

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

MARCOS VINICIUS DE SOUZA
BRAGANCA
Petitioner,

Civil Action No. 3:25-cv-1845

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

HERIBERTO TELLEZ, in his official capacity
as the Warden of Jackson Parish Correctional
Center;

MELLISSA HARPER, in her official capacity
as New Orleans Field Office Director for U.S.
Immigration and Customs Enforcement;

TODD LYONS, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement; and

KRISTI NOEM, in her official capacity as
Secretary of the U.S. Department of Homeland
Security;

Respondents.

INTRODUCTION

1. The Petitioner in this case, MARCOS VINICIUS DE SOUZA BRAGANCA is an unlawfully detained person who was awarded Special Immigrant Juvenile Status (“SIJS”) by the Department of Homeland Security (“DHS”). [See Exhibit 1, I-360 Approval and Grant of Deferred Action] Subsequent to coming to the United States, the Petitioner, in compliance with applicable law, sought and received SIJS protection as a vulnerable minor. Being awarded this benefit, as Congress intended, permits the Petitioner’s presence in the United States for the purpose

of adjustment of status to lawful permanent residence. The Petitioner has been approved for SIJS, was granted deferred action from removal by the DHS, and was peaceably awaiting eligibility to file his application for lawful permanent residence in the United States.

2. Despite the DHS acknowledging that: (a) the Petitioner is a member of a vulnerable population; (b) Petitioner was awarded the benefits of SIJS, including deferred action from removal; and (c) the Petitioner is required to be physically present for adjustment of status to permanent residence, the Respondents detained him without cause. The Respondents intend to remove him from the United States thereby unlawfully stripping him of his SIJ status in defiance of the intent of Congress to protect vulnerable children who have been victims of abuse, abandonment or neglect. **[See Exhibit 5, Notice to Appear November 4, 2025]** The Petitioner remains detained by the Respondents at the Jackson Parish Correctional Center (“JPCC”) in Jonesboro, Louisiana.

3. The Petitioner has been classified as a “Special Immigrant Juvenile” (“SIJ”) by the United States Citizenship and Immigration Service (“USCIS”) on the basis of an approved self-petition after an underlying family court proceeding that resulted in the requisite “predicate order.” **[See Exhibit 2, Predicate Order from the Probate and Family Court of the Commonwealth of Massachusetts]** Upon SIJ approval, the Petitioner was granted deferred action from removal. **[See Exhibit 1, I-360 Approval and Grant of Deferred Action]** Neither benefit has been properly rescinded or lawfully revoked in any way nor has the Petitioner violated his status or any law which might justify the Respondents’ harsh treatment.

4. The Petitioner has been awaiting an available visa number for a substantial time and has remained physically present as contemplated under the statute because the Probate and Family Court has determined it is in the best interest of the Petitioner that he remains in the United

States based on a history of abuse, abandonment or neglect. [*See Exhibit 2, Predicate Order from the Probate and Family Court of the Commonwealth of Massachusetts*]

5. Respondents now seek to undercut both the determination of the family court and that of USCIS, which is the agency that adjudicated and approved the Petitioner for SIJS. Respondents seek the detention and removal of the Petitioner despite the benefits that DHS/USCIS and Congress has afforded him.

6. 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.

7. Congress's goal for the SIJ program was to create protective measures and a pathway to citizenship for children who have been victimized or trafficked. 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 the protection of the U.S. government.

8. As explained by the Third Circuit 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 an immigrant 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.

9. However, notwithstanding the protections Congress afforded to SIJs, the Petitioner now faces unlawful immigration detention because DHS and the Executive Office of Immigration Review (EOIR) have concluded Petitioners are subject to the newly-instituted mandatory detention policy 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 his removal from the United States violate the constitutional, procedural, statutory and regulatory rights of the SIJ Petitioner in this case.

10. Despite not any having criminal record whatsoever or any pre-existing order of removal, and in violation of his SIJ and deferred action status, the Petitioner was stopped, arrested and detained at his place of work while legally working in the United States with his work authorization. [See Exhibit 3, Petitioner's Work Authorization] and placed into immigration detention at the JPCC in Jonesboro, Louisiana.

