Practice Alert
Sosnava Rodriguez v. Vergara and 8 U.S.C. § 1225(b)(2)(A) Detention in the Fifth Circuit[1]

November 12, 2026

On October 23, 2026, the en banc Fifth Circuit held in *Sosnava Rodriguez v. Vergara*, No. 26-50183, 2026 WL 3181188 (5th Cir. Oct. 23, 2026) (en banc) that immigration detention without access to a bond hearing does not violate the due process rights of people detained under 8 U.S.C. § 1225(b)(2)(A). This ruling applies to noncitizens held by the Department of Homeland Security ("DHS") in Texas, Louisiana, and Mississippi.[2]

This practice alert describes the Fifth Circuit's decision in *Sosnava Rodriguez* and provides an overview of types of habeas claims challenging immigration detention that may still be available for noncitizens impacted by *Sosnava Rodriguez* in the Fifth Circuit following the decision.

I. Background on *Sosnava Rodriguez*

Sosnava Rodriguez consolidated three government appeals of district court habeas grants from early 2026. All three petitioners are long-time residents of Texas who entered the United States without inspection over a decade ago, have U.S. citizen children, have pending claims for cancellation of removal in their ongoing removal proceedings, and lack criminal history. All were arrested following routine traffic stops and held in immigration detention under 8 U.S.C § 1225(b)(2)(A), with no access to a bond hearing to review whether their detention was individually justified.

In most of the country, these petitioners would have been deemed subject to 8 U.S.C. § 1226(a) and eligible for a bond hearing. *See Lopez Garcia v. Guadian*, 190 F.4th 305, 317 (4th Cir. 2026) (noting the extent of the circuit split on the statutory question). But the Fifth Circuit held in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), that § 1225(b)(2)(A), not

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[2] The counsel team will continue to update this resource as circumstances develop and encourage practitioners to report post-*Sosnava Rodriguez* by emailing clearinghouse@immcouncil.org.

§ 1226, governs detention of noncitizens arrested in the interior of the United States who were not previously admitted (i.e. who did not enter lawfully).

Petitioners brought individual habeas petitions in the U.S. District Court for the Western District of Texas. In each case, a district court held that detaining them without any individualized hearing to determine flight risk or danger violated the Due Process Clause of the U.S. Constitution and ordered their immediate release. The government appealed each of the cases and then sought consolidation and expedited review from the Fifth Circuit.

On July 2, 2026, in a 2-1 split decision, a panel of the Fifth Circuit affirmed the district courts' habeas grants, in *Sosnava Rodriguez v. Ortega*, 180 F.4th 702 (5th Cir. 2026), *vacated*, 181 F.4th 608 (5th Cir. 2026) (en banc). Only a few days later, the Fifth Circuit sua sponte took the case up en banc and vacated the panel's decision. **The July panel decision has been vacated and is no longer in effect**.

II. The Fifth Circuit's En Banc Ruling

On October 23, 2026, the en banc Fifth Circuit voted 10-7 to reverse the grants of habeas relief below. Judge Wilson, writing for the *Sosnava Rodriguez* majority, rejected petitioners' claim that that they were entitled to individualized review of whether their detention served one of the recognized legitimate purposes of immigration detention—preventing flight risk or danger to the community.[3]

The majority opinion adopted all of the government's key arguments, holding:

(1) all unadmitted noncitizens are subject to the "entry fiction" and thus have no procedural due process rights regarding their admission beyond what Congress has provided via statute, and this includes detention during removal proceedings;

(2) under *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003), there is no procedural due process right to evaluate a fact that is not "relevant under the statutory scheme" at issue, and thus noncitizens subject to mandatory detention under § 1225(b)(2)(A) cannot invoke procedural due process to seek a bond hearing evaluating flight risk and danger because those facts are irrelevant under that statute;

(3) detention pending removal proceedings implicates not petitioners' constitutionally enumerated right to "liberty," but a narrower interest in being free in the United States pending removal proceedings—which is not "fundamental," and therefore is subject to, and survives, mere rational basis review; and

[3] Because the majority decision repeatedly relies on the distinction between admitted and unadmitted noncitizens, the decision likely does not foreclose due process challenges to detention brought by admitted noncitizens. Analysis of the effects of *Sosnava Rodriguez* on such claims, if any, is beyond the scope of this Alert.

