UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

JOSE O. PUERTO-HERNANDEZ,

Petitioner,

v.

ROBERT LYNCH, Detroit Field Office Director for U.S. Immigration and Customs Enforcement, in his official capacity; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; and KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity,

Respondents.

Case No. 1:25-cv-1097

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

ORAL ARGUMENT REQUESTED

INTRODUCTION

1. The Petitioner in this case, Jose Onilson Puerto-Hernandez ("J.O.P.H.") is a person unlawfully detained by the U.S. Department of Homeland Security ("DHS") with a pending self-petition for Special Immigrant Juvenile Status ("SIJS") filed on August 20, 2025 with U.S. Citizenship and Immigration Services ("USCIS"), an agency under the umbrella of DHS. **[*See* Exhibit 1, I-797C Receipt for Petitioner's I-360, Petition for Amerasian, Widow(er), or Special Immigrant]** Pursuant to applicable federal regulations, USCIS generally has 180 days to render a decision on the petition. 8 C.F.R. §204.11(g)(1)

2. Subsequent to coming to the United States as a minor, the Petitioner, in compliance with applicable law, has sought protection as a vulnerable minor immigrant who had been abused, abandoned or neglected by a parent (in this case, his father). Eligibility for and approval of this benefit, as Congress intended, permits the Petitioner's presence in the United States for the purpose of adjustment of status to lawful permanent residency.

3. On August 13, 2025, when investigating another individual, agents from U.S. Immigration and Customs Enforcement ("ICE") detained

4. The Immigration Judge ("IJ") granted the Petitioner release from custody on August 26, 2025, pursuant to a bond in the amount of $5,000.00. **[*See* Exhibit 2, August 26, 2025 Order of the Immigration Judge]** Further, on the same date, the IJ terminated removal proceedings against the Petitioner due to Respondents' failure to prosecute. **[*See* Exhibit 3, EOIR Online Printouts showing case termination]** Since that time, no new Notice to Appear has been filed, yet the Petitioner remains in custody due to DHS filing an appeal of the custody redetermination which automatically stays his release and prevents the payment of the bond set by the IJ.

5. The Petitioner is currently awaiting approval for SIJS by USCIS, evaluation for deferred action from removal by DHS (however, the current Administration has issued a blanket policy of refusing to grant Deferred Action to

approved SIJ petitioners, which is being challenged in a class action lawsuit in the Eastern District of New York[1]), and subsequently will be awaiting eligibility to file his application for residency based on the limited visa numbers available for Certain Special Immigrants.

6. Despite DHS's awareness that the Petitioner is a member of a vulnerable population, the Respondents have detained this youth, without cause, and intend to remove him from the United States thereby unlawfully stripping them of his eligibility for SIJ status in defiance of the intent of Congress to protect vulnerable immigrant children who have been victims of abuse, abandonment or neglect. Petitioner remains detained by the Respondents at the North Lake Processing Center in Baldwin, Michigan through a contract with The GEO Group, Inc., a company which operates private, for-profit prisons.

7. The Petitioner has received the underlying predicate order from a family court proceeding required for approval as a "Special Immigrant Juvenile," by USCIS. **[*See* Exhibit 4, New Jersey Superior Court predicate order]** As noted above, the Petitioner has filed a self-petition for classification as a Special Immigrant Juvenile which is currently pending. **[*See* Exhibit 1]** There is no basis for denial of the Petitioner's pending self-petition. Upon approval, the Petitioner would have

[1] A.C.R., et al., v. Noem, et al., 1:25-cv-3962 (EDNY).

previously been granted deferred action (temporary relief from removal proceedings) as a matter of course.

8. The Petitioner has not violated any law or done anything else which might explain the Respondents' position. The Petitioner is currently awaiting adjudication of his SIJS petition, having remained physically present as contemplated under the statute as a Juvenile Court has determined it is in the best interest of the Petitioner that he remain in the United States based on a history of childhood abuse, abandonment or neglect. Respondents now seek to undercut the determination of the family court and block the petitioner from the relief provided by Congress to Special Immigrant Juveniles. They seek to continue the detention of such a youth and they seek his removal - despite the benefit that Congress has afforded him.

9. Consistent with the American public's interest in protecting vulnerable children in the United States, regardless of nationality, Congress created the SIJ program by statute in 1990 as a form of humanitarian protection for certain non-citizen children who were eligible for long term foster care. The program was later expanded under the William Wilberforce Trafficking Victims Protection Reauthorization Act ("TVPRA") to include all unmarried, non-citizen children under the age of 21 who are unable to reunite with one or both of their biological parents due to abuse, neglect, abandonment, or a similar basis under state law, and

for whom a state juvenile court determines that it is not in their best interests to be removed from the United States.

10. Congress's goal for the SIJ program was to create protective measures and a pathway to citizenship for children who have been victimized. The program was intended to protect eligible children in the United States from further harm, and to allow them to deepen their connections with the United States. Since these children had effectively become wards of the United States, Congress determined that these children are entitled to protection by the U.S. government.