11. Despite notifying Immigration and Customs Enforcement (ICE) of the Petitioner's status, demonstrating proper identification, and not being accused or charged with any violation of his approved SIJ status or any other law, the Petitioner was detained and charged with, *inter alia*, having entered the United States without inspection or parole. 8 U.S.C. § 1182(a)(6)(A)(i). [See Exhibit 5, Notice to Appear dated November 4, 2025] Respondents are aware that the

Petitioner has been afforded SIJ status and deferred action and continues to seek his detention and removal despite having previously unopposed termination of removal proceedings. **[See Exhibit 6, Order of the Immigration Judge terminating proceedings dated May 28, 2024]**

12. The Petitioner is currently challenging his removal proceedings seeking termination of proceedings and release from detention. However, based on the allegations raised in Petitioners' removal proceedings, that the Petitioner entered the United States without inspection, Respondents denied the Petitioner's 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. **[See Exhibit 7, July 8, 2025 ICE Guidance]**

13. 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 Immigration Judges (“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 pursue the flawed agency interpretation of 8 U.S.C. § 1225 imposed for the first time ever in 2025.

14. 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 are therefore outside of the statutory authority granted to Respondents by Congress. The 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 his SIJ status without due process of law.

15. 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.

16. 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 major political parties, such individuals were determined to be 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.

17. As noted above, the Petitioner is seeking collateral relief within his removal proceedings, requesting termination of removal proceedings and/or other remedial actions. IJs have a number of docket management tools available to them under the INA and its implementing regulations, such as 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); *see also, Arcos Sanchez v. Att'y Gen.*, 997 F.3d 113, 121-24 (3d Cir. 2021). Nevertheless, those requests were similarly denied by the Immigration Court and opposed by DHS, as the position of DHS is that the Petitioner is to remain detained indefinitely and, despite his status and prior grant of deferred action, DHS intends to, without process, strip the Petitioner of the legal benefits to which he is entitled to under the INA and remove him from the United States.

18. Accordingly, the Petitioner seek a writ of habeas corpus ordering: (a) immediate release or, at minimum, a prompt individualized custody hearing before a neutral decisionmaker

under 8 U.S.C. §1226(a), at which the government bears the burden to justify the Petitioner's continued detention by clear and convincing evidence; and (b) a declaration that § 1225, as applied by current agency practice, does not apply to SIJ beneficiaries consistent with the holding of *Osorio-Martinez* and the TVPRA as well as constitutional, statutory and agency protections.

JURISDICTION

19. The Petitioner is in the physical and legal custody of Respondents. He is detained at the JPCC in Jonesboro, Louisiana. 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); *Tran v. Mukasey*, 515 F. 3d 478, 482 (5th Cir. 2008).

20. 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).

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

22. 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).

Immigration Judge terminating proceedings. VENUE (May 23, 2024) On September 24, 2025, the

23. 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 Louisiana, the judicial district in which the Petitioner is currently detained.

24. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and/or agents 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 Louisiana.

Respondent Heriberto Tellez is the Warden of the Jackson Parish Correctional Center, where the Petitioner is detained. PARTIES Immediate physical custody of Petitioner. He is

25. Petitioner MARCOS VINICIUS DE SOUZA BRAGANCA is an approved Special Immigrant Juvenile pursuant to 8 U.S.C. § 1101(a)(27)(J), and a citizen and national of Brazil. Petitioner entered the United States through the southern border on or about May 26, 2023. [See **Exhibit 4, Notice to Appear dated May 27, 2023**] He was eventually released, and obtained a predicate order with the requisite SIJ findings from a state court of competent jurisdiction – Probate and Family Court of the Commonwealth of Massachusetts – on December 18, 2023. [See **Exhibit 2, Predicate Order from the Probate and Family Court of the Commonwealth of Massachusetts**] He subsequently petitioned the USCIS for SIJ status, which granted his petition and simultaneously granted the Petitioner deferred action from removal on or about May 1, 2024. [See **Exhibit 1, I-360 Approval and Grant of Deferred Action**] The Petitioner is currently awaiting an available visa number to submit his adjustment of status application to lawful permanent residency and has no criminal record or other adverse criminal or removal history. In fact, removal proceedings were terminated by the IJ after an unopposed motion to terminate filed by Petitioner’s counsel upon SIJS approval on May 1, 2024. [See **Exhibit 6, Order of the**