(4) even if the enumerated right to "liberty" were at issue, detention pending removal remains justified, and therefore substantively valid, unless removal is not "practically attainable," and this is so even if detention becomes prolonged.

The decision broadly forecloses most claims based on the Due Process Clause that could be brought in habeas to challenge detention without a bond hearing under § 1225(b)(2)(A) by noncitizens who were not previously admitted. Seven judges dissented and would have held that the petitioners were entitled to habeas relief on due process grounds.

The majority's holdings represent fringe positions never adopted by the Supreme Court or any other circuit court. *See, e.g.*, *Buele Morocho v. Warden Phila. FDC*, 189 F.4th 287, 305–07 (3d Cir. 2026) (holding detention of noncitizens first apprehended in the interior without access to a bond hearing violates due process); *Lopez-Campos v. Raycraft*, 175 F.4th 713, 732–34 (6th Cir. 2026) (same); *see also Barbosa da Cunha v. Freden*, 175 F.4th 61, 85–86, 93–96 (2d Cir. 2026) (rejecting government's proposed expansion of the entry fiction as well as its proposed statutory interpretation of § 1225(b)(2)(A) based in part on the canon of constitutional avoidance), *cert. granted*, *Rhoney v. Barbosa da Cunha* (No 26-104); *Lopez Garcia*, 190 F.4th at 315, 333–35 (same); *Cirrus Rojas v. Olson*, 183 F.4th 909, 930–31 & n.7 (7th Cir. 2026) (same); *Santillan Quiroz v. Mullin*, 180 F.4th 1226, 1249–50 (10th Cir. 2026) (employing canon of constitutional avoidance); *Padilla*, 2026 WL 2822044, at *11–19 (rejecting the government's proposed expansion of the entry fiction).

A. Expanded the Entry Fiction to All Unadmitted Noncitizens and to Detention

The majority accepted the government's effort to dramatically expand the so-called "entry fiction," holding that because the petitioners had "never been admitted to the United States, due process does not entitle them to additional proceedings beyond what Congress has provided before they may be detained pending removal." 2026 WL 3181188, at *5. And because § 1225(b)(2)(A) mandates detention without access to a bond hearing or any other meaningful individualized review,[4] the court held no additional process is constitutionally required. *Id.* at *5–7.

In reaching this result, the court read the Supreme Court's decision in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), as "emphasiz[ing] that admission status—not physical presence—informs what procedural rights are available" to a noncitizen regarding both admission *and detention*. *Sosnava Rodriguez*, 2026 WL 3181188, at *6. In other words, the court held that Congress's decision to mandate detention of all "applicants for

[4] Someone detained under § 1225(b)(2)(A) would be eligible for humanitarian parole under 8 U.S.C. § 1182(d)(5); however, in practice, DHS rarely uses this discretionary provision at this time, and its discretionary decision to deny parole is generally not reviewable in federal court. On the other hand, an individual re-detained after a prior grant of parole may be able to challenge such a revocation under the procedures required by statute and regulation. *See infra*, part III.

admission" under § 1225(b)(2)(A) without individualized review[5] determines the scope of the Constitution's protection against the deprivation of these noncitizens' liberty in the immigration detention context. *See id. But see id.* at *52–54 (Southwick, J., dissenting) (refuting this overreading of *Thuraissigiam*); *id.* at *66–67 & n.7 (Higginson, J., dissenting) (similar); *Padilla v. U.S. Immigr. & Customs Enf't*, No. 24-2801, 2026 WL 2822044, at *10–19 (9th Cir. Sept. 21, 2026) (rejecting the government's proposed expansion of the entry fiction and explaining why the fiction is irrelevant to procedures regarding detention, as opposed to admission).