11. As explained by the Third Circuit Court of Appeals in *Osorio-Martínez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018), SIJs are afforded a number of statutory and procedural protections that they would otherwise not have under the law as applicants for admission. These protections materially constrain DHS' removal-related authority and are enforceable in federal district court. The protections include generous waivers of many grounds of inadmissibility, assurance of their eligibility to apply for permanent residence, authorized legal presence in the United States while they wait for the visa to become available, and the ability to not be stripped of that designation without due process of law and a finding of "good and sufficient cause" to do so. *Osorio-Martínez* at 168, 170-72.

12. However, notwithstanding the protections Congress afforded to SIJs and the fact that USCIS not yet rendered a decision on the Petitioner's pending self-

petition, the Petitioner now faces continued unlawful immigration detention because DHS and the Executive Office of Immigration Review (EOIR) under the authority of the Attorney General of the United States has concluded Petitioners are subject to the newly-instituted mandatory detention policies purported permitted under 8 U.S.C. § 1225, and removal from the United States. Both actions by the Respondents including subjecting the Petitioner to ongoing detention and execution of a future removal from the United States in violation of the constitutional, procedural, statutory and regulatory rights of the SIJ Petitioner in this case.

13. Despite not having any criminal record whatsoever or a pre-existing orders of removal, and, in fact, not even currently charged with removability in any immigration court, in violation of his rights, the Petitioner was stopped, arrested, detained and placed into immigration detention at the North Lake Processing Center in Baldwin, Michigan pursuant to a collateral traffic stop by U.S. Immigration and Customs Enforcement ("ICE"), wherein the Petitioner was not a target of any enforcement action. **[*See* Exhibit 5, I-213, Record of Deportable/Inadmissible Alien]**

14. Despite notifying ICE of his status, demonstrating proper identification, and not being accused or charged with any violation of that status, or any other law, the Petitioner was detained and charged with, inter alia, having entered the United States without inspection or parole and not being in possession of a valid

immigration document and a valid document of identity or nationality at the time of apprehension. 8 U.S.C. §§ 1182(a)(6)(A)(i);(a)(7)(A)(i)(I). Respondents are aware that the Petitioner has a pending application for SIJ status and seeks deferred action on that basis, and continue to detain him and seek his removal from the United States.

15. The Petitioner challenged his removal proceedings, seeking termination of proceedings and sought release from detention. However, based on the allegations raised in the Petitioner's removal proceedings, that the Petitioner entered the United States as a minor without inspection, Respondents DHS and ICE have denied Petitioners release from immigration custody. This determination is consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone charged with inadmissibility under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without inspection—to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The July 8 DHS policy memorandum states it was issued "in coordination with the Department of Justice (DOJ)."

16. The Petitioner sought a bond redetermination hearing before an IJ and was granted bond; yet despite this redetermination and the termination of his removal proceedings by the IJ, DHS and ICE filed an appeal and continue to refuse to release him.

17. On September 5, 2025, the Board of Immigration Appeals (BIA) published the decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that IJs do not have the authority to hear bond requests or grant bond to noncitizens who are present in the United States without authorization, continuing to enforce the new, flawed agency interpretation of 8 U.S.C. § 1225.

18. Notwithstanding the holding in *Yajure Hurtado*, the Petitioner's detention violates the plain language of the Immigration and Nationality Act and Congress' intentions for the SIJ program, and is therefore outside of the statutory authority granted by Congress. Petitioner's detention and potential removal run counter to the protections afforded to SIJs, and as such are actions outside of the agency's authority that have effectively stripped the Petitioner of the relief afforded by the SIJ statute without due process of law. However, because of the actions of DHS and ICE, the Petitioner has no recourse for release other than a habeas petition in federal court.

19. As it stands, Respondents' new legal interpretation is plainly contrary to the statutory framework of the SIJ program and contrary to decades of agency practice applying § 1226(a) to people like the Petitioner rather than §1225.

20. Historically, §1225(b)(2)(A) did not apply to individuals like the Petitioner who previously entered and are now residing in the United States. Under numerous previous executive administrations of both political parties, such

individuals were subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. This is consistent with the fact that § 1226(a) expressly applies to people who, like the Petitioner, are charged as inadmissible for having entered the United States without inspection and who have resided in the United States for more than two years.

21. Further, the Petitioner sought collateral relief within their removal proceedings, requesting termination of removal proceedings which was granted by the IJ. **[*See* Exhibit 3]** IJs have a number of docket management tools available to them under the INA and its implementing regulations, such administrative closure, continuances, or even termination of removal proceedings that would allow IJs to preserve the rights of SIJ beneficiaries who are waiting for a visa to become available. *See Matter of Cruz Valdez*, 28 I&N Dec. 326 (A.G. 2021).

22. Nevertheless, despite the fact that the Petitioner's request for bond was granted by the Immigration Court and the case itself was terminated, DHS immediately filed an appeal of the bond redetermination. The position of the DHS is that the Petitioner is to remain detained indefinitely and, despite his pending SIJS petition, DHS intends to, without process, strip the petitioner of the legal benefits he is entitled to under the INA. **[*See* Exhibit 6, Respondents' Appeal to the Board of Immigration Appeals]**

23. Accordingly, the Petitioner seeks a writ of habeas corpus ordering (a) immediate release or, at minimum, (b) a prompt individualized custody hearing before a neutral decisionmaker under 8 U.S.C. §1226(a), at which the government bears the burden by clear and convincing evidence, and (c) a declaration that § 1225, as applied by current agency practice, does not apply to SIJ beneficiaries consistent with the persuasive holding of the Third Circuit Court of Appeals *Osorio Martinez* and the plain language of the TVPRA.