Immigration Judge terminating proceedings dated May 28, 2024] On September 24, 2025, the Petitioner was at his place of work when ICE arrived looking for a specific individual and detained the Respondent and other nine individuals in a collateral arrest. Despite being aware of the Petitioner's SIJ and deferred action status, ICE officers detained him. He is currently being held without bail or bond at the JPCC in Jonesboro, Louisiana. He was served with a new Notice to Appear and placed in removal proceedings. **[See Exhibit 5, Notice to Appear dated November 4, 2025]**

26. Respondent Heriberto Tellez is the Warden of the Jackson Parish Correctional Center, where the Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

27. Respondent Mellissa Harper is the Director of the New Orleans Field Office of ICE's Enforcement and Removal Operations division, a component of the Department of Homeland Security. As such, she is Petitioner's immediate legal custodian and is responsible for the Petitioner's detention and removal. She is sued in her official capacity.

28. 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. He is sued in his official capacity.

29. 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 the Petitioner. She is sued in her official capacity.

LEGAL FRAMEWORK

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

30. 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 parents¹. 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 residence².

31. 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.³ Congress also explicitly excluded SIJ beneficiaries from specific grounds of excludability, or as they are now known, grounds of inadmissibility.⁴ This prevented broad disqualification of SIJS beneficiaries from adjustment of status due to numerous admissibility issues common to SIJ beneficiaries.

32. 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

¹ 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)).

² *Id.*

³ 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)).

⁴ *See* 1990 Act.

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.*⁵

33. 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."⁶ This amendment also increased the potential eligibility pool to 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 21.⁷

34. In 2008, Congress unanimously passed the TVPRA, which expressly codified longstanding regulatory policy where SIJ eligibility was could come from dependency on a state court *or* placement in the custody of an individual or entity appointed by a state court.⁸ 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

⁵ 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."

⁶ 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).

⁷ See Special Immigrant Status, 58 Fed. Reg. 42843-01, 42850 (Aug. 12, 1993) (codified at 8 C.F.R. § 204.11).

⁸ 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)).

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.”⁹

35. 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 eligible to adjust their status even if they had entered the country without inspection or without the necessary travel documents.¹⁰

36. To qualify for SIJS, petitioners must be under the age of 21 at the time of filing, unmarried, and physically present in the United States.¹¹ 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.¹² 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.¹³

37. 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*.¹⁴

⁹ *Id.*

¹⁰ *Id.* at 5080 (codified at 8 U.S.C. § 1255(h)(2)).

¹¹ 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11.

¹² *See* 8 C.F.R. § 204.11(c).

¹³ *Id.*

¹⁴ The 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

38. 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.¹⁵ Alternatively, should USCIS intend to revoke the grant of SIJS for cause, USCIS issues a notice of revocation. After providing notice and an opportunity to respond, then USCIS can revoke the SIJ classification "for good and sufficient cause," for example, a finding of fraud or a determination that the application was approved in error.¹⁶

39. 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, *Application to Register Permanent Residence or Adjust Status* with USCIS. As stated, this form may only be filed when an immigrant 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.

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. Petitioners instead suggest that 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).

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

¹⁶ *Id.*

Congress set the annual allotment of EB-4 visas at 7.1% of the annual worldwide level of available employment-based visas, which amounts to approximately 9,940 available EB-4 visas in a typical federal fiscal year.

40. To manage the limited supply of visas, the United States Department of State (“DOS”), in collaboration with USCIS, 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 issuance to a given applicant, and thus when an applicant may submit an application for adjustment of status. The Visa Bulletin appears on the DOS website, and USCIS has an additional website indicating which priority dates (Dates for Filing or Final Action Dates) are to be used for purposes of filing the adjustment of status.

41. 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.

