MULLINS,** Secretary of the U.S. Department of Homeland Security; **DEPARTMENT OF HOMELAND SECURITY; LT. ANDREW JOHNSON,** Jail Administrator of the Saint Genevieve County Detention Center, in their official capacities, Respondents.	)	Case No. 1:26-CV-00112-SNLJ

PETITIONER'S REPLY BRIEF IN SUPPORT OF HER PETITION FOR RELIEF PURSUANT TO 28 U.S.C. § 2243

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INTRODUCTION

Congress legislated specific protections for unaccompanied and other vulnerable groups of children who entered this country without legal status, providing them with both rights and opportunities that are not available to adults who enter the United States unlawfully. Indeed, in creating Special Immigrant Juvenile ("SIJ") Status, Congress provided eligible youth the opportunity to remain in the United States to adjust status and to obtain legal permanent residency. Respondents would have this Court ignore those laws and uphold their alleged right to detain Petitioner to pursue, in their own words, Petitioner's removal from the United States, presumably even before she is able to apply for adjustment of status. *See* Resp. Brief at 10. As set forth below, Respondents' reliance on *Avila v. Bondi,* 170 F.4th 1128, 1134 (8th Cir. 2026) to justify Petitioner's detention is wholly misplaced. It is neither binding or persuasive authority here given that it did not consider the statutory frameworks created by Congress for unaccompanied children ("UAC") and SIJ youth.

SUPPLEMENTAL FACTUAL BACKGROUND

The day after this Petition was filed, Respondent Department of Homeland Security ("DHS") initiated removal proceedings against Petitioner before the Immigration Court in Kansas City, Missouri, charging that Petitioner is removable pursuant to:

- 8 U.S.C. §1182(a)(6)(A)(i), in that Petitioner is "an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General"; and
- 8 U.S.C. §1182(a)(7)(A)(i)(I), because Petitioner "is an immigrant who at the time of application for admission, is not in possession of a valid unexpired immigrant visa reentry permit, border crossing card, or other valid entry document . . . and a valid unexpired passport, or other suitable travel document, or document of identity and nationality . . ."

See Petitioner's Exhibit A (Notice to Appear). Notably, the factual allegations of the Notice to Appear ("NTA") do not claim that Petitioner is a noncitizen who has not been "admitted or paroled" into the United States; rather, the NTA solely alleges that she arrived "at a time or place other than as designated by the Attorney General." Petitioner appeared for her initial hearing before the Immigration Court on June 1, 2026, at which time the matter was continued to June 16, 2026. Petitioner has not yet pled to the charges nor has the Immigration Court sustained the charges.

On June 2, 2026, the Board of Immigration Appeals issued an opinion in *Matter of N-A-G-C*, 29 I&N Dec. 662 (BIA 2026), holding that the Immigration Court does not have authority to grant bond to noncitizens previously determined to be a UAC or that have an approved SIJ petition, to the extent they were not admitted into the United States. The Immigration Court is bound by *Matter of N-A-G-C*. While Petitioner here seeks immediate release rather than a bond hearing, the BIA's recent decision ensures that Petitioner will not find any relief within the Immigration Court and any such request or appeal to the BIA will be futile.

I. Petitioner's Continued Detention Violates Her Substantive and Procedural Due Process Rights

Respondents admit that the Due Process Clause protects every person, including non-citizens, from the unlawful deprivation of liberty, yet then claim that congressional authority over matters of immigration is near absolute such that only "extreme procedural circumstances . . . approach the constitutional line." Resp. Brief, at 10. While it is unclear where the phrase "extreme procedural circumstances" comes from, it certainly is not the law. Indeed, while Congress may have plenary power to create immigration law, it is "subject to important constitutional limitations" and that the nature of the [due process] protection "may vary depending upon status and circumstance." *Zadvydas v. Davis*, 533 U.S. 678, 694-695 (2001). In *Zadvydas*, for example, the Supreme Court held that even a person with a final removal order cannot be detained indefinitely. *Id.* at 699.