JURISDICTION

24. Petitioner is in the physical custody of Respondents. Petitioner is detained at the North Lake Processing Center in Baldwin, Michigan. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness or constitutionality of their detention by ICE. See, e.g., *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001);

25. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101–1537, regulations implementing the INA, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706, and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

26. This Court has additional remedial authority under 28 U.S.C. §§ 2201–2202 (declaratory relief), Federal Rules of Civil Procedure Rule 65 (injunctive relief), 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

27. The federal government has waived its sovereign immunity and permitted judicial review of agency action under 5 U.S.C. § 702. In addition, sovereign immunity does not bar claims against federal officials that seek to prevent violations of federal law (rather than provide monetary relief).

VENUE

28. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Michigan, the judicial district in which the Petitioner is currently detained.

29. Venue is also properly in this Court pursuant to 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 or omissions giving rise to the claims occurred in the Western District of Michigan.

PARTIES

30. Petitioner J.O.P.H. is pending classification as a Special Immigrant Juvenile pursuant to 8 U.S.C. § 1101(a)(27)(J), and is a citizen and national of Honduras. J.O.P.H. entered the United States as a twelve-year old child through the

southern border on or about June 19, 2019. On August 21, 2024, the Superior Court of New Jersey in a New Jersey juvenile custody proceeding found that J.O.P.H. had been abandoned and neglected by his father as determined under state law and that it would not be in his best interests to return to Honduras. He subsequently self-petitioned the USCIS for SIJ status, which is currently pending adjudication.

31. Respondent Robert Lynch is the Director of the Detroit Field Office of ICE's Enforcement and Removal Operations division, a component of the Department of Homeland Security. As such, he is Petitioner's immediate custodian for purposes of habeas and is responsible for Petitioner's detention and removal. *See Roman v. Ashcroft*, 340 F.3d 314 (6th Cir. 2003). He is sued in his official capacity.

32. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement, the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens, and a component agency of the Department of Homeland Security.

33. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

LEGAL FRAMEWORK

A. The History of SIJ Status supports protecting vulnerable children and permitting presence through adjustment of status.

34. Congress created Special Immigrant Juvenile Status in 1990 to provide immigration relief for noncitizen children living in the United States, who have been abused, neglected, or abandoned, or similarly mistreated by one or both parents [2]. The statute set forth specific eligibility criteria, which included being the subject of a state juvenile court judicial determination that it would not be in their best interests to return to their country of origin or country of last habitual residence[3].

35. Given that a number of these immigrant children had various admissibility issues, including unlawful entry or unlawful presence, in 1991, Congress amended the INA to address this issue by providing that SIJ beneficiaries "shall be deemed, for purposes of [adjustment of status], to have been paroled into the United States," and exempting them from bars to adjustment based on failure to maintain status or unauthorized employment. [4] Congress also explicitly excluded SIJ beneficiaries from specific grounds of excludability, or as they are now known, grounds of inadmissibility[5]. This prevented broad disqualification of SIJS

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[2] Immigration Act of 1990 ("1990 Act"), Pub. L. 101–649, § 153, 104 Stat. 4978 5005–06 (1990) (codified at 8 U.S.C. § 1101(a)(27)(J)).
[3] *Id.*
[4] Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MTINA"), Pub. L. No. 102–232, § 302(d)(2)(A), (B), 105 Stat. 1733, 1744 (1991) (codified at 8 U.S.C. § 1255(h)(1), (2)).
[5] *See* 1990 Act.

beneficiaries from adjustment of status due to numerous admissibility issues common to SIJ beneficiaries.

36. By creating a pathway for SIJ to adjust status due to being considered paroled, Congress showed that it intended SIJ beneficiaries to receive permanent legal protection, and consequently, that the SIJ process is not complete unless and until an SIJ beneficiary can apply for and be considered for LPR status. This necessarily requires that SIJ beneficiaries be present in the United States, because there is no statutory mechanism that allows SIJ beneficiaries to gain lawful permanent residence other than the filing of a Form I-485 Adjustment of Status Application. SIJ beneficiaries may file that application only when an immigrant visa is immediately available *and they are present in the United States* [6].

37. Congress expanded the SIJ program in 1994 to include children whom a court "has legally committed to, or placed under the custody of, a[] [state] agency or department."[7] This amendment also increased the potential eligibility pool to

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[6] USCIS Policy Manual, Vol. 7, Part F, Ch. 7.C (stating that SIJS beneficiaries must be "physically present in the United States at the time of filing and adjudication of an adjustment application"); *Id.*, vol. 7, pt. A, ch. 1.B. ("Adjustment of status to lawful permanent residence describes the process by which an alien obtains U.S. LPR status while physically present in the United States."); 22 C.F.R. pt. 42.11 (denoting SIJS as an "adjustment-only" category). See also "9 FAM 502.5-7(C) (U) Certain Juvenile Court Dependents *(CT:VISA-1829; 09-12-2023)* (U) The Department of State and Related Agencies Appropriations Act, 1998 changed the definition of a Special Immigrant Juvenile (SIJ) and divested consular officers of the authority to issue SIJ visas. Due to this change, since November 26, 1997, SIJ has been an adjustment-only category as reflected in 22 CFR 42.11. Under no circumstances should you issue an SIJ visa."