42. Importantly, the removal of an SIJ beneficiary from the United States before the adjustment of status is complete strips the SIJ beneficiary of the opportunity to become an LPR, because adjustment of status is not available to those not physically present in the United States. There is no process for those outside of the United States to return on an SIJ visa. *See* 22 C.F.R. § 44.11 (denoting SIJS as an “adjustment-only” category).¹⁷

¹⁷*See also* 9 FAM 502.5-7(C), Certain Juvenile Court Dependents (CT:VISA-1829; 09-12-2023), “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.”

B. The Third Circuit Has Issued a Persuasive Opinion in *Osorio-Martinez* with regard to SIJS and Habeas Corpus.

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

44. 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”).

45. 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.

46. 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.

47. 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, Part F, Ch. 7 (Mar. 21, 2018)).

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

49. Like the petitioners in *Osorio-Martinez*, the Petitioner now faces indefinite detention and potential removal from the United States without cause, notice, or judicial review, leaving him without any method to return to the United States, and would thus render his SIJ status "a nullity." The Petitioner in this matter is similarly entitled to constitutional protections as expressly intended by Congress. These protections must include, at a minimum, the ability to have the potential nullification of his SIJ status reviewed by a higher authority. Importantly, the petitioners in *Osorio-Martinez* were in a far more legally precarious position than the Petitioner here, as they were subject to statutorily prescribed mandatory detention as well as specific rules

severely restricting federal court review due to limits in the INA and 8 U.S.C. § 1252(e)(2). Despite this, the Third Circuit recognized that the benefits granted to a SIJ beneficiary cannot be stripped without review and that the detention of those petitioners was not proper.

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

50. 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.*

51. 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;” and (3) “the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

52. 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) (holding that 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 Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (holding that the interest in being free from physical detention” is “the most elemental of liberty interests.”) *see also Martinez v. Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025) and *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, various 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). As a civil detainee, the Petitioner also has an interest in non-punitive conditions of confinement. *Peregrino Guevara v. Witte*, No. 6:20-CV-01200, 2020 WL 6940814, at *6 (W.D. La. Nov. 17, 2020), *report and recommendation adopted*, No. 6:20-CV-01200, 2020 WL 6929700 (W.D. La. Nov. 24, 2020).

53. The Petitioner has a liberty interest at stake in this matter. USCIS has approved his I-360 petition, designating him as an SIJ, a class of young people to whom Congress has granted significant protections. Despite his SIJ Status and the numerous protections Congress created for SIJ beneficiaries, Respondents intend to remove the Petitioner from the United States and have subjected him to detention to effectuate that goal.

54. If removed, the Petitioner will lose the benefits of his SIJ approval, and he will not be able to pursue the lawful permanent resident status for which he is entitled to apply as an SIJ beneficiary. If 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.

See also Morton v. Ruiz, 415 U.S. 199, 235 (1974) (“[i]t is incumbent upon agencies to follow their

55. Interpreted in light of the Constitution, pursuant to the INA and its implementing regulations, deportation is improper while an individual is engaged in the process of attempting to regularize his immigration status subsequent to a grant of Special Immigrant Juvenile Status.

56. 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").

57. The Petitioner has protected a due process interest in his ability to retain and benefit from his SIJ classification and grant of deferred action, and a right to remain in the United States to apply for lawful permanent residence when an immigrant visa becomes available.

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

58. 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

61. The Respondents, in pursuing detention and removal of SIJ beneficiaries, including those with deferred action from removal like the Petitioner, fail to comply with their own rules and regulations. The Respondents have provided the Petitioner with benefits under the law (SIJ and deferred action) and have not rescinded or revoked those benefits. Government statutes and regulations provide the mechanism for the revocation of SIJ status, both automatically and for

59. When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes 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 such reasons." *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted)).

own procedures . . . even where [they] are possibly more rigorous than otherwise would be required”); see also *Ka Fung Chan v. INS*, 634 F.2d 248 (5th Cir. 1981) (where the Fifth Circuit recognized the *Accardi* principle that an agency must abide by its own regulations and treated regulatory violations as possible bases for a procedural-due-process claim.) and *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”).

60. Breaches of *Accardi*’s rule constitute violations of both the Fifth Amendment’s Due Process Clause and the APA.¹⁸ See also, *Ka Fung Chan v. INS*, 634 F.2d 248 (5th Cir. 1981), *Rowe v. United States AG*, 545 Fed.Appx. 888, 890 (11th Cir. 2013) (recognizing the *Accardi* doctrine entails 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, that *Accardi* supports using habeas to ensure due process and that the “crucial question” is whether the Attorney General’s conduct deprived an individual the rights guaranteed under a statute or regulation) (internal citations omitted).

