UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

JAIME IVAN DUCHI-NAULA

Petitioner,

v.

E.L. TATUM, JR., Warden of the Federal Correctional Institute, Berlin; **PATRICIA H. HYDE**, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations, Boston Field Office; **TODD LYONS**, Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of U.S. Department of Homeland Security; **PAMELA BONDI**, U.S. Attorney General,

Respondents.

Case No.: 1:25-cv-247-**LM-AJ**

PETITIONER'S BRIEF ON THE COURT'S INHERENT POWER TO CONDUCT A BAIL HEARING

INTRODUCTION

Petitioner Jaime Ivan Duchi-Na ia is a Special Immigrant Juvenile (SIJ) designee whose Form I-360 has been approved by the United States Citizenship and Immigration Services (USCIS). Docket Number (DN) 1-2 at 25. USCIS has also granted his deferred action, which permits him to work and temporarily delays his removal for four years (until 2028). *Id.* Petitioner has no crime or any indication that he is a flight risk. Respondents do not dispute these facts. *See* Govt's Br. at 3-9. In other words, there is no logical reason to detain him at all. However, he is currently detained at a medium security federal prison.

Nor do Respondents dispute that this Court has inherent authority to hold a bail hearing and release him on bail during the pendency of Petitioner's habeas case. Nevertheless, Respondents argue that this Court should not exercise the Court's inherent power because "Petitioner has not made a clear showing that his detention is governed by [8 U.S.C.] § 1226(a)" or has not alleged "extraordinary circumstances here." Govt's Br. at 7-9. Respondents' arguments are unpersuasive.

First, Petitioner raises clear cases on law and facts that he is entitled to a bond hearing. Congress specifically wanted to treat a SIJ visa designee as "'an immigrant who is present in the United States'" and provide "a host of procedural rights designed to sustain their relationship to the United States[.]" *Rodriguez v. Perry*, 747 F. Supp. 3d 911, 916 (E.D. Va. 2024) (quoting *Osorio-Martinez v. AG United States*, 893 F.3d 153, 171 (3d Cir. 2018)). Respondents' only argument is that the SIJ designation does not confer lawful status. Govt's Br. at 5. However, the detention statute, 8 U.S.C. § 1226(a), or constitutional rights do not depend on lawful status only. As Congress intended, a SIJ designee enjoys the constitutional right not to be detained or summarily deported without procedural due process protection "that distinguish[es] them from

arriving aliens[.]" *Rodriguez*, 747 F. Supp. 3d at 918; *Diaz-Calderon v. Barr*, No. 2:20-CV-11235-TGB, 2020 U.S. Dist. LEXIS 173509, at *33 (E.D. Mich. Sep. 22, 2020) ("Diaz's temporary parole [as an arriving alien or applicant for admission], which Respondents contend was effectuated by § 1182(d)(5), expired once his SIJ application was approved. [b]ut Respondents' 'status quo' argument ignores the operation of § 1255(h), which acts to parole Diaz into the United States as a SIJ status recipient with a current visa who is eligible to apply for an adjustment of status."); *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 660-61 (E.D. Va. 2020) ("Notably, in the immigration context, not all types of parole are treated equally" and "SIJ status puts [a noncitizen] in a special parole status" that allows him to become a lawful permanent resident). Petitioner has presented clear cases on law and facts.

Second, Petitioner's detention is extraordinary. Again, Petitioner is a SIJ designee who has received deferred action from removal and has no crime or any indication that he is a flight risk. Despite this, Respondents have detained Petitioner at a medium security level Federal Correctional Institution (FCI) that is designed to detain individuals with serious criminal convictions. Respondents' detention of Petitioner is precisely the opposite of what Congress intended. Petitioner's detention has cut off his ties to the community, his family, and lawful employment. In short, Petitioner cannot have the opportunity to deepen his "legal relationship with the United States" despite Congressional intent. *Osorio*, 893 F.3d at 170. Indeed, Respondents cite no case or example to support their position that the detention of a noncitizen like Petitioner is even justified.