[7] Immigration and Nationality Technical Corrections Act of 1994 ("INTCA"), Pub. L. No. 103-416, § 219, 108 Stat. 4305 (1994) (codified at 8 U.S.C. §§ 101-225).

include not only those in foster care and other court-dependent children, but also children in juvenile facilities. The Immigration Naturalization Service ("INS"), the agency then tasked with administration of the INA, similarly passed regulations that increased eligibility to those individuals who were under the age of 21.[8]

38. In 2008, Congress unanimously passed the TVPRA, which expressly codified longstanding regulatory policy where SIJ eligibility was could come from dependency on a state juvenile court *or* placement in the custody of an individual or entity appointed by a state of juvenile court.[9] Consistent with academic research that found that children are best served by living with a non-offending relative when compared with those in foster care, Congress included children living in various custody and guardianship arrangements. Eligibility was also now conditioned on the non-viability of reunification with *a* parent and eliminated language requiring children seeking SIJ status to demonstrate that they were "eligible for long-term foster care." [10]

39. At the same time, the TVPRA also explicitly exempted SIJ beneficiaries from inadmissibility based on having entered the United States without admission or parole or at an unauthorized time or place, making SIJ beneficiaries

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[8] *See* Special Immigrant Status, 58 Fed. Reg. 42843-01, 42850 (Aug. 12, 1993) (codified at 8 C.F.R. § 204.11).

[9] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 ("TVPRA"). Pub. L. 110-457, § 235(d)(1)(A), 122 Stat. 5044, 5079-80 (2008) (codified at 8 U.S.C. § 1101(a)(27)(J)).

[10] *Id.*

eligible to adjust their status even if they had entered the country without inspection or without the necessary travel documents.[11]

40. To qualify for SIJS, petitioners must be under the age of 21, unmarried, and physically present in the United States.[12] A state court of competent jurisdiction must have issued an order either (1) declaring the petitioner dependent upon the court, or (2) committing the petitioner to the custody of a state agency or department, or placing the petitioner under the custody of an individual or entity appointed by the state or court.[13] Petitioners must also submit to USCIS a predicate state court order making specific findings that (1) it is not viable for the petitioner to reunify with their parent or parents due to abuse, neglect, abandonment, or a similar basis under state law, and (2) it would not be in the petitioner's best interest to be returned to their or their parent's country of nationality or last habitual residence.[14]

41. The SIJ statute also authorizes the Secretary of Homeland Security to consent to a grant of SIJ status under 8 U.S.C. §1101(a)(27)(J)(iii). USCIS exercises this delegated authority to grant cases where the request for SIJ classification is *bona fide*. In practice, a case is determined to be *bone fide* if the evidence of record establishes that the state court order was sought primarily to obtain relief from abuse,

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[11] *Id.* at 5080 (codified at 8 U.S.C. § 1255(h)(2)).
[12] 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.
[13] *See* 8 C.F.R. § 204.11(c).
[14] *Id.*

neglect or abandonment, or a similar basis under state law, and not primarily for the purpose of obtaining lawful immigration status.[15]

42. The statutory framework lays out certain circumstances where an approved SIJ petition is revoked automatically before USCIS can decide an SIJ beneficiary's permanent residence petition: (1) reunification with one or both parents by virtue of a court order, where the court had previously determined that reunification was not viable due to abuse, neglect, abandonment, or similar basis under state law; or (2) the juvenile court reverses the determination that it would not be in the child's best interests to be returned to their country of origin or of last habitual residence.[16] Where USCIS intends to revoke the grant of SIJ classification, USCIS issues a notice of automatic revocation. After providing notice and an opportunity to respond, then USCIS can revoke the SIJ classification "for good and

[15] Petitioner does not agree that the consent function was intended to be a discretionary decision, or that a *bona fide* case is one interpreted to be "not sought primarily for immigration purposes." In reality, nearly *every* state juvenile court order requires *some* immigration motive to be present, as the SIJ statute requires petitioners to obtain state court orders that often do not ordinarily contain language or findings that are sufficient for immigration purposes. Thus, a petitioner can ordinarily only receive these findings in the required format if specifically sought or requested from the court, which presupposes some level of immigration motive. Rather, consent was intended to be given where a request is *bona fide*, meaning where a state juvenile court has found *actual* facts suggesting abuse, neglect, or abandonment, or a similar basis under state law, where these facts predate any intent to seek immigration benefits. Withholding consent in cases where these facts exist because the petitioner showed "too much" intent to seek immigration benefits would frustrate Congress' purposes in attempting to protect children who have been mistreated who would otherwise be eligible for relief. This suggested interpretation is consistent with USCIS' rulemaking. *See* 87 FR 13066, 13070 (2022).