61. The Respondents, in pursuing detention and removal of SIJ beneficiaries, including those with deferred action from removal like the Petitioner, fail to comply with their own rules and regulations. The Respondents have provided the Petitioner with benefits under the law (SIJ and deferred action) and have not rescinded or revoked those benefits. Governing statutes and regulations provide the mechanism for the revocation of SIJ status, both automatically and for

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).

was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3720 (2025).
cause, which have not and cannot be followed in this case. Respondents are attempting to unlawfully revoke the SIJ status of the Petitioner via detention and removal, and not through any authorized process found in the statute or regulations.

62. The Petitioner remains a member of a vulnerable population and has the right to remain in the United States for the purpose of pursuing adjustment of status to lawful permanent residence.

E. Detention of SIJ Beneficiaries Remains Improper without Hearing or Review for those persons with SIJ status and a grant of Deferred Action.

63. 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.

64. 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.

65. 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).

66. 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).

67. Following the enactment of the IIRIRA, the Executive Office for Immigration Review 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).

68. Thus, in the decades that followed, most people who entered without inspection who were detained were placed in standard removal proceedings and 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)).

69. On July 8, 2025, ICE, purportedly advised by the U.S. Department of Justice announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice. [**See Exhibit 7, July 8, 2025 ICE Guidance**]

70. 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.

71. Despite ICE and EOIR's adoption of mandatory detention, several federal courts have rejected this exact conclusion. A multitude of district courts have found that these noncitizens are detained under 8 U.S.C. § 1226(a) rather than 8 U.S.C. § 1225(b) and ordered the Immigration Court to provide them individualized bond hearings. *See e.g. Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *4 (W.D. La. Aug. 27, 2025); *Lopez Santos*, 2025 WL 2642278, at *5.

72. In so holding, the courts have found that *Yajure Hurtado* is not entitled to deference. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *7 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 n.3 (S.D. Tex. Oct. 7, 2025).

73. A growing consensus of courts have remedied DOJ's 8 U.S.C. § 1225(a)/ 8 U.S.C. § 1225(b) misclassification by "ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence." *Lopez-Arevelo*, WL 2691828, at *13.

74. The Respondents' statutory interpretation violates the plain language of the statute. As the *Kostak* and *Lopez-Santos* court explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like the 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 our own court and other circuits have explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240 (W.D. Wash. Apr. 24, 2025), 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 – like the Petitioner.

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). Although the Petitioner was initially apprehended at the border, his proceedings were terminated on May 28, 2024. **[See Exhibit 6, Order of the Immigration Judge terminating proceedings dated May 28, 2024]**

79. Considering that Removal proceedings were initiated for a second time with a new Notice to Appear upon Petitioner’s apprehension within the United States on November 4, 2025, and who was residing in the United States at the time he was apprehended, the mandatory detention

provision of § 1225(b)(2) does not apply to Petitioner. His detention is a consequence of arbitrary interior enforcement and not expedited removal. [See Exhibit 5, Notice to Appear dated November 4, 2025]

80. Further, the INA detention provision is silent about special immigrant categories, for whom Congress intended to have various other forms of special protections and relief. 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. Petitioner Marcos Vinicius de Souza Braganca is a 22-year-old native and citizen of Brazil.

82. Petitioner entered the United States through the southern border on or about May 26, 2023. He was apprehended upon his entry by immigration authorities near Lukeville, Arizona. He was subsequently released by ICE under his own recognizance.