This Court should exercise the Court's power to hold a bail hearing and release him on bail.

LEGAL BACKGROUND

The Court's Inherent Power

This Court "has inherent power to release the petitioner pending determination of the merits." *Gomes v. US Dep't of Homeland Sec.*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020) (quoting *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (per curiam)); *Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001). The Court "may grant bail to a habeas petitioner if: (1) the petitioner has a clear case on the law and facts, *or* (2) exceptional circumstances are present and the petitioner demonstrates a substantial claim of constitutional error." *Gomes*, 460 F. Supp. 3d at 144 (citing *Glynn v. Donnelly*, 470 F.2d 95, 98 (1st Cir. 1972)) (emphasis added).

Special Immigrant Juvenile (SIJ)

Congress has created a special treatment for SIJ designees that "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 [Lawful Permanent Resident] status." *Osorio-Martinez*, 893 F.3d at 168 (quoting *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011)). Once granted, SIJ designation "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." *Id.* at 170.

"Not only are SIJ [designees] 'deemed, for purposes of [adjustment of status to lawful permanent resident under § 1255(a)], to have been paroled into the United States,' 8 U.S.C. § 1255(h)(1), but Congress also enlarged the chance that [SIJ designees] would be successful in their applications for adjustment [of status] by exempting them from a host of grounds that would otherwise render them inadmissible – including being found to be a 'public charge,' lacking a 'valid entry document,' or having 'misrepresented a material fact'—while seeking admission into the United States, *id.* § 1182(a); *see also id.* § 1255(h)(2)(A)." *Id.* at 170-71. In short, for constitutional rights purposes, "SIJ designees stand much closer to lawful permanent residents than

to aliens present in the United States for a few hours before their apprehension." *Osorio-Martinez*, 893 F.3d at 174.

ARGUMENT

I. PETITIONER HAS CLEAR CASES ON LAW AND FACTS

Petitioner has clear cases on law and facts that he is entitled to a bond hearing. While Respondents explain about the mandatory detention of an arriving alien, Respondents cite no case to support their position that Petitioner's SIJ designation does not alter his former arriving alien status and still treat him as if he is at the border for both statutory and constitutional aspects of his detention. *See* Govt's Br. at 5-6. Instead, courts have agreed with Petitioner. *See Rodriguez*, 747 F. Supp. 3d at 916 (holding that the approval of SIJ shifted the treatment of the petitioner's detention from an arriving alien to an immigrant present in the United States); *Diaz-Calderon v. Barr*, No. 2:20-CV-11235-TGB, 2020 U.S. Dist. LEXIS 173509, at *33 (E.D. Mich. Sep. 22, 2020) ("Diaz's temporary parole [as an arriving alien or applicant for admission], which Respondents contend was effectuated by § 1182(d)(5), expired once his SIJ application was approved [b]ut Respondents' 'status quo' argument ignores the operation of § 1255(h), which acts to parole Diaz into the United States as an SIJ status recipient with a current visa who is eligible to apply for an adjustment of status."); *Joshua M. v. Barr*, 339 F. Supp. 3d 632, 660-61 (E.D. Va. 2020) ("Notably, in the immigration context, not all types of parole are treated equally" and "SIJ status puts [a noncitizen] in a special parole status" that allows him to become a lawful permanent resident).

Respondents advance two responses to defend their position. First, Respondents claim that the approval of the SIJ application does not confer lawful status. *See* Govt's Br. at 5-6. However, the question of whether Petitioner is entitled to an individualized detention determination through

the statute or the Due Process Clause does not depend solely on lawful status. Individuals who are present in the United States unlawfully have their statutory right to a bond hearing under 8 U.S.C. § 1226(a) and constitutional right to shift the burden of proof to justify detention to the government. *See Hernandez Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021) ("[I]n order to continue detaining Hernandez under section 1226(a), due process requires the government to either (1) prove by clear and convincing evidence that she poses a danger to the community or (2) prove by a preponderance of the evidence that she poses a flight risk."). In case of SIJ designees, again, Congress "provided opportunities for this class of [children] to strengthen their connections to the United States, pending a determination on their applications for adjustment of status." *Osorio-Martinez*, 893 F.3d at 170. Thus, the fact that SIJ designees have not yet become lawful permanent residents, as their visas are not available, does not diminish their statutory and constitutional rights. *Cf.* Govt's Br. at 6 n.2. *See also Osorio-Martinez*, 893 F.3d at 160 n.3 ("Congress has set various limits on the number of visas that may be made available . . . resulting in a waiting list when demand for visas exceeds supply.").