[16] 8 C.F.R. § 204.11(j); *see also* USCIS Policy Manual, Vol. 6, Part J, Ch.4.F.3.

sufficient cause," for example, a finding of fraud or a determination that the application was approved in error.[17]

43. After an SIJ beneficiary's I-360 petition is approved, they are then eligible to adjust their status to lawful permanent residence (LPR) by filing a Form I-485 Adjustment of Status Application. As stated, this form may only be filed when a visa is immediately available. The immigrant visa category under which SIJS beneficiaries may seek to adjust status is the employment-based fourth preference special immigrant category ("EB-4"). Immigrant visa availability for SIJS beneficiaries, as for other applicants in the EB-4 category, is subject to annual numerical limits established by Congress. Congress set the annual allotment of EB-4 visas at 7.1 percent of the annual worldwide level of available employment-based visas, which amounts to about 9,940 available EB-4 visas in a typical year.

44. To manage the limited supply of visas, the United States Department of State (the "State Department") issues the Visa Bulletin, a monthly publication that tracks visa availability in each category, based on applicant priority date and country of nationality. The "priority date" is defined as the date when the applicant filed the underlying petition or application-such as the petition for SIJ status. Dates listed in each month's Visa Bulletin are used to determine when a visa is available for

[17] *Id.*

issuance to a given applicant, and thus when an applicant may submit an application for adjustment of status.

45. An SIJ beneficiary may adjust status only if the applicant's priority date is earlier than the "final action" date listed in the current month's Visa Bulletin for the EB-4 category for the applicant's country of nationality.

46. Importantly, Removal of the SIJ beneficiary from the United States before the adjustment of status is complete strips the SIJ beneficiary of the opportunity to become a lawful permanent resident, because adjustment of status is not available to those not in the United States. There is no process for those outside of the United States to return on an SIJ visa.

B. The Third Circuit Court of Appeals has issued a persuasive opinion in evaluating this petition.

47. In 2018, the Third Circuit heard *Osorio-Martinez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018), a case where a number of children who had approved SIJ petitions and their mothers brought a case challenging the expedited removal orders that DHS had entered against them, arguing that their approved SIJ-petitions entitled them to some level of procedural and due process protections. However, review was barred for those children under the expedited removal statute. 8 U.S.C. § 1252(e)(2).

48. The Third Circuit held that denying habeas corpus review of expedited removal orders for SIJ-beneficiaries constitutes an unconstitutional suspension of

the writ of habeas corpus, as protected by Article I, Section 9, Clause 2 of the United States Constitution ("the Suspension Clause").

49. The Third Circuit distinguished the petitioners' circumstances from the general class of noncitizens in expedited removal, recognizing that SIJS confers statutory protection and strong ties to the United States not present in most immigration cases. In doing so, the Third Circuit relied on the extensive statutory protections granted to SIJ beneficiaries and Congress's express intentions for the SIJ program.

50. The Third Circuit noted that "the requirements for SIJ status that 'show 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,' and that, in effect, establish a successful applicant as a ward of the United States with the approval of both state and federal authorities." *Id.* at 168 *(citing Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) and *Yeboah v. U.S. Dep't of Justice*, 345 F.3d 216, 221 (3d Cir. 2003)). The court also noted that, "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." *Id.* at 170.

51. To that end, the Third Circuit explained that:

> Congress also afforded these aliens a host of procedural rights designed to sustain their relationship to the United

> States and to ensure they would not be stripped of SIJ protections without due process. SIJ status may be revoked only for what the Secretary of Homeland Security deems 'good and sufficient cause.' Even then, revocation must be 'on notice,' meaning that the agency must provide the SIJ designee with 'notice of intent' to revoke, an 'opportunity to offer evidence ... in opposition to the grounds alleged for revocation,' a 'written notification of the decision that explains the specific reasons for the revocation,' and the option to file an appeal within the agency.'

Id. at 171 (*citing* 8 U.S.C. § 1155; 8 C.F.R. § 205.2; *see also* 7 USCIS Policy Manual, pt. F, ch. 7 (Mar. 21, 2018)).

52. The Third Circuit further explained that expedited removal would revoke SIJ statutory rights "without cause, notice, or judicial review," leaving the SIJ-beneficaries without any method to return to the United States, and would thereby render SIJ status "a nullity" *Id.* at 172.

53. Like the children in *Osorio-Martinez,* the Petitioner in this case now faces indefinite detention and potential removal, without cause, notice, or judicial review contrary to law, which would render his eligibility for SIJ status "a nullity." The Petitioner is similarly entitled to broad constitutional protections, as intended by Congress's intentions for SIJ beneficiaries to deepen their ties with the United States. These protections must include, at a minimum, the ability to have potential nullification of their SIJ status reviewed by a higher authority.

C. Detention and Removal of SIJ Beneficiaries violates the Due Process Rights of Vulnerable Populations.

54. The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Elridge*, 424 U.S. 319, 332 (1976). Procedural due process "imposes constraints on government decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth amendment." *Id.*

55. Once a petitioner has identified protected liberty or property interest, the Court must determine whether constitutionally sufficient process has been provided. *Id.* In making this determination, the Court balances (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 requirement would entail;" (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.