As set forth more fully below, in creating the SIJ statutory framework, Congress intended that SIJ youth be able to adjust status notwithstanding their unlawful entry into the United States. Congress expressly exempted them from any inadmissibility factors relating to that unlawful entry. It then follows that SIJ youth cannot be removed from the United States solely based on their unlawful entry prior to applying for adjustment of status and having that application adjudicated. Given that the visa category applicable to SIJ youth is currently oversubscribed, SIJ youth cannot immediately seek adjustment of status upon receiving their SIJ approval and may need to wait an indefinite period of time of up to several years to apply for adjustment. If Petitioner cannot be removed from the United States based solely on her unlawful status before she is able to adjust status, and if we accept Respondent's theory that she is subject to mandatory detention until her removal proceeding is resolved, then Petitioner is now subject to an indefinite period of detention – the kind of detention that the U.S. Supreme Court in *Zadvydas* found unconstitutional. *Zadvydas v. Davis*, 533 U.S. 678, 699 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable . . . ."). Petitioner must be released.

A- <u>Congress Intended SIJ Youth To Be Able To Remain In the United States Pending the Adjudication of Their Adjustment of Status Applications.</u>

Respondents could not make their intention more clear: "Petitioner remains in active removal proceedings, and removal is plainly possible – in fact, that is the goal." Resp. Br. at 11. While that may be Respondents' goal, it is not what Congress intends for SIJ youth. It is incontrovertible that Congress intended SIJ youth to remain in the United States to adjust status regardless of the lawfulness of their entry. *Walter A. v. Easterwood*, 2026 U.S. Dist. LEXIS 64031, 2026 LX 103238 (D. Minn. 2026). *See, also, Osorio-Martinez v. Attorney General*, 893 F.3d 153, 170 (2018) ("SIJ status also reflects the determination of Congress to accord those abused, neglected, and abandoned children a legal relationship with the United States and to ensure they are not stripped of the opportunity to retain and deepen that relationship without due process."); *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011), abrogated on other grounds (the SIJ 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.")

Before a minor can even apply for SIJ status, the SIJ statute requires her to seek an order from a juvenile state court that not only finds that reunification with one or both parents is not viable due to abuse, neglect, or abandonment, but also that it is in the best interest of the minor not to return to their home country. In other words, Congress intentionally limited SIJ relief to those children who would not be best served by returning to their home country.

After a person's petition for SIJ status is approved, they are eligible to adjust status in the United States without having to leave the country to go through consular processing at a U.S. embassy office abroad to obtain a visa. 8 U.S.C. §1255(a), (g), (h)(1); 8 C.F.R. §245.1(a). The authority to adjust status rather than consular process emanates from Congress. With the enactment of the SIJ statutory framework, Congress expressly granted this extraordinary form of relief to SIJ youth, intending that they remain in the United States to adjust status.

B- Congress Ensured That SIJ Youth Could Not Be Removed From the United States Prior to the Adjudication of Their Adjustment of Status Application Based Solely On Their Unlawful Entry.

To facilitate the adjustment of SIJ youth to legal permanent residents, a process that would otherwise typically require a person to have been inspected and admitted or paroled into the United States or to have an approved petition under the Violence Against Women Act, Congress expressly designated SIJ youth as parolees. 8 U.S.C. §1255(a), (h)(1). Congress also exempted SIJ youth from numerous factors of inadmissibility that would ordinarily make a noncitizen removable from the United States, including presence in the United States without being admitted or paroled and the lack of valid entry documents. 8 U.S.C. §1182(a)(6) and (a)(7), 8 U.S.C. §1255(h)(2). With respect to a set of other inadmissibility factors, SIJ youth may apply for a waiver. 8 U.S.C. §1255(h)(2)(B). In fact, there are only a handful of inadmissibility factors from which SIJ youth have not been exempted or that are not waivable, all of which related to serious criminal conduct, national security grounds, and persecution of others. *Id.* (identifying the non-waivable grounds of inadmissibility as those under 8 U.S.C. §1182(a)(2)(A)-(C), (a)(3)(A) – (C), and (a)(3)(E)). *See, also,* Petition, ¶¶37-38. It is undisputed that none of the waivable or nonwaivable grounds of inadmissibility apply to Petitioner.