B. Found No Right to Process Regarding Facts Not "Relevant Under the Statutory Scheme"

The majority further held that even if the entry fiction does not apply to people like the petitioners, their procedural due process claims would still fail because flight risk and danger—the facts they sought a hearing to evaluate—are not mentioned in § 1225(b)(2)(A). That statute mandates detention of noncitizens who are not "clearly and beyond a doubt entitled to be admitted," without regard to their flight risk or danger. The majority adopted a novel Trump administration argument that procedural due process is only ever available to evaluate facts that are "relevant *under the statutory scheme*" in question, based on *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003). *See Sosnava Rodriguez*, 2026 WL 3181188, at *7–9 (quoting *Doe*, 538 U.S. at 8). *Doe* was an unusual case regarding a procedural due process challenge to placement on a sex offender registry that did not involve infringement of an enumerated constitutional right. *See id.* at *55–58 (Southwick, J., dissenting) (explaining why the majority's reading of *Doe* is wrong).

C. Held Petitioners' Detention During Removal Proceedings Does Not Implicate the Enumerated Right to Liberty, Is Subject to Rational Basis Review, and Satisfies That Standard

The majority rejected the petitioners' argument that their detention was unjustified, and therefore substantively invalid, because they presented no risk of flight or danger to the community, and preventing flight and danger are the only valid purposes of immigration detention ever asserted by the government or recognized by courts. *Sosnava Rodriguez*, 2026 WL 3181188, at *9–10.

In doing so, the majority concluded the right to "liberty" enumerated in the Fifth Amendment was not at issue in the case. The majority stated that petitioners "frame[d] their asserted liberty interest at too high a level of abstraction." *Id.* at *9. *But see id.* at *46–47, 50–51 (Southwick J., dissenting) (rejecting the majority's position). The two reasons the majority gave to justify this holding are: (1) noncitizens in removal proceedings can "simply walk[] out of detention" by giving up their claims in immigration court and accepting a removal order, and (2), Congress has "plenary authority to set policy regarding [noncitizen] admission and removal." *Id.*

[5] As described above, most circuits do not read the INA to mandate detention of this group in the first place. The Supreme Court is set to resolve this circuit split in 2027 in *Rhoney v. Barbosa da Cunha* (No. 26-104).

at *10 *But see id.* at *54 & n.9 (Southwick, J., dissenting) (arguing neither reason holds water); *id.* at *65–66, 71 & n.13 (Higginson, J., dissenting) (similar).

After reaching the novel conclusion that the relevant right must be defined by the specific context of the deprivation, the majority proclaimed that the right petitioners sought to protect was really "the right to freedom from custody pending removal proceedings." *Sosnava Rodriguez*, 2026 WL 3181188, at *11. The majority then evaluated this asserted right under the substantive due process framework set forth in *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997), which is used to determine whether to recognize a new, implied "fundamental" right. *Id.* at *11–12. *But see id.* at *47–50 (Southwick, J., dissenting) (explaining why that framework is inapplicable).

Under the *Glucksberg* framework, an interest will only be deemed "fundamental" if it is "objectively, deeply rooted in this Nation's history and tradition." 521 U.S. at 720–21. Infringement of an implied fundamental right is subject to strict scrutiny review, while deprivations of interests not deemed "fundamental" are subject to mere rational basis review. *Id.* at 728.

The *Sosnava Rodriguez* court concluded the petitioners' "right to freedom from custody pending removal proceedings" is not "fundamental," and therefore detention during removal proceedings is subject to mere rational basis review, *Sosnava Rodriguez*, 2026 WL 3181188, at *11–12, even though the Supreme Court has never held civil detention is subject to this deferential standard of review. The majority reasoned that because a right to release pending proceedings for people like petitioners has "never been consistently offered by federal immigration law," that right is not deeply rooted in history and tradition. *Id.* at *11. *But see id.* at * 47 n.2, 51 (Southwick, J., dissenting) (refuting this view of history); *id.* at *61–63 (Douglas, J., dissenting) (similar). The majority then suggested that even if there were a deeply rooted right to release, Congress's plenary power over admission of noncitizens would allow Congress to take away that right at any time. *Id.* at *11. *But see id.* at *51 (Southwick, J., dissenting) (disagreeing); *id.* at *65–66 (Higginson, J., dissenting) (rejecting the majority's deployment of the plenary power).