56. Due process cases recognize a broad liberty interest rooted in the fact of deportation, not just the process of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) (finding

a "strong liberty interest" where being deported means being separated from home and family). While this liberty interest typically arises in removal proceedings, courts have found procedural due process violations for persons not in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (forms issued to noncitizens charged with civil document fraud violated due process clause); *Rojas v. Johnson*, No. C16-1024 RSM, 2018 WL 1532715, at *8 (W.D. Wash. Mar. 29, 2018) (concluding that "Agency Defendants do not provide sufficient notice of the one-year deadline to satisfy the Due Process clause" to asylum-seeker subclasses both in and out of removal proceedings).

57. The Petitioner has a liberty interest at stake in this matter. USCIS has accepted his I-360 self-petition for adjudication, and has yet to render a decision on that petition. If approved, he will be designated as an SIJ, a class of young people to whom Congress has granted significant protections. Despite his eligibility for SIJ Status and the numerous protections that Congress has created for SIJ beneficiaries, Respondents intend to remove the Petitioner from the United States and is subjecting him to ongoing detention to effectuate that goal.

58. If removed, the Petitioner will lose the benefits of his SIJ petition, and he will not be able to pursue the lawful permanent resident status that he would otherwise be entitled to apply for as an SIJ-beneficiary. If the removed, the Petitioner will be barred from reentry to the United States for at least five years. 8 U.S.C. §

1182(a)(9)(A)(i); 22 C.F.R. § 40.91(a). He will not be able to adjust status to that of lawful permanent resident, as adjustment of status is not available through consular processing.

59. Interpreted in light of the Constitution, the INA and its applicable regulations do not permit potential deportation while an individual is engaged in the process of attempting to regularize his immigration status through Special Immigrant Juvenile Status.

60. Due process protects a noncitizen's liberty interest in the adjudication of applications for relief and benefits made available under the immigration laws. *See Arevalo v. Ashcroft,* 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself").

61. The Petitioner has protected due process interests in his ability to retain and benefit from his pending SIJ self-petition, and upon approval, to remain in the United States and ultimately to receive lawful permanent residence status when a visa becomes available.

D. Protections under the Administrative Procedures Act and the *Accardi* Doctrine are Applicable to SIJ Beneficiaries.

62. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of

judgment"; it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

63. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes and in areas of the law, such that agencies must follow their own "existing valid regulations," even where government officers have broad discretion, such as in the area of immigration. *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954) (reversing in immigration case after review of warrant for deportation); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("[I]t is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required."); *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005) ("*Accardi* has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others.").

64. Breaches of *Accardi*'s rule constitute violations of both the Fifth Amendment's Due Process Clause and the APA. [18] *See also, Rowe v. United States AG*, 545 Fed.Appx. 888, 890 (11th Cir. 2013) (Recognizing the *Accardi* doctrine

[18] The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

holds that to ensure due process an agency is required to follow its own regulations when exercising discretion and issuing a decision) and *Mayers v. United States INS,* 175 F.3d 1289, 1300 (11th Cir. 1999) (Recognizing that a review of statutory questions implicates due process and that *Accardi* found using habeas to ensure that due process and that the "crucial question" is whether the Attorney General's conducted deprived an individual the rights guaranteed under a statute or regulation.) (internal citations omitted).

E. Detention of SIJ Beneficiaries Remains Improper without Hearing or Review.

65. On September 5, 2025, the BIA published *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that IJs do not have the authority to hear custody redetermination requests or grant bond to noncitizens who are present in the United States without having been admitted.

66. In that decision, the BIA explained that inspection, detention, and removal of noncitizens who have not been admitted to the United States is governed by INA §235, as codified at 8 U.S.C. § 1225. Under that section, all applicants for admission are effectively subject to indefinite, mandatory detention.

67. This is compared to 8 U.S.C. § 1226, which authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens

who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

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

70. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229

(1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

71. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. **[*See* Exhibit 7, July 8, 2025 ICE Guidance]**

72. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). *See id.* The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades. These policy decisions culminated in *Matter of Yajure Hurtado*, which solidified the agency's petition on mandatory detention for applicants for admission.

73. ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, after IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens

who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

74. DHS's and DOJ's interpretation defies the INA. As the *Rodriguez Vazquez* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

75. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

76. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

77. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

78. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

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

80. Further, the INA detention provision is silent about special immigrant categories, whom Congress intended to have various other forms of special protections and relief. However, there is no indication that Congress intended SIJ beneficiaries, as a default, to be detained for the duration of their petition and adjustment period. Such an outcome flies in the face of Congress's goals of protecting and nurturing SIJ beneficiaries and instead treats them like common criminals, isolating them from society, rather than encouraging them to deepen their

connections with the United States. This reading of the INA is not supported by either the literal text of the statute or the spirit of the law enacted by Congress.