83. On December 18, 2023, Petitioner's attorney obtained a predicate order from a state court of competent jurisdiction - Probate and Family Court of the Commonwealth of Massachusetts, giving rise to his eligibility for SIJS. [See Exhibit 2, Predicate Order from the

Probate and Family Court of the Commonwealth of Massachusetts]

84. On December 22, 2023, the Petitioner filed a petition for Special Immigrant Juvenile Status (SIJS) with USCIS. **[See Exhibit 1, I-360 Approval and Grant of Deferred Action]**

85. On May 1, 2024, USCIS approved the Petitioner's SIJS petition and granted him Deferred Action for a period of four years. Petitioner subsequently received his Work Authorization and Social Security Card. **[See Exhibit 1, I-360 Approval and Grant of Deferred Action] and [Exhibit 3, Petitioner's Work Authorization]**

86. Upon the approval of his SIJS, Petitioner's counsel filed a Motion to Terminate Removal Proceedings before the Lowell immigration Court and on May 28, 2024, the IJ terminated Petitioner's removal proceedings. Petitioner's motion was unopposed by DHS. **[See Exhibit 6, Order of the Immigration Judge terminating proceedings dated May 28, 2024]**

87. Petitioner was living a productive and normal life in the United States when on September 24, 2025, ICE arrived at Petitioner's work site looking for "Mr. Saulo Alves Matos". Despite pursuing a specific person, ICE detained the Petitioner and other nine individuals in a collateral arrest, even after the Petitioner presented proof of his identity in the form of his currently valid Employment Authorization Document (EAD). **[See Exhibit 3, Petitioner's Work Authorization]**

88. Nevertheless, Respondents declined to release the Petitioner from detention, and he remains detained at the JPPC and faces removal. The Petitioner's removal would eliminate his SIJ process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, and deferred action benefits. **[See Exhibit 5, Notice to Appear dated November 4, 2025]**

89. The Petitioner has significant ties to the United States and is not a flight risk, as established and recognized by both a state court of competent jurisdiction and USCIS through its grant of the I-360 petition. The Petitioner is in no way a danger to his community, and nor does he

have any criminal record. 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 community and support system.

90. Any appeal to the BIA is futile. The Board's most recent precedential decisions have squarely foreclosed position that the IJ in fact has jurisdiction over requests for custody redetermination in similar situations, holding that persons like the Petitioner are subject to mandatory detention as applicants for admission. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)

91. Finally, in the *Kostak*, *Lopez-Santos* and *Rodriguez Vazquez* litigation, the government 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 *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *4 (W.D. La. Aug. 27, 2025); *Lopez Santos*, 2025 WL 2642278, at *5. and 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

92. 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).

93. 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).

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

95. *Second*, noncitizens who have been adjudicated to be SIJs have significant benefits and procedural protections set forth by Congress, including “for cause” protections against revocation of their classification as SIJs.

96. The Petitioner has been classified as a Special Immigrant Juvenile and was granted that benefit by the Respondents and issued deferred action from removal. Neither benefit has properly rescinded or revoked. He should be considered paroled into the country for the purpose of adjustment and should be allowed to remain until his visa is current. 8 U.S.C. § 1255(h)(1).

Physical presence in the United States is a condition of SIJ Status, if Petitioner is removed, his SIJ Status is nullified. 8 U.S.C. 1101(a)(27)(J)(i). [See Exhibit 4, Notice to Appear dated May 27, 2023]

97. The Petitioner has a property and liberty interest in remaining in the United States and awaiting adjustment of status. If removed, the Petitioner will lose his SIJ Status and be unable to avail himself of the benefits afforded to SIJS beneficiaries to remain safely in the U.S. for the purpose of adjustment of status to lawful permanent residence. See *Osorio-Martinez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018). **COUNT II**

98. The Respondents’ continued detention of the Petitioner without a bond hearing to determine whether he is individually a flight risk or a danger to others violates his right to due process by effectively stripping him of SIJ status without notice, an opportunity to respond, or review.

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

99. Respondents have not, from the Petitioner's detention to the date of this Petition, provided the Petitioner with either notice or an opportunity to challenge his detention, alleging a lack of jurisdiction.

100. The Petitioner's continued detention without an individualized determination as to whether he presents a danger to the community or a risk of nonappearance constitutes a deprivation of his interest in personal liberty.

101. By failing to provide the Petitioner with an opportunity to show that he does not present a danger to the community or a risk of nonappearance, and by failing to make an individualized determination as to whether the Petitioner satisfied those requirements prior to deciding to detain him, Respondents failed to provide the Petitioner with due process of law.