Respondents' brief indicates that they intend to pursue removal of Petitioner despite her SIJ status and seemingly before she has an opportunity to apply for adjustment of status. Yet, the only charges brought against Petitioner are based on her unlawful entry – the same grounds of inadmissibility that Congress has expressly stated do not bar SIJ youth from adjusting status to legal permanent resident. It is, quite frankly, ludicrous to suggest that on one hand, Congress enacted the SIJ framework to permit an especially vulnerable group of children who entered unlawfully to obtain SIJ status and apply for permanent residency while at the same time allowing DHS to remove them based solely on their unlawful entry before they can apply for adjustment of status. *See, e.g, Pamaquiza Zamora v. Noem,* 2026 U.S. Dist. LEXIS 56111 (D. Neb. 2026) at *11, 2026 LX 150005 (petitioner's failure to leave the country in violation of the Visa Waiver Program was not a basis for removing him in light of his subsequent SIJ approval and grant of deferred action which remain in effect); *Xol-Maas v. Francis*, 2026 U.S. Dist. LEXIS 33713, 2026 LX 95924 (S.D.N.Y. Feb. 18, 2026) (removal from the U.S. while petitioner enjoys SIJ status but has yet to have the opportunity to apply for adjustment of status violates due process). There is nothing within the SIJ statute that permits removal of SIJ youth prior to the adjudication of their application for adjustment of status.

Petitioner's ability to adjust status is not speculative. "SIJS beneficiaries are a 'hair's breadth from being able to adjust their status, pending only the availability of immigrant visas and the approval of the Attorney General.'" *Walter A.*, 2026 U.S. Dist. LEXIS 64031 at *61-62, quoting *Osorio-Martinez*, 893 F.3d 153, 174 (2018) (describing waitlist for adjustment of status to LPR). Petitioner has met all the requirements to apply for adjustment of status as a special juvenile immigrant and none of the non-waivable grounds of inadmissibility apply to her. She is solely waiting for a visa to become available. Her priority date is February 25, 2025, *see* Petitioner's Exhibit B, and pursuant to the June 2026 Visa Bulletin and USCIS website, USCIS is only accepting applications for adjustment of status in the EB-4 category for those individuals with priority dates before July 15, 2022.[1] Notwithstanding the delay, Congress clearly intended to allow her to remain in the United States to have the opportunity to adjust status. *See Osorio-Martinez*, 893 F.3d at 178-179 (holding that the enforcement of an expedited removal order is incompatible with the statutory and constitutional rights of SIJ designees, including eligibility to apply for adjustment to LPR status, protection against having SIJ status revoked without statutorily prescribed process, and the due process rights that automatically attach to those

[1] *See* Department of State June 2026 Visa Bulletin, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-june-2026.html. The Visa Bulletin provides two charts for the Employment-Based visa categories, one named "Final Action Dates" and one named "Dates for Filing of Employment-Based Visa Applications." For each month, USCIS determines which chart filers should use. For the June 2026 Visa Bulletin, USCIS has instructed that the "Final Action Dates" chart should be used. See, https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/adjustment-of-status-filing-charts-from-the-visa-bulletin. The priority dates set forth in the Visa Bulletin by DOS and USCIS do not necessarily progress in a linear fashion and may even regress from month to month. For example, in April 2026, USCIS instructed filers in the EB-4 category to use the "filing" chart, permitting individuals with priority dates before January 1, 2023 to submit applications. *See id.* (providing drop-down menus to view historical data). The possibility of regression of priority dates makes it even more difficult to assess exactly how much time a SIJ youth must wait to adjust to permanent resident.

statutory rights.).

Respondents' reliance on the Third Circuit decision *Cortez Amador v. Attorney General*, 66 F.4th 429 (3rd Cir. 2023) in support of the continued detention of Petitioner and their right to proceed with removal is misplaced. In that case, the Immigration Judge did in fact first adjudicate petitioner's application for adjustment of status based on his approved SIJ status, ultimately denying the application based on petitioner's criminal history. *Id.* at 431-32. The petitioner had pleaded guilty to non-sexual child endangerment after having been charged with sexual assault on a child under the age of 13 and child endangerment. *Id.* at 431. Only after petitioner's applications for adjustment of status and for asylum, withholding of removal and protection under the Convention Against Torture had all been denied, did the Immigration Court enter an order of removal. *Id.* at 430. Thus, the *Cortez* decision is consistent with the granting of this Petition in that it would first require adjudication of Petitioner's adjustment of status application based on her SIJ status before Respondents could proceed with removal.