FACTS

81. The Petitioner, J.O.P.H., entered the United States as a 12-year old child in 2019, and in 2024, the Superior Court of New Jersey determined that he was abandoned and neglected by his father, Rodil Onilson Puerto Duran, and sole custody was awarded to his mother, Maria Clementina Hernandez Garcia. **[See Exhibit 4]** The New Jersey Superior Court found that "*[i]t is in the best interest of JOSE ONILSON PUERTO HERNANDEZ to remain in the United States in the sole custody of MARIA CLEMENTINA HERNANDEZ GARCIA. If JOSE ONILSON PUERTO HERNANDEZ were to return to Honduras, he would be in danger and would have no one to care for him protect him and keep him safe.*" *See id.*

82. According to the Respondents' own records, J.O.P.H. has no criminal history, and was picked up collaterally in a traffic stop by ICE in which he was not the target of the investigation.

83. In addition, J.O.P.H.'s motion for bond redetermination was granted based on his strong community ties, high G.P.A., and his active participation in his community church. **[*See* Exhibit 8, Bond Redetermination Submission]** He is a fine young man, who has suffered hardship and does not deserve to be detained without lawful basis.

84. The Petitioner has significant ties to the United States and is not a flight risk, as established and recognized by the New Jersey Superior Family Court and the IJ who granted his bond redetermination. Nor is he in any way a danger to his community, and Respondents themselves acknowledge that he has no criminal record whatsoever. **[*See* Exhibit 5]**

85. Despite these positive equities, the Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

86. Although the IJ granted bond redetermination and terminated proceedings, the Petitioner has every expectation that the Respondents' appeal to the Board of Immigration Appeals will be successfully, despite the unlawful basis for their position. The Board's most recent precedential decisions have squarely foreclosed the Petitioner's argument as to why the EOIR has jurisdiction over their requests for custody redetermination, holding that persons like the Petitioner are subject to mandatory detention as applicants for admission.

87. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like the Petitioner are applicants for admission and subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See* Mot. To Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31.

CLAIMS FOR RELIEF

COUNT I

Violation of the Due Process Clause Of The Fifth Amendment To The U.S. Constitution

88. The Petitioner realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 93 above.

89. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

90. Courts have long recognized that removal implicates substantial liberty interests, such that 'the Due Process Clause protects an alien subject to a final order of deportation." *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001); see also *Wong Wine v. United States*, 163 U.S. 228, 238 (1896).

91. *First*, Petitioner has a fundamental interest in liberty and being free from official restraint.

92. *Second*, noncitizens with pending petitions for SIJ classification have a fundamental property interest in the adjudication of their petitions.

93. *Third*, noncitizens whose petitions for SIJ classification are approved have significant benefits and procedural protections set forth by Congress, including "for cause" protections against the revocation of their classification as SIJs.

94. The Petitioner is awaiting adjudication of his SIJ self-petition by Respondents. He should be considered paroled into the country pending adjudication of his petition, and upon approval, for the purposes of adjustment and should be allowed to remain until his visa is current. 8 U.S.C. § 1255(h)(1). However, as physical presence in the United States is a condition of SIJ Status, his eligibility for SIJ Status is nullified if and when he is removed. 8 U.S.C. 1101(a)(27)(J)(i).

95. The Petitioner has a liberty interest in remaining in the United States and awaiting adjudication of his petition and subsequent adjustment of status. If removed, the Petitioner will lose his eligibility for SIJ Status and be unable to avail himself of the benefits afforded to SIJ beneficiaries to be safe and to remain in the US for the purposes of adjustment of status to a lawful permanent resident. *See Osorio-Martínez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018).

96. Respondents' continued detention of the Petitioner despite his favorable bond redetermination hearing and the termination of his removal proceedings by the IJ violates his right to due process.

97. The Petitioner was detained, and is continuing to be detained, without cause and without the release to which he is entitled after the IJ's individualized

determination that he does not present a danger to the community or a risk of nonappearance. Such detention and attempted removal threatens his eligibility for SIJ.

98. The Petitioner's detention thus constitutes a deprivation of his fundamental interest in personal liberty and a failure to provide the Petitioner with due process of law.

99. The Petitioner has no adequate remedy, as the Respondents have taken the position that the Petitioner is subject to mandatory detention and that they contine to intend to remove him from the United States, despite his pending SIJ petition, bond redetermination (granted) by the IJ, and termination of his removal proceedings.

100. For the foregoing reasons, Respondents' detention of the Petitioner violates the rights guaranteed to him by the Due Process Clause of the Fifth Amendment to the United States Constitution.

COUNT II

Violation of the INA

101. The Petitioner realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 93 above.

102. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility.

103. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

104. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

105. Further, Respondents have a duty to adjudicate the Petitioner's pending SIJ self-petition timely. Upon approval, the Petitioner will be an SIJ beneficiary, a special class of noncitizens present in the United States. Numerous grounds of inadmissibility do not apply to them under the express text of the INA and the TVPRA. Holding the Petitioner without bond violates the INA and Congressional intent behind the SIJ program, and such detention cannot be squared with the waiver of inadmissibility, let alone mandatory, indefinite detention.