Second, Respondents' reliance on *Matter of Q.LI*, 29 I & N. Dec. 66 (B.I.A. 2025) does not help Respondents' legal position. Respondents explain that under *Matter of Q.LI*, "once an alien is detained under [1225(b)], DHS cannot convert the statutory authority governing her detention from [1225(b)] to section [1226(a)] through the post-hoc issuance of a warrant" and "[w]hen parole granted by DHS is terminated, 'the alien shall forthwith return or be returned to the custody from which he was paroled.'" Govt's Br. at 6 n.3, 4-5. However, *Matter of Q.LI* does not address a noncitizen whose SIJ petition has been approved. Petitioner "cannot be '*returned to the custody from which he was paroled*' because his prior custody . . . was premised on the fact that he was removable under § 1182(a)(6)(A)(i), which is not possible now that a visa is available

and he can apply for adjustment of status under § 1255(h)." *Diaz-Calderon*, 2020 U.S. Dist. LEXIS 173509, at *33-34 (emphasis in original). Thus, *Matter of Q.LI* is inapplicable to Petitioner's case because he is no longer an arriving alien, and, therefore, Petitioner is not challenging the validity of *Matter of Q.LI* and this Court does not need to consider whether it should defer to the immigration agency's statutory interpretation. *Cf. Loper Bright Enters v. Raimondo*, 603 U.S. 369, 412-13 (2024) ("*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority").

The Court should find that Petitioner's statutory and constitutional claims meet the clear cases on law and facts standard.

II. PETITIONER'S DETENTION PRESENTS EXCEPTIONAL CIRCUMSTANCES AND HIS CLAIMS DEMONSTRATE A SUBSTANTIAL CLAIM OF CONSTITUTIONAL ERROR

Petitioner's detention presents exceptional circumstances, and his claims demonstrate a substantial claim of constitutional error.

First, Petitioner has demonstrated a substantial claim of constitutional error. In the context of noncitizens' detention, Congress has limited mandatory detention to certain classes of noncitizens, such as noncitizens convicted of specified crimes, noncitizens who arrived at the border, and noncitizens who present national security concerns. 8 U.S.C. § 1226(c); 8 U.S.C. § 1225(b); *Hernandez-Lara*, 10 F.4th at 36. SIJ designees do not fall into these categories, as explained above. *See supra* I. "Given that [Petitioner] is an SIJ designee who is accorded significant benefits and procedural protections that put him 'a hair's breadth from being able to adjust [his] status,'" the Court should find that Petitioner has demonstrated a substantial claim of constitutional error. *Rodriguez*, 747 F. Supp. 3d at 919. *See also Ozturk v. Trump*, No. 2:35-cv-374, 2025 U.S. Dist. LEXIS 93949, at *19 (D. Vt. May 16, 2025) ("The Court need not decide at

this stage whether Ms. Ozturk's detention actually constitutes a First Amendment violation.").

Second, Petitioner's case presents extraordinary circumstances. In this case, Respondents' decision to arrest and detain Petitioner is extraordinary. Ex. 1 (Affidavit of Attorney Elizabeth Badger). USCIS has granted deferred action from removal for four years. DN 1-2 at 25. Respondents do not dispute that Petitioner is neither dangerous nor a flight risk. *Mahdawi v. Trump*, 2025 U.S. Dist. LEXIS 84287, at *32-33 (D. Vt. Apr. 30, 2025) (considering the "conventional bail issues of risk of flight and danger to society"); *D'Alessandro v. Mukasey*, No. 08-CV-914(RJA)(VEB), 2009 U.S. Dist. LEXIS 24954, at *15 (W.D.N.Y. Mar. 25, 2009) ("[T]his is an exceptional case in that there is no evidence to support a finding that [petitioner] is a flight risk or is a danger to the community.").