With removal from the United States based on charges of unlawful entry out of the question until Petitioner has exhausted her right to seek adjustment of status to legal permanent resident, removal is now a remote possibility at best. Further, Petitioner's detention no longer serves any immigration purpose. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, Petitioner presently faces an indefinite term of detention in the United States, exactly the concern that the Supreme Court addressed in *Zadvydas v. Davis* and found constitutionally wanting. 533 U.S. at 699 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable . . . ."). Thus, this Court should order the immediate release of Petitioner.

C- <u>Petitioner Is Not Subject to Mandatory Detention</u>

Respondents cavalierly discount any due process concerns, arguing that Congress has mandated mandatory detention under §1225(b)(2) for all noncitizens who entered the U.S. unlawfully and thus Petitioner's detention does not raise due process concerns. Respondents rely on the Eighth Circuit decisions in *Banyee v. Garland*, 115 F.4th 928 (8th Cir. 2024) and *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026) in support of its position. Petitioner addresses each in turn.

In *Banyee,* the Eighth Circuit addressed the petitioner's prolonged detention of a year while his removal proceedings progressed. *Banyee*, 115 F.4th at 930. The district court released petitioner Banyee on bond finding that his one-year incarceration was too long. *Id.* The Eighth Circuit reversed, holding that notwithstanding the delay, deportation remained a possibility and that detention pending deportation had a definite termination point, and thus, the concerns raised in *Zadvydas*, were not applicable. *Id.* at 932-33. Indeed, an order of removal had already been entered against Banyee and he was waiting for a decision on his appeal. *Id.* at 933.

Unlike the petitioner in *Banyee*, Petitioner's removal is a remote possibility. Petitioner has been granted the right to pursue adjustment to legal permanent resident as soon as a visa is available. If granted, and there is no reason to believe it would not be, she would not be removable. In addition, the petitioner Banyee, who had numerous convictions, had been detained under 8 U.S.C. §1226(c), requiring mandatory detention of individuals who had committed certain crimes. *Banyee*, 115 F.4th at 930. Unlike Petitioner, Banyee was neither an unaccompanied minor nor a Special Immigrant Juvenile. Thus, the Eighth Circuit's analysis was of a statute enacted by Congress that had as its express purpose to detain certain individuals whose crimes made them a danger to the community rather than the laws enacted by Congress *to provide added protections* to two vulnerable groups of children of which Petitioner is a part. The goals of these statutes (8 U.S.C. 1226(c) and the SIJ framework) are inapposite. Given that the nature of the due process protection "may vary depending upon status and circumstance," *Zadvydas*, 533 U.S. at 694-695, the *Banyee* decision is not binding here.

Respondents' reliance on *Avila v. Bondi,* 170 F.4th 1128 (8th Cir. 2026), is also unavailing. The petitioner Avila had been in the U.S. for several years before being detained by ICE. *Id.* at 1132. He was charged with removability under §1182(a)(6)(A)(i) and (a)(7)(A)(i)(I) for being a noncitizen present in the U.S. without being admitted or paroled and for lacking valid entry documentation. *Id.* After the district court granted Avila's habeas petition and ordered that a bond hearing be held, the government appealed. *Id.* The Eighth Circuit reversed the district court's grant of habeas corpus, finding that Avila was both an "applicant for admission" and "seeking admission" and subject to mandatory detention under §1225(b)(2). *Id.* at 1137-38. *Avila* does not apply here.[2]

Like Banshee, Avila was not an unaccompanied child nor had he ever been approved for SIJ status. Thus the Eighth Circuit did not address the laws and regulations specific to these groups of children that provide them with additional due process protections not available to Avila. Indeed, the *Avila* Court did not engage in any due process analysis under Zadvyda.

