

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

CRISTOFER A. ORTEGA-VARELA,

Petitioner,

v.

CHRIS BRACKETT, in his official
capacity As Superintendent, Strafford
County Department of Corrections;

PATRICIA HYDE, in her official capacity
as Acting Field Office Director of the
Boston Field Office of U.S. Immigration
and Customs Enforcement, Enforcement
and Removal Operations;

TODD LYONS, in his official capacity as
Acting Director and Senior Official
Performing the Duties of the Director of
U.S. Immigration and Customs
Enforcement;

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

Respondents.

**VERIFIED PETITION FOR A WRIT
OF HABEAS CORPUS**

Case No. _____

INTRODUCTION

1. Petitioner, Cristofer A. Ortega-Varela ("Cristofer") is a 20-year-old college student from Plainfield, New Jersey who has been in the United States since he was nine years old. He has a grant of Special Immigrant Juvenile ("SIJ") Status, meaning that a family court judge has found, and U.S. Citizenship and Immigration Services ("USCIS") has agreed, that it is not in his best interest to be returned to his home country of Honduras.

2. On July 16, 2025, federal agents unjustifiably took Cristofer into immigration detention absent reasonable suspicion or probable cause. The government's arbitrary, unlawful, and dangerous actions deprived him of liberty and due process.

3. That morning, while Cristofer was visiting family in New Hampshire, he was a passenger in a vehicle stopped at a red light. Armed federal agents identified as "FBI" exited two unmarked vehicles also stopped at the light. The armed agents surrounded Cristofer's vehicle and forcibly removed him and the driver without a warrant and without any explanation. The agents shackled Cristofer and transferred him to the custody of U.S. Immigration and Customs Enforcement ("ICE").

4. Despite the fact that Cristofer has SIJ status and ICE cannot lawfully remove Cristofer to the dangerous conditions in Honduras, they have detained him ever since.

5. Cristofer's initial arrest violated his constitutional rights. His ongoing detention, especially without individualized review, serves no lawful purpose and violates the substantive and procedural due process protections of the Fourth Amendment, Fifth Amendment, the Administrative Procedure Act ("APA"), and the Immigration and Nationality Act ("INA") and its implementing regulations.

6. Cristofer is subject to a final order of removal, however that removal order and a motion to reopen his removal proceedings are subject to ongoing litigation in a petition for review at the U.S. Third Circuit Court of Appeals. The Third Circuit is also considering a Motion for a Stay of Removal pending the outcome of the petition for review and has imposed a temporary stay before full adjudication of the Motion for a Stay.

7. This habeas petition does not challenge the removal order itself. Cristofer brings this habeas petition to challenge his unlawful arrest and to seek release from detention because his detention serves no lawful purpose and his removal is not reasonably foreseeable.

8. Cristofer asks this Court to find that his continued detention is unlawful and order his immediate release from custody, or in the alternative, to hold a bond hearing. He also asks that this Court enjoin Respondents from transferring him outside of this District for the duration of these proceedings.

PARTIES

9. Petitioner **Cristofer A. Varela-Ortega** is a 20-year-old citizen of Honduras and resident of Plainfield, New Jersey. He entered the United States together with his mother on or about May 2, 2014, when he was nine years old. Cristofer is a high school graduate, a student at [REDACTED] and has approved SIJ Status. Federal agents forcibly detained Cristofer and transferred him to ICE custody on July 16, 2025. He is currently detained at Strafford County Department of Corrections in Strafford, New Hampshire, under the custody and control of Respondents.

10. Respondent **Kristi Noem** is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) and overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondent Lyons. She is the ultimate legal custodian of Cristofer.

11. Respondent **Todd Lyons** is sued in his official capacity as Acting Director of ICE and as such, he is the legal custodian of Cristofer.

12. Respondent **Patricia Hyde** is sued in her official capacity as ICE's Acting Field Office Director for the Boston Field Office of ICE Enforcement and Removal Operations. Respondent Hyde oversees ICE's enforcement and removal operations in the Boston Area of Responsibility ("AOR"), which includes New Hampshire. Cristofer is currently detained within this AOR and, as such, Respondent Hyde is a legal custodian of Cristofer.

13. Upon information and belief, Respondent **Chris Bracket** is the Superintendent of the Strafford County Department of Corrections in Strafford, New Hampshire, where Cristofer is currently detained. Respondent Bracket is responsible for the supervision, custody and care of all persons incarcerated or detained at the Strafford County Department of Corrections and is Cristofer's immediate physical custodian. He is sued in his official capacity.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), Art. I § 9, cl. 2 of the U.S. Constitution (Suspension Clause), 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Kong v. United States*, 62 F.4th 608, 614 (1st Cir. 2023) (same).

16. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (e)(1) because Cristofer is detained within the District of New Hampshire, his immediate physical custodian is located within this District, and a substantial part of the events giving rise to this petition occurred and continue to occur within this District.

FACTUAL ALLEGATIONS and PROCEDURAL HISTORY

17. Cristofer is a 20-year-old native and citizen of Honduras who entered the United States with his mother when he was around nine years old. They entered through Hidalgo, Texas on or about May 2, 2014. *See* Exhibit A, Notice to Appear.

18. The Department of Homeland Security (“DHS”) placed Cristofer and his mother into removal proceedings, and he was charged as removable under section 212 (a)(6)(A)(i) of the Immigration and Nationality Act (“INA”).

19. In removal proceedings, Cristofer’s mother sought asylum, withholding of removal, and protection under the Convention Against Torture (CAT) and included Cristofer as a derivative on her application.

20. An Immigration Judge at the Newark Immigration Court denied all applications for relief and issued an order for Cristofer’s removal on November 15, 2019. *See* Exhibit B, Order of Removal, dated November 15, 2019.

21. Following the issuance of the removal orders, Cristofer’s mother filed an appeal with the Board of Immigration Appeals (“BIA”). The BIA dismissed the appeal on April 9, 2024. *See* Exhibit C, 2024 Decision of the BIA, dated April 9, 2024.

22. After Cristofer found out about the dismissal of the appeal in 2024, he retained the pro bono legal services of American Friends Service Committee (“AFSC”),

through a New Jersey program that aims to assist immigrant youth. Legal staff at AFSC informed Cristofer and his mother about SIJ Status.

23. On May 30, 2024, Cristofer received his high school diploma.

24. On October 1, 2024, through legal counsel, Cristofer's mother submitted a petition for sole custody of Cristofer in the Superior Court of New Jersey – Family Division in Union County.

25. On January 10, 2025, the New Jersey Family Court entered an order finding that Cristofer was unemancipated and therefore, he was dependent upon the New Jersey Family Court. The Court granted sole legal and physical custody of Cristofer to his mother and also found that Cristofer's reunification with his father was not viable because his father had neglected and abandoned him. The Court also found that it is not in Cristofer's best interest to be returned to Honduras.

26. Through counsel, Cristofer subsequently filed a Form I-360 petition for SIJ Status with USCIS, which was approved on June 12, 2025, with a Priority Date of 02/07/2025. *See* Exhibit D, I-797 Notice of Action – Approval Notice for Special Immigrant Juvenile Status, dated June 12, 2025.

27. Cristofer's priority date under the EB-4 visa category is not current and, therefore, he cannot yet apply for adjustment of status to that of a Legal Permanent Resident ("LPR"), although he is *prima facie* eligible for such adjustment. There is currently a large backlog of youth with SIJ status who are otherwise eligible to pursue adjustment of status but are only prevented from filing applications due to non-current priority dates. The process by which priority dates become current is outside of Cristofer's control.

28. In January 2025, Cristofer enrolled in the full-time Adult Post-Secondary Plumbing/HVAC program at Union County Vocational-Technical School in Scotch Plains, New Jersey.

29. In July 2025, Cristofer traveled from New Jersey to New Hampshire to visit his uncle. On July 16, 2025, Cristofer was a passenger in a vehicle lawfully stopped at a red light. While stopped, agents wearing clothing marked as “FBI” exited two unmarked vehicles that were also stopped at the same traffic light. The armed agents quickly surrounded the car Cristofer was in and demanded that Cristofer and the driver exit the vehicle. The agents pulled both Cristofer and the driver out of the car by force, twisting their arms. When the vehicle’s driver tried to question the agents as to why this was happening, the agents only shouted profanity and told the driver and Cristofer to shut up. *See Exhibit E, Declaration of Cristofer A. Ortega-Varela.*

30. The agents restrained Cristofer and one of them removed his New Jersey state identification from his pocket. After presumably checking his ID, the agents told Cristofer that he was coming with them. The agents handcuffed Cristofer, shackled his legs and placed a chain around his waist. The agents then transported him to an ICE facility for processing.

31. At the ICE facility, other detainees told Cristofer that earlier that same day, another group of individuals had been brought there for processing. After that first group arrived, the detainees heard ICE officers say that it was still early and they [ICE] “needed more” for that day.