COUNT III

Violation of the Administrative Procedure Act

106. The Petitioner realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 93 above.

107. Under the Administrative Procedure Act, "final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. §704. The reviewing court "shall ... hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §706(2)(A), (E). A court reviewing agency action "must assess ... whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment; it must "examine[e] the reasons for agency decisions- or, as the case may be, the absence of such reasons." *Encino Motorcars LLC v. Navarro*, 136 S. Ct 2117, 2125 (2016)(*quoting Motor Vehicles Mfrs. Assn of U.S. State Farm Mut. Auto. Ins. Co.*, 462 U.S. 29, 43 (1983)); *Judulang v. Holder*, 565 U.S. 42, 53 (2011)(quotations omitted).

108. The APA also sets forth rule-making procedures that agencies must follow before adopting substantive rules. *See* 5 U.S.C. 553. DHS followed these rulemaking procedures to establish TVPRA and VAWA, see 867 Fed. Reg. 4784.

109. The Petitioner's detention and removal under the facts alleged here constitutes a violation of the APA.

110. The Petitioner's detention and removal would render him ineligible for adjustment of status as an SIJ beneficiary in violation of the APA, is not in accordance with the law and is an abuse of discretion. 5 U.S.C. §706(2)(A). In order

to be statutorily eligible for SIJ Status, the Petitioner must be physically in the U.S. 8 U.S.C. 1101(a)(27)(J)(i). Currently, the Petitioners satisfies this requirement because he is physically within the borders of the United States, though in immigration detention.

111. However, if removed, the Petitioner will no longer satisfy the physical presence requirement; his eligibility for SIJ status will be nullified and he will not be able to pursue adjustment of status. Therefore, if the Government succeeds in their efforts against the Petitioner, they alone will have intentionally stripped the Petitioner's right to engage in an immigration process made available to him, which is an abuse of discretion and not in accordance with the law under 5 USC §706(2)(A).

112. In detaining the Petitioner and seeking an order of removal to effectuate, the Government has attempted to strip the Petitioner of his eligibility for SIJ and deferred action status.

113. The Respondents' actions are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" 5 U.S.C. 706(2)(C) and "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. 706(2)(C).

COUNT IV

5 U.S.C. § 706(2)(A) – Violation of Accardi Doctrine

114. The Petitioner realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 93 above.

115. "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). This principle is known as the Accardi doctrine. See *United States Ex Rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004).

116. The "procedures" that agencies are required to follow include both formal agency regulations and informal operating procedures and guidance. *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990). The Accardi doctrine applies "even where the internal procedures are possibly more rigorous than otherwise would be required." *Alcaraz*, 384 F.3d at 1162 (quoting *Morton*, 415 U.S. at 235).

117. Respondents' intention to detain and seek removal of an SIJ beneficiary whose petition is pending adjudication - without cause or process - represents a sudden and unexplained departure from the agency's own guidance and regulations in violation of the *Accardi* doctrine.

118. In violating the *Accardi* doctrine, the Respondents have irreparably injured the Petitioner depriving him of relief from removal, depriving him of his liberty, and depriving him of his ability to remain in the United States for the purpose of adjustment and a host of additional protections. *See Osorio-Martínez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018).

COUNT V

28 U.S.C. §§ 2201 and 2202 – Declaratory Judgment

119. The Petitioner realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 93 above.

120. The Declaratory Judgment Act, 28 U.S.C. § 2201, allows the court, "[i]n a case of actual controversy within its jurisdiction," to "declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a).

121. The Petitioner respectfully requests that this Court declare that the process of detention and attempted removal without the adjudication of the Petitioner's pending self-petition for SIJ classification, as applied to the Petitioner by Respondents, violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations, and is an unlawful taking of his statutorily authorized benefits without appropriate process, is arbitrary and capricious, an abuse of discretion, and contrary to law.

COUNT VI

Violation of the Suspension Clause of the U.S. Constitution

122. The Petitioner realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 93 above.

123. The Respondents' detention and attempted removal of the Petitioner without any opportunity for meaningful judicial review of the unlawfulness of that removal would violate the Suspension Clause. *See Osorio-Martínez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018).

PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus requiring that Respondents release Petitioner or show cause as to why the Petitioner should remain detained pursuant to DHS's appeal based solely upon the July 8, 2025 mandatory detention policy memorandum;
3. Issue a writ of habeas corpus directing Respondents to pursue a constitutionally adequate process to justify adverse immigration actions against the Petitioner;
4. Enjoin Respondents from removing the Petitioner from the United States pending the resolution of this case;

5. Declare that the process as applied to the Petitioner by Respondents violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations;
6. Declare that the Petitioner may remain in the United States pending adjudication of his self-petition for SIJ classification and subsequently to pursue adjustment of status upon approval;
7. Stay the Petitioner's removal from the United States until he exhausts the process, successfully or otherwise, of pursuing relief from removal by virtue of his Special Immigrant Juvenile Status and parole into the country for the purposes of adjustment;
8. Award the Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. §2412, or other statutes;
9. Grant such further relief as the Court deems just and proper.

Dated this 17th day of September, 2025,

Respectfully submitted,

s/ Amy Maldonado
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VERIFICATION

On this 17th day of September, 2025, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of and acting on behalf of Petitioner, Jose Onilson Puerto-Hernandez because the Petitioner is currently detained and because of the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing the Petitioner, Jose Onilson Puerto-Hernandez.

Dated: 09/17/2025

East Lansing, MI

s/ Amy Maldonado

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