In addition, in reaching its decision, the *Avila* Court relied in part on the presumed purpose of §1225 to "ensure that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, *are placed on equal footing in removal proceedings*." 170 F.4th at 1135-36 (emphasis added). Yet, the laws and regulations governing UACs and SIJ youth are plainly designed ***not*** to place them on equal footing with other noncitizens that entered unlawfully; rather, Congress provided them with extra protection.

Unaccompanied children, for example, are exempted from expedited removal and,

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[2] In addition to the specific arguments raised in the main text of this brief, Petitioner also believes that to the extent Avila holds that all persons who entered the U.S. unlawfully are "applicants for admission" and subject to mandatory detention under 1225(b)(2) that decision was wrongly decided.

therefore, are exempt from mandatory detention under 8 U.S.C. §1225. U.S.C. § 1232(a)(5)(D)(i). Additionally, even after a UAC turns 18 years old or is placed under the custody of a parent or legal guardian, that person maintains their UAC designation for the purpose of special protections relating to asylum claims. Those protections include exemption from the one-year filing deadline for asylum applications, *see* 8 U.S.C. § 1158(a)(2)(B), (E) and 8 C.F.R. §208.4(a) (5) (referring to an applicant who "was", not "is" an unaccompanied minor), and the opportunity to have their asylum applications adjudicated in the first instance by USCIS. 8 U.S.C. § 1158(b)(3). Indeed, in a 2025 memorandum, USCIS reaffirmed its initial jurisdiction over asylum applications of UACs who are over the age of 18, even if the UAC is in removal proceedings.[3]

In addition, the Trafficking Victims Protection Reauthorization Act (TVPRA), enacted by Congress in 2008 requires that unaccompanied children, even those who turn 18 and age out of ORR custody, be placed in the "least restrictive setting available." 8 U.S.C. §1232(c)(2)(B). It is a well-established canon of statutory interpretation that the more specific provisions of the law control more general provisions. *HCSC-Laundry v United States,* 450 U.S. 1, 6 (1981) (per curiam). Congress clearly intended that UACs not be subject to detention if a less restrictive setting was available. Thus, *Avila* is not binding authority here.

To circumvent this barrier to mandatory detention, Respondents argue that (1) Petitioner's status as a UAC was discharged; and (2) Petitioner is now over 18. Neither has merit. No government agency has ever revoked Petitioner's UAC status. Respondents' reliance

[3] John Lafferty, Chief, USCIS Asylum Division, "Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Children and Implementation of the J.O.P. Settlement Agreement (Jan 30, 2025), https://www.uscis.gov/sites/default/files/document/legal-docs/JOP_UAC_Procedures_Memo_10.30.2025.pdf. *See also,* Settlement Agreement in *J.O.P. v. U.S. Dept. of Homeland Security et al.,* Civil Action 8:19-cv-01944 (D. Md.), effective on November 25, 2024.

on a one-page document at Bates 007 of their Exhibit A does not establish otherwise. As a preliminary matter, Petitioner objects to the admission of this document into evidence as it has not been properly authenticated. The document does not indicate who or when it was created and why. In addition, the document's indication that Petitioner's "status" – of what is unclear -- has been "discharged" does not mean that Petitioner's UAC status was terminated or discharged. To the extent this printout comes from the U.S. Department of Health and Human Services' Office of Refugee Resettlement ("ORR), the agency that initially had custody over Petitioner when she first arrived in the United States, the document appears to reflect information regarding that custody. In that case, the term "discharge" merely reflects that Petitioner was discharged from ORR custody to a sponsor, not that her UAC status was terminated. See Petitioner's Exhibit C, Declaration of Sarah Phelps. Indeed, the document (Bates 007) indicates that Petitioner's date of admission was December 17, 2021 and she stayed for 12 days, until December 29, 2021. That date is the same date on the Verification of Release form that Respondents also provide at Bates No. 006, indicating her discharge date from ORR custody.