And finally, the court concluded that petitioners' detention satisfied rational basis review because immigration detention during removal proceedings is generally permissible, *id.* at *12, contrary to the prior understanding that detention must "actually serve[]" one of the identified legitimate purposes of preventing demonstrated flight risk or danger, *id.* at *48 (Southwick, J., dissenting).

D. Held Petitioners' Detention Was Substantively Valid Because Removal Is Not Unattainable

Lastly, the majority held that despite the Supreme Court's constitutional reasoning in *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Court in that case "suggested" only that "the Constitution may limit the permissible length of [a noncitizen's] detention *after* he is ordered removed," and that "*Zadvydas* communicates no substantive due process right to avoid custody while one's removal proceedings are pending," particularly for unadmitted noncitizens. *Sosnava*

Rodriguez, 2026 WL 3181188, at *12. The majority then explained that even if *Zadvydas* had some relevance to pre-order detention, it would only prevent detention where removal was "'no longer practically attainable,' such that continued detention did not serve its purported immigration purpose." *Id.* at *13 (quoting *Zadvydas*, 533 U.S. at 690). The court held that because the petitioners in *Sosnava Rodriguez* did not argue or prove that their ultimate removal was not reasonably foreseeable, their "[d]etention still 'necessarily serves the purpose of preventing' Petitioners 'from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, [they] will be successfully removed.'" *Id.* (quoting *Demore v. Kim*, 538 U.S. 510, 528 (2003)). *But see id.* at *49 (Southwick, J., dissenting) (refuting the majority's reading of *Zadvydas*).

While the *Sosnava Rodriguez* petitioners never argued that their detention without review had become unconstitutionally prolonged, the government urged the en banc court to decide that such claims are also unavailable. The majority did so despite the brevity of the petitioners' detention, announcing that "so long as removal remains a viable prospect, continued detention, or renewed detention in the case of an alien previously released, does not violate due process." *Id.* at *13. *But see id.* at *60 (Southwick, J., dissenting) (rejecting the majority's position); *id.* at *61 & n.2 (Douglas, J., dissenting) (similar, and noting that the question was not before the court).

III. Habeas Claims Likely Still Viable After *Sosnava Rodriguez*

For unadmitted noncitizens arrested in states other than Texas, Louisiana, and Mississippi, practitioners should consider filing a habeas petition immediately after arrest by DHS, before ICE may transfer the individual out of the state, in the federal district where the noncitizen is detained at the time and naming as respondents DHS officials in addition to the immediate custodian.[6] That court will retain jurisdiction over the case, and will not be bound by Fifth Circuit law, even if DHS transfers the noncitizen to the Fifth Circuit while the habeas is pending. *See Rumsfeld v. Padilla*, 542 U.S. 426, 551 (2004) ("[W]hen the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release."). Filing a habeas petition with the basic known information suffices for the purposes of establishing jurisdiction. Counsel can subsequently amend the petition once they learn the additional relevant facts.

Because the statutory issue is currently pending before the Supreme Court, practitioners in the Fifth Circuit should consider **preserving the statutory claim** that was rejected in *Buenrostro-Mendez*, arguing in new or ongoing habeas cases that § 1226, not § 1225(b)(2)(A), is the statute that authorizes detention during removal proceedings for noncitizens who entered without inspection, and therefore such individuals are entitled to bond hearings. Practitioners

[6] Detained individuals who do not have access to counsel may still prepare and file a habeas petition *pro se*. *See, e.g.*, DetentionHelp, https://detentionhelp.org/en/; National Immigration Project, *Habeas Explainer & Pro Se Filing Instructions* (Aug. 4, 2026), https://nipnlg.org/work/resources/habeas-explainer-pro-se-filing-instructions.