In fact, Petitioner's detention eliminates his opportunities to deepen his legal relationship with the United States, which is what Congress intended to provide for SIJ designees. In other words, if each SIJ designee is subject to mandatory detention even after receiving deferred action from the U.S. government and having no criminal record, such detention would render SIJ designation class meaningless as the detention would prohibit SIJ designees from developing their legal relationship with the United States. Numerous courts have found extraordinary circumstances in light of similar factors related to individualized circumstances. *See Diaz-Calderon*, 2020 U.S. Dist. LEXIS 173209, at *46 ("the unique and extraordinary circumstances of this case raise serious issues calling into question the basis for Petitioner's detention"); *Ozturk*, 2025 U.S. Dist. LEXIS 93949, at *23 ("The government has not claimed that Ms. Ozturk violated any civil or criminal laws requiring her removal from the country."); *Mahdawi*, 2025 U.S. Dist. LEXIS 84287, at *33 ("There is no risk of flight. Mr. Ma[h]dawi has strong ties to the Vermont community where he owns a home . . . [and] presents no danger to his community or to others.").

See also Healy v. Spencer, 406 F. Supp. 2d 129, 130 (D. Mass. 2005) ("[T]he factors favoring release, the strength of the evidence supporting habeas relief for the *Brady* violation, the utter absence of any risk of flight or risk to the community, and the weakness of any countervailing arguments, all favor release.").

Indeed, the statute also requires Respondents to "consider placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight" for SIJ designees who "reach[] 18 years of age" under Respondents' custody. 8 U.S.C. § 1232(c)(2)(B). Yet, Petitioner is detained at FCI Berlin, which is a federal prison. While Respondents explain that "some circumstances making this application exceptional and deserving of special treatment in the interests of justice[,]" Respondents do not acknowledge that Petitioner is not "a convicted prisoner[.]" *Shaw v. Corey Riendeau, Warden, N.N.H. Corr. Facility*, No. 19-cv-1122-SE-AJ, 2025 U.S. Dist. LEXIS 57421, at *2-3 (D.N.H. Feb. 28, 2025). Petitioner has received deferred action in addition to the SIJ designation. The detention's justification of "preventing flight . . . is weak or nonexistent [since] removal seems a remote possibility at best." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Nor is the justification of "protecting the community" present, as Petitioner has no crime. *Id.* Petitioner has a fixed address in Lowell, Massachusetts where he lives with his cousin. DN 1-2 at 25. Petitioner has a stable job. DN 1-2 at 117.

"[A]ny detention must 'bear[] [a] reasonable relation to [its] purpose[.]" *Hernandez-Lara*, 10 F.4th at 32 n.5 (quoting *Zadvydas*, 533 U.S. at 690). Respondents "offer[] no conceivable purpose served by [Petitioner's] detention." *Id.* The Court should find that Petitioner's case constitutes extraordinary circumstances.

CONCLUSION

For the reasons stated above, this Court should exercise the Court's inherent power to hold

a bail hearing.

Date: July 2, 2025

Jaime Ivan Duchi-Naula,

By and through her attorneys,

/s/ SangYeob Kim

Jennifer P. Lyon (NH Bar: 274086)
SHEEHAN PHINNEY
1000 Elm Street, 17th Floor
Manchester, NH 03101
Phone: 603.627.8394
jlyon@sheehan.com

Gilles R. Bissonnette (NH Bar: 265393)
SangYeob Kim (NH Bar: 266657)
Chelsea Eddy (NH Bar: 276248)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE
18 Low Avenue
Concord, NH 03301
Phone: 603.333.2081
gilles@aclu-nh.org
sangyeob@aclu-nh.org
chelsea@aclu-nh.org