The fact that Petitioner is now over 18 likewise does not mean that she no longer benefits from the same protections of a UAC under age 18. Respondents first note that Petitioner was "just barely a minor" when she entered the United States at age 17. Like the idiom, "you can't be a little pregnant," under the law, a person cannot be barely a minor or almost an adult. One is either a minor, or one is not. In addition, as noted above, UACs retain many of the benefits of a UAC after they turn 18, including that with respect to custody, they are subject to "the least restrictive setting." To be sure, Section 1232(c)(2)(B) refers only to UACs that turn 18 while in ORR custody, requiring that if they are transferred to ICE custody, that ICE place them in "the least restrictive setting." Respondents argue that the failure to include UACs that have already been discharged means that those individuals, like Petitioner, are not subject to the same "least restrictive setting" standard. Yet, the reasoning for that language's absence seems readily apparent: those UACs have already been placed in "the least restrictive setting," having secured release to a sponsor prior to turning 18. Moreover, Respondents' position, at a minimum, violates the spirit of the Court Order enforcing the 2021 permanent injunction in *Garcia Ramirez v. U.S. ICE,* Case No. 1-18-cv-00508-RC (D.D.C.).

Garcia Ramirez is a nationwide class action lawsuit against DHS and ICE for transferring unaccompanied minors who reach their 18th birthdays to ICE adult detention facilities without considering less restrictive placements. *Id.* In 2025, Plaintiffs filed a motion to enforce the final judgment and permanent injunction, alleging, in part, that Respondents had issued a new policy on October 1, 2025 that violated Section 1232(c)(2)(B) and that Respondents had been re-arresting and detaining age-outs after ICE initially released them, despite no material change in the age-outs' circumstances indicating they posed a danger or flight risk that would justify detention. *Garcia Ramirez,* Case No. 1-18-cv-00508-RC (D.D.C.), ECF No. 436 (Opinion Granting Plaintiffs' Motion to Enforce Final Judgment) at 2. The new policy "reflect[ed] a shift in Defendants' interpretation of their authority to detain "applicants for admission" under Section 1225(b)," and required all age-outs to be placed in an adult detention center if they did not qualify for parole. *Id.* at 16, 19-20. As here, the government argued that their policy merely reflects their understanding that §1232(c)(2)(B) and 8 U.S.C. §1225(b)(2)(A) must work in concert. *Id.* at 25. The Court flatly rejected that argument relying on the basic principle of statutory construction that a specific statute controls over a general provision. *Id.*, citing *HCSC-Laundry v United States,* 450 U.S. 1, 6 (1981) (per curiam) and *Busic v. United States*, 446 U.S. 398, 406 (1980).

With respect to the re-arrest and re-detention of age-outs previously released from ORR custody, the Court likewise rejected the government's argument that such age-outs are subject to detention "like any other adult alien." *Garcia-Ramirez*, 1:18-cv-00508 (DDC), ECF Doc. No. 436 at 29. The Court held that there is no time limit on ICE's duties under the statute, either on the front end or the back end. *Id.*

Respondents' argument here is the same failed argument made in *Ramirez*-Garcia: that Petitioner is now subject to detention "like any other adult alien." Respondents also claim that Petitioner's "theory" would mean that the TVPRA would continue to impose obligations designed for minor children on the government even if the UAC remained in the U.S. for decades without seeking some sort of admittance or parole. Resp. Br. at 21. That argument is disingenuous. UACs are issued notices to appear while still in ORR custody or at the latest, when they are released to a sponsor and thus are placed in removal proceedings where they will be ordered removed if they do not seek to apply, and found eligible, for some type of immigration relief. Respondents' argument is not supported by the TVPRA governing unaccompanied children and thus §1225(b)(2) does not apply here.

This case is not controlled by *Avila* for several additional reasons based on Petitioner's SIJ status. As discussed above, the purpose of the SIJ statutory framework is not to pursue removal of SIJ youth, but to provide them, like Petitioner, with an opportunity to adjust status and become a legal permanent resident in the United States despite their unlawful entry. Thus, detention based solely on Petitioner's unlawful entry serves no purpose. In addition, the *Avila* Court recognized that parole status under 8 U.S.C. §1182(d)(5)(A) is an exception to mandatory detention. The power to grant parole emanates from Congress. Although Congress delegated to DHS the discretionary authority to grant parole in most other situations, it expressly decided to grant parole to SIJ youth.