with pending habeas appeals in the Fifth Circuit, particularly if they also raised a statutory argument despite *Buenrostro-Mendez*, could consider **asking the circuit to hold those cases in abeyance** pending the Supreme Court's decision in *Barbosa da Cunha*.[7]

The en banc decision in *Sosnava Rodriguez* likely forecloses most claims **brought by unadmitted noncitizens** detained **in the Fifth Circuit** to challenge their **initial detention** without a bond hearing **under the Due Process Clause**. However, there may be other viable arguments that unadmitted noncitizens can bring to challenge their detention. Practitioners with pending habeas claims in the Fifth Circuit may consider **amending their petitions** if additional claims are available, **or filing a notice or supplemental brief** making clear which claims remain viable after *Sosnava Rodriguez*. Claims that likely remain viable include:

- **Warrantless arrest:**
  - Arrest without a valid warrant and without the required probable cause of both unlawful presence and likelihood of disappearing violates 8 U.S.C. § 1357(a)(2) and accompanying regulations, and/or the Fourth Amendment.[8]
- **Re-detention:**
  - Revocation of noncitizen's release on recognizance or release ordered by an IJ did not comply with statutory or regulatory requirements.[9]
  - Revocation of noncitizen's humanitarian parole did not comply with statutory or regulatory requirements.[10]

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[7] Practitioners can also consider preserving any due process claims, as there is currently a cert petition pending on this issue in *Lopez-Campos v. Raycraft*, although it is unlikely the Supreme Court will review the issue before *Barbosa da Cunha*.

[8] *See* National Immigration Project, *Habeas in the Fifth and Eighth Circuits After* Buenrostro *and* Avila, at 13–14 (May 28, 2026), https://nipnlg.org/work/resources/habeas-after-buenrostro-and-avila [hereinafter "Habeas Practice Advisory"] (**note that this Alert cites the Habeas Practice Advisory for information about non-due process claims only, as it is out of date regarding due process claims in the Fifth Circuit)**; National Immigration Project, *Freeing SIJS Youth from ICE Detention*, at 18–19 (Oct. 19, 2026), https://nipnlg.org/work/resources/practice-advisory-freeing-sijs-youth-ice-detention [hereinafter "SIJS Habeas Practice Advisory"].

[9] *See* Habeas Practice Advisory, supra note [8], at 5–6 (describing claims that revocation of release on recognizance violated 8 U.S.C. § 1226(b) or 8 C.F.R. § 1236.1(c)(9)). *See also, e.g.*, *Hernandez v. Mullin*, No. CIV-26-837-G, 2026 WL 2318740, at *5–6 (W.D. Okla. June 5, 2026) (granting release because order of release on recognizance not lawfully revoked under statute and regulation), *report and recommendation adopted*, No. CIV-26-837-G, 2026 WL 2302460 (W.D. Okla. Aug. 10, 2026); *Castro De Santiago v. Mullin*, No. 26-CV-00186-CYC, 2026 WL 2969460, at *2–4 (D. Colo. Oct. 2, 2026) (granting release because custody not revoked by authorized official, and because statutory and regulatory regime implicitly requires changed circumstances before revocation of release granted by an IJ, and collecting cases); *Singh v. Noem*, 824 F. Supp. 3d 1197, 1211–13 (D.N.M. 2026) (revocation of release violated regulations); *Jimenez v. Bostock*, No. 3:25-CV-00570-MTK, 2025 WL 2430381, at *6 (D. Or. Aug. 22, 2025) (same).

Once a noncitizen has been released under § 1226(a), courts have held that the government may not shift detention authority back to § 1225. *See infra* note [23].

[10] *See* Habeas Practice Advisory, *supra* note [8], at 8–10 (describing claims that revocation of parole violated 8 U.S.C. § 1182(d)(5)(A) and/or 8 C.F.R. § 212(e)(2)(i)); *see also Y-Z-L-H v. Bostock*, 792 F.