102. The Petitioner has no adequate remedy, as the Respondents have taken the position that the Petitioner is subject to mandatory detention and that they intend to remove him, despite his SIJ approval and grant of deferred action. [See Exhibit 4, Notice to Appear dated May 27, 2023]

103. 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

104. 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 applicants for admission.

105. 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. *Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

106. The application of § 1225(b)(2) to the Petitioner unlawfully mandates his continued detention and violates the INA. 5 U.S.C. 553. DHS followed these releasing procedures to

107. Further, SIJ beneficiaries are 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. Substantial benefits have been afforded to the Petitioner in light of his grant of SIJS, including his right to remain for the purpose of adjustment of status. *See Osorio-Martínez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018). *Id.* would render him ineligible for adjustment

of status. 108. Holding the Petitioner indefinitely without bail violates the INA and Congressional intent behind the SIJ program, and such detention cannot be squared with the waiver of inadmissibility for approved SIJ beneficiaries in the statute. (27)(j)(i). Currently, the Petitioner

satisfies this requirement because he is present in the borders of the United States, though in immigration detention. **COUNT III**
Violation of the Administrative Procedure Act *Id.* will satisfy the physical

presence. 109. 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).

110. 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 relief under the TVPRA and the Violence Against Women Act (“VAWA”). *See* 867 Fed. Reg. 4784.

111. The Petitioner’s detention and removal under the facts alleged here is a violation of the APA.

112. 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 Petitioner satisfies this requirement because he is physically within the borders of the United States, though in immigration detention. However, if removed, the Petitioner will no longer satisfy the physical presence requirement; his SIJ status will be nullified and he will not be able to pursue adjustment of status. Therefore, if the Respondents succeed 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).

113. In detaining the Petitioner and seeking an order of removal to effectuate, the Respondents have attempted to strip the Petitioner of his SIJS and deferred action.

See Osorio-Morales v. Attorney General, 893 F.3d 153 (3d Cir. 2018).

114. 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).

actual controversy within its jurisdiction. **COUNT IV** the rights and other legal relations of any interested party seek 5 U.S.C. § 706(2)(A) – Violation of Accardi Doctrine could be sought." 28

U.S.C. 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). See also *Ka Fung Chan v. INS*, 634 F.2d 248 (5th Cir. 1981)

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. The Respondents' intention to detain and seek removal of SIJS beneficiaries with deferred action 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, 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, as well as 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 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).

120. The Petitioner seeks a declaration from this Honorable Court that the process of detention and removal without review of SIJS beneficiaries, as applied to the Petitioner by the Respondents, violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations, is in excess of Respondents’ statutory authorization, is an unlawful taking of the Petitioner’s statutorily authorized benefits without appropriate process, and is arbitrary and capricious, an abuse of discretion and contrary to law.

COUNT VI

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

121. The Respondents’ detention and intended removal of the Petitioner without any opportunity for meaningful judicial review violates the Suspension Clause. *See Osorio-Martinez 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 the Petitioner immediately or provide him with a bond hearing pursuant to 8 U.S.C. § 1226(a) within 14 days;

3. Issue a writ of habeas corpus directing Respondents to pursue a constitutionally adequate process before taking any 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 and the Suspension Clause, the INA, the APA, and federal regulations;
6. Declare that the Petitioner may remain in the United States to pursue adjustment of status;
7. Stay the Petitioner's removal proceedings until he exhausts the process, successfully or otherwise, of pursuing relief from removal by virtue of his Special Immigrant Juvenile Status;
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: November 21, 2025

Respectfully submitted,

/s/ Nathalia Dickson
Nathalia Rocha Dickson
Dickson Law Firm, LC
18405 E Petroleum Drive, Suite
C Baton Rouge, LA 70809
p: 225-369-9922
m: 225-364-9435
Counsel for Petitioner

**VERIFICATION BY SOMEONE ACTING
ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 21, 2025.

Respectfully submitted,

/s/ Nathalia Dickson

Nathalia Rocha Dickson
Dickson Law Firm, LC
18405 E Petroleum Drive, Suite
C Baton Rouge, LA 70809
p: 225-369-9922
m: 225-364-9435
Counsel for Petitioner