Respondents argue that this parole designation by Congress to SIJ youth is not really "parole," because in subsection (h)(1), Congress inserted the language "for purposes of subsection (a)," in deeming SIJ youth paroled into the United States. Respondents claim that because subsection (a) deals with adjustment of status, SIJ youth are only "paroled" into the United States for adjustment of status purposes. Petitioner disagrees.

As discussed above, Congress already exempted SIJ youth from the inadmissibility factors relating to unlawful entry, including presence in the U.S. without admission or parole. Thus, the grant of parole under subsection (h)(1)(a) serves no purpose and would be superfluous unless it provided some added benefit for SIJ youth. Parole as a protection against mandatory detention is consistent with the statutory purpose undergirding the SIJ statute: to protect children who have been found to have been abused, neglected, or abandoned by one or both parents and to provide them with a path to permanent residency – not removal. In addition, Respondents provide no authority that the concept of parole can be segmented in the way they wish. *See, also, Sarmiento v. Perry,* 2026 U.S. Dist. LEXIS 9590, *16-17, 2026 LX 73578 (S.D.N.Y. 2026) (holding that the SIJ status operates to confer the status of parolee with inadmissibility waived as a ground for petitioner's detention or removal within the context of his challenges to his detention and ordering his immediate release.). Parole is parole, and unless there is a specific finding that a SIJ youth is a danger to the community or a flight risk, Respondents cannot apply mandatory detention to Petitioner. *J.M.C. v. Stanski*, 2026 U.S. Dist. LEXIS 94581, 2026 LX 255742 (D. Minn. 2026) (finding based on Petitioner's SIJ status, that his arrest and detention violated his due process rights and that the *Banshee* and *Avila* cases were not controlling). *See, also Osorio-Martinez v. Attorney General*, 893 F.3d 153, 170-71 and n. 14 (finding it unnecessary to decide the dispute over the interpretation of the phrase "for purposes of section (a)" because at the end of the day, Congress expressly exempted only 2 groups from the general requirement that noncitizens must be "admitted or paroled" to adjust status, one of them being SIJ youth. This "significant benefit" supported the substantial legal relationship of SIJ designees with the United States and, hence their ability to invoke the Suspension Clause.).

D- <u>Balancing of the *Mathews* Factors Require Petitioner's Immediate Release</u>

Relying almost exclusively on *Avila* and *Banyee* and Respondents' erroneous and misguided belief that Petitioner is subject to mandatory detention, Respondents do little to respond to Petitioner's discussion of the *Mathews* factors in her Petition. See Petition, ¶¶55-60. Indeed, there is little they can say to defend their actions. 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." *Mathews v. Eldrige,* 424 U.S. 319, 335 (1976).

As a previously designated UAC and approved SIJ youth, Petitioner has a weighty interest in her continued liberty as she waits for the availability of a visa to apply for adjustment of status and become a legal permanent resident. In contrast to other noncitizens who have entered the United States unlawfully, Congress has exempted Petitioner from the very inadmissibility factors that might otherwise make her removable. Because she cannot be removed based on the charges that DHS has filed against her, at least not until she has the opportunity to adjust status, and only if that application is unsuccessful, her detention has no meaningful purpose.

In addition, Petitioner was previously released from ORR custody after being found she is neither a flight risk or a danger to the community. Within the last ten months, Petitioner, who lived in Peoria, Illinois, attended three ICE check-ins in St. Louis, travelling more than two hours each way to comply with DHS's requirements. The first two times, DHS allowed her to return home, apparently determining that she was neither a flight risk or a danger to community. While nothing in Petitioner's circumstances had changed, DHS detained her without notice at the third check-in. Her detention is the direct result of insufficient safeguards and lack of procedure.

Moreover, no legitimate government interests are served by Petitioner's continued detention. Petitioner cannot be presently removed based on the charges brought against her, and it may be years before she is able to fully complete the adjustment of status process. The expense of keeping Petitioner in detention for years with the strong possibility that she will be granted permanent residency, serves no legitimate or rational purpose. Petitioner should be ordered released.