    - Re-detention after a prior decision to release absent materially changed circumstances was arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).[11]
- **U Visa / T Visa / VAWA petition pending:**
    - The noncitizen has a pending principal or derivative U visa petition, T visa petition, or VAWA self-petition pending, with or without deferred action. Orders in a pending class action, *Immigr. Ctr. for Women & Children v. Noem*, 351 F.R.D. 324, 396–97 (C.D. Cal. 2026) ("*ICWC*"), may preclude their detention.[12]
- **Deferred action:**
    - Detention is unjustified under the standard articulated in *Sosnava Rodriguez*, 2026 WL 3181188, at *12–13, given that removal is not reasonably foreseeable in light of current deferred action.[13]
    - Deferred action revocation did not comply with regulatory requirements or was arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).[14]
    - Current deferred action status means that the noncitizen is considered to be in a period of authorized stay, per the USCIS Policy Manual, such that detention

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Supp. 3d 1123, 1137–38 (D. Or. 2025) (explaining that the parole statute "has a mandatory requirement—parole may be terminated or revoked only when in the Secretary's opinion the parole's purposes have been met"); *Garcia Castillo v. Bullock*, No. 3:26-cv-01166, 2026 WL 2923716, at *3–4 (M.D. Tenn. Sept. 29, 2026) (granting habeas where "the Government failed to comply with the applicable statutory and regulatory requirements when it purported to revoke the Petitioner's parole"); *Arias v. Larose*, No. 3:25-CV-02595, 2025 WL 3295385, at *4 (S.D. Cal. Nov. 25, 2025) (ordering release where there was no "real-time" determination "that the purpose of parole has been served," noting regulation also requires written notice of parole termination, and explaining that a departure date listed on an I-94 is not a parole expiration date); *Kenzhebaev v. Noem*, 820 F. Supp. 3d 647, 656–58 & n. 5 (W.D. Mich. 2025) (ordering release based on violation of statute and regulation and collecting cases).

[11] *See* Habeas Practice Advisory, *supra* note [8], at 6–7, 10–11 (discussing APA challenges to re-detention, including potential pitfalls); *see also Jimenez*, 2025 WL 2430381, at *5 (finding redetention without changed circumstances was arbitrary and capricious); *Ramirez-Morales v. Lyons*, No. EP-25-CV-00476-DCG-RFC, 2025 WL 4057146, at *3–5 (W.D. Tex. Nov. 21, 2025) (recommending relief because it was arbitrary and capricious to subject petitioner to mandatory detention after an immigration judge previously ordered release on bond), *report and recommendation adopted as modified*, 2025 WL 3767065 (W.D. Tex. Dec. 30, 2025) (granting relief on other grounds without deciding whether APA was violated)).

[12] *See* Habeas Practice Advisory, *supra* note [8], at 12 (discussing *ICWC*). For more information about the case and to contact class counsel, visit: https://publiccounsel.org/our-cases/icwc-v-mullin/.

[13] *See* Habeas Practice Advisory, *supra* note [8], at 13; National Immigration Project, Outline of Habeas Decisions Related to 18+ SIJs/UCs and Individuals with Deferred Action [hereinafter "SIJs/UCs Habeas Outline"], part I.

[14] *See* SIJs/UCs Habeas Outline, *supra* note [13], at part IV; *see also Inland Empire-Immigrant Youth Collective v. Duke*, No. EDCV172048PSGSHKX, 2017 WL 5900061, at *6–9 (C.D. Cal. Nov. 20, 2017) (finding revocation of individual's DACA was arbitrary and capricious); *Inland Empire-Immigrant Youth Collective v. Nielsen*, 2018 WL 1061408, at *17–19 (C.D. Cal. Feb. 26, 2018) (granting class-wide preliminary injunction); *Inland Empire-Immigrant Youth Collective v. Nielsen*, 2018 WL 4998230, at *17–18 (C.D. Cal. Apr. 19, 2018) (denying government's motion to dismiss).

violates the *Accardi* doctrine. Or, at a minimum, the case is distinguishable from *Sosnava Rodriguez*, where the court held that the petitioners had no right to be present in the United States during their removal proceedings.[15]

- **Unaccompanied Children and Special Immigrant Juveniles:**[16]
  - If previously released to a sponsor as an unaccompanied child, re-detention and transfer to ORR *while still a minor* may violate the TVPRA, 8 U.S.C. § 1232(c)(2)(A), and/or Department of Health and Human Services regulations governing Office of Refugee Resettlement custody.[17]
  - If previously designated an unaccompanied child and released on 18th birthday, federal court order prevents Immigration and Customs Enforcement ("ICE") from re-detaining absent materially changed circumstances. *See Garcia-Ramirez v. ICE*, 812 F. Supp. 3d 86 (D.D.C. 2025), *appeal docketed*, 26-5053 (D.C. Cir. Feb. 11, 2026).[18]
  - If previously released to a sponsor as an unaccompanied child under the TVPRA, re-detention absent materially changed circumstances (regardless of current age) is arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).[19]
  - If Special Immigrant Juvenile, claim that removal is not practically attainable due to arguable non-removability while waiting in the visa backlog may be viable.[20]

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[15] These are novel arguments. *Cf.*, *e.g.*, *Pineda Parada v. Rice*, No. 1:25-CV-01660, 2026 WL 2122879, at *2 (W.D. La. July 1, 2026) (discussing USCIS Policy Manual), *report and recommendation adopted*, 2026 WL 2116973 (W.D. La. July 22, 2026).

[16] *See generally* SIJs/UCs Habeas Outline, *supra* note [13] (collecting cases based on claims grounded in the TVPRA and/or SIJS).

[17] Limited due process arguments may be available for unaccompanied children after *Sosnava*, given that their custody is governed by the TVPRA—a distinct statutory scheme under which prompt placement in the least restrictive setting is the default, and questions such as family unity and sponsor capability are statutorily relevant, while flight risk and danger are also relevant under applicable regulations. For more on UC-specific claims for release, *see* National Center for Youth Law [forthcoming].

[18] *See* American Immigration Council, Iowa College of Law Federal Impact Litigation Clinic, and National Immigration Justice Center, *Updates on* Garcia Ramirez *Class Action* (Oct. 15, 2026), https://www.americanimmigrationcouncil.org/wp-content/uploads/2026/10/Garcia-Ramirez-Practice-Pointer-Oct-2026-update.pdf. Practitioners with clients in this posture are strongly encouraged to reach out to class counsel at Clearinghouse@immcouncil.org and Litigation@immigrantjustice.org.

[19] *See* Habeas Practice Advisory, *supra* note [8], at 8.

[20] *See generally* SIJs/UCs Habeas Outline, *supra* note [13]; Habeas Practice Advisory, *supra* note [8], at 13; National Immigration Project, *Freeing SIJS Youth from ICE Detention*, at 21–22 (Oct. 19, 2026), https://nipnlg.org/work/resources/practice-advisory-freeing-sijs-youth-ice-detention [hereinafter "SIJS Habeas Practice Advisory"]. *But see Salto Carchi v. Bondi*, No. CV 26-804 SEC P, 2026 WL 1834305, at *3 (W.D. La. June 25, 2026) ("The Court lacks jurisdiction over Petitioner's claim that he cannot be removed due to his SIJ status."); *Guerra Leon v. Noem*, No. 3:25-CV-0149, 2025 WL 4113562, at *3 (W.D. La. Oct. 30, 2025) ("SIJS status is not what prevents the removability of the Petitioner."). **Please reach out to the National Immigration Project's SIJS Habeas Project if you plan to make this argument**, https://nipnlg.org/sijs-habeas-project.