II. Petitioner's Unlawful Arrest Violates the Fourth Amendment

As Petitioner is not subject to mandatory detention under 8 U.S.C. §1225, her arrest and detention must comply with 8 U.S.C. § 1226, "Apprehension and Detention of Aliens," which states:

> (a) Arrest, Detention, and Release - On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. 8 U.S.C. §1226. Under federal immigration law, DHS may arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States.

8 U.S.C. § 1226(a). Here, Respondents arrested and detained Petitioner without probable cause in violation of the Fourth Amendment.

Respondents admit that the Fourth Amendment requires probable cause to exist for the arrest of a noncitizen regardless of whether immigration authorities execute an arrest warrant or conduct a warrantless arrest. Resp. Br. at 12-15. Here, Respondents detained Petitioner at her ICE check-in and issued an arrest warrant, claiming that the officer had determined that there was "probable cause to believe that [Petitioner] is removable from the United States." Gov't

Exhibit A, at Bates 001. Respondents further cite to a redacted I-213, *Record of Deportable/Inadmissible Alien*, *see id.* at Bates 003, in support of that probable cause determination.

Petitioner objects to the entry into evidence of the redacted I-213 because Respondents have redacted substantive information within the document that is relevant to this case. Thus, it is both untrustworthy and unreliable. Petitioner's counsel received a copy of the unredacted I-213 from DHS after DHS tried to submit a similar redacted document to the Immigration Court and, upon counsel's objection, the Immigration Judge directed DHS's counsel to provide an unredacted copy to Petitioner's counsel and the Court. Petitioner submits that copy here as Exhibit D, still redacting names and other biometric data for privacy reasons, but disclosing the relevant information on page 2 of the document, relating to Petitioner's status and pending immigration relief.

Petitioner submits Exhibit D not for the truth of the matters asserted in the document, but solely to show that the immigration officers who detained Petitioner knew that at the time of Petitioner's arrest and detention, Petitioner (i) had been designated an unaccompanied minor; (ii) had a pending I-589 asylum application submitted on March 21, 2025; (iii) had an approved I-765 employment authorization document valid until October 24, 2030; and (iv) had an approved I-360, the Special Immigrant Juvenile petition. Accordingly the ICE officer knew that:

- Petitioner's UAC status made her ineligible for mandatory detention and that she needed to be assessed for the "least restrictive setting" based on a determination of whether she was a danger to the community or a flight risk; and

- Petitioner's SIJ status made her unremovable based solely on her unlawful entry into the United States.

Notwithstanding this knowledge, immigration officers arrested and detained Petitioner. Perhaps in acknowledgment that the immigration officers exceeded their authority, Respondents claim that Petitioner did in fact pose a flight risk. See Resp. Br. at 13-14. That is absurd. Petitioner sought out SIJ status and has applied for asylum, indicating that she wishes to remain in the United States and hopes to become a legal permanent resident. She has work authorization. She went to three ICE check-ins in St Louis, Missouri in less than one year as ICE required her to do so. Petition, ¶¶ 22-23. Moreover, given her SIJ status, Petitioner had no reason to believe that she was subject to mandatory detention. As there was no indication that Petitioner was currently removable from the United States, there was no probable cause to arrest and detain her. Her arrest and continued detention thus violate the Fourth Amendment.

III. Petitioner Seeks Discovery Relating to her APA Claims

Petitioner's APA claims rely on internal policy directives to remove noncitizens with approved SIJ status who are awaiting their priority date to become current, asserting that these policy changes violate 5 U.S.C. §553 and 5 U.S.C. §706. Should the Court deny relief on Petitioner's other claims, Petitioner respectfully seeks limited discovery related to such internal directives.

CONCLUSION

For the foregoing reasons, Petitioner asks this Court to grant her Petition and order her immediate release from custody.

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/s/ Laura Smith
Laura Smith (IL ARDC 6300907)
Laura@ChildrensLegalCenterChicago.org
Children's Legal Center
1100 W Cermak Rd., Suite 422
Chicago, Illinois 60608
(312) 722-6642
Admitted Pro Hac Vice

Javad Khazaeli (MO53735)

javad.khazaeli@kwlawstl.com
Khazaeli Wyrsch LLC
911 Washington Ave, Suite 211
St. Louis, MO 63101