- **TPS:**
  - If TPS is current, detention violates 8 U.S.C. § 1254(a).[21]
- **Arrest with a warrant invoking 8 U.S.C. § 1226:**
  - Where ICE represented that a person was detained pursuant to 8 U.S.C. § 1226, such as in an arrest warrant explicitly invoking that provision or where the noncitizen was previously released on recognizance under § 1226(a)(2)(B), ICE should be held to that representation and must comply with the § 1226 statutory and regulatory requirements, including by providing a bond hearing.[22]
- **Violation of binding ICE policies:**
  - Detention violates ICE's own policies, including:
    - ICE Directive 11032.4 on generally not detaining pregnant, postpartum, and nursing people;[23] and
    - ICE Directive 16004.1 on generally not detaining individuals who have been granted asylum, withholding, or Convention Against Torture relief, where DHS has appeal.[24]
- **Post-removal order:**
  - Post-removal order detention violates 8 U.S.C. § 1231(a)(6) under *Zadvydas* because removal is not significantly likely in the reasonably foreseeable future.
  - Re-detention after release on an Order of Supervision violates regulations and/or due process.[25]

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[21] *See* Habeas Practice Advisory, *supra* note [8], at 12.

[22] *See, e.g.*, *Andrés Felipe C.C. v. Blanche*, No. 26-CV-3220, 2026 WL 2137334, at *2–4 (D. Minn. July 24, 2026); *Martha C.G.P. v. Blanche*, No. CV 26-2308, 2026 WL 1329577, at *2 (D. Minn. May 13, 2026); *O.A.C.S. v. Wofford*, No. 1:25-CV-01652-DAD-CSK (HC), 2025 WL 3485221, at *3 (E.D. Cal. Dec. 4, 2025) (finding a prior release under § 1226 precludes the government from later "switching tracks" and collecting cases).

[23] *See* Robert & Ethel Kennedy Human Rights Center, *Practice Advisory: Litigating Habeas Corpus Petitions for Pregnant, Postpartum, and Nursing People in ICE Detention* (Aug. 24, 2026), https://kennedyhumanrights.org/report/practice-advisory-litigating-habeas-corpus-petitions-for-pregnant-postpartum-and-nursing-people-in-ice-detention/; *see also San Juan v. Mullin*, 838 F. Supp. 3d 602, 604–06 (W.D. La. 2026) (granting release based on *Accardi* doctrine and violation of ICE Directive 11032.4); *Shigwedha v. Acuna,* No. CV 26-2430, 2026 WL 2211525, at *1 (W.D. La. July 31, 2026) (same); *de Leon v. Ladwig*, No. 6:25-cv-1884, 2026 WL 19095 (W.D. La. Jan. 2, 2026) (same).

[24] ICE Directive 16004.1, Detention Policy Where an Immigration Judge Has Granted Asylum, Withholding of Removal, or Convention Against Torture Protection, and DHS Has Appealed, Feb. 9, 2004; Memorandum from Michael Garcia, ICE Assistant Secretary, Detention Policy Where an Immigration Judge Has Granted Asylum and ICE Has Appealed (Feb. 2004); *see also* Message from Gary Mead, ICE ERO Executive Assoc. Dir., Reminder on Detention Policy Where an Immigration Judge Has Granted Asylum, Withholding of Removal, or CAT (Mar. 6, 2012) (confirming policy "applies at all times following a grant of protection"). Available at https://nipnlg.org/sites/default/files/2024-07/all_ice_policies_on_post-relief_release.pdf.

[25] *See, e.g.*, *Rodriguez Romero v. Ladwig*, 827 F. Supp. 3d 779 (M.D. La. 2026).

IV. Conclusion

Although the Fifth Circuit has decided *Sosnava Rodriguez*, the immigration detention landscape in the Fifth Circuit remains likely to evolve rapidly over the coming months as the Supreme Court decides *Rhoney v. Barbosa da Cunha*. Practitioners are encouraged to remain in communication with the counsel team and with each other about victories, setbacks, and other developments, both in the district and immigration courts, and the counsel team will continue to regularly update this practice advisory to keep practitioners informed.