32. *After* his arrest and initial processing on July 16, 2025, ICE served Cristofer with a Warrant of Removal which states that he is subject to a final order of removal

pursuant to INA 212 (a)(6)(A)(i), the same charge on his initial NTA. *See* Exhibit F, ICE Form I-205, Warrant of Removal, dated July 16, 2025.

33. On July 18, 2025, Cristofer filed a motion to reopen his removal proceedings with the BIA arguing that his approved petition for SIJ status was new, material evidence that was previously unavailable during the pendency of his removal proceedings.

34. In early October 2025, ICE conducted a review of Cristofer's detention, purportedly pursuant to regulations at 8 C.F.R. § 241.4(e), (f) and (g). ICE served Cristofer with a Decision to Continue Detention on October 8, 2025. That decision stated that ICE was continuing detention of Cristofer because his removal is practicable, likely to occur in the reasonable future and in the public interest. Even though every factor enumerated in 8 C.F.R. § 241.4(f) would support Cristofer's release, ICE's decision made little to no mention of those factors. The decision ignored Cristofer's ties to the U.S. as a recipient of SIJ status, his status as a full-time student and his lack of any criminal history. *See* Exhibit G, Decision to Continue Detention.

35. On October 21, 2025, the BIA denied Cristofer's motion to reopen finding that it was filed untimely. The BIA held that Cristofer had not established extraordinary circumstances that would warrant equitable tolling because, in the BIA's view, becoming eligible for relief after a final order of removal is common and does not justify equitable tolling. *See* Exhibit H, 2025 Decision of the BIA, dated October 21, 2025.

36. On October 29, 2025, Cristofer filed a Petition for Review of the 2025 BIA decision with the U.S. Court of Appeals for Third Circuit. That petition is still currently pending.

37. On October 30, 2025, Cristofer filed a Motion for a Stay of Removal with the U.S. Court of Appeals for Third Circuit. That motion is still currently pending, although pursuant to Third Circuit local rules, a temporary stay of removal is in effect until the Motion for Stay of Removal can be fully adjudicated. *See* Exhibit I, Order for Stay of Removal, dated October 31, 2025.

38. ICE detained and continues to detain Cristofer despite his approved SIJ Status.

LEGAL FRAMEWORK

A. SIJ Status Provides a Pathway to Permanent Status for Certain Vulnerable Young People

39. In 1990, Congress created SIJ status to protect vulnerable immigrant children and provide them a pathway to citizenship. Immigration Act of 1990, Pub. L. No. 101-649, § 153, 104 Stat. 4978 (1990) (amending various sections of the INA); Special Immigrant Status, 58 Fed. Reg. 42843, 43844 (Aug. 12, 1993) (“This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified [noncitizens] with the opportunity to apply for special immigrant classification and lawful permanent resident status, with [the] possibility of becoming citizens of the United States in the future.”). Since 1990, Congress has amended the INA multiple times to expand the protections of SIJ status, most recently in 2008, through the Trafficking Victims Protection Reauthorization Act, Pub. L. 110-457, § 235(d), 122 Stat. 5044 (2008).

40. To be granted SIJ status, youth like Cristofer must first “satisfy[] a set of rigorous, congressionally defined eligibility criteria.” *Osorio-Martinez v. U.S. Att’y Gen.*, 893 F.3d 153, 163 (3d Cir. 2018). Specifically, the INA provides that those eligible for SIJ designation, as relevant here, are noncitizen youth who are present in the United States;

who have been declared dependent on a state juvenile court; who cannot be reunified with one or more parents because of abuse, neglect, or abandonment; and for whom it has been determined that it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c).

41. Crucially, a noncitizen youth is eligible for SIJ status only if he or she is “present in the United States.” 8 U.S.C. § 1101(a)(27)(J) (emphasis added). This requirement makes perfect sense considering the purpose of the SIJ statute. SIJ status is predicated on a state court finding that the youth cannot be safely reunited with parent(s), nor safely sent back to their country of origin. The design of this program, then, “show[s] a congressional intent to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status.” *Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds).

42. Youth can apply for SIJ status upon receipt of a state court order finding they cannot be safely reunited with parent(s) nor safely sent back to their country of origin. The application process includes submitting a Form I-360 SIJ Petition to USCIS, along with the predicate state court order and other supporting evidence. *See* 8 C.F.R. § 204.11(b). USCIS then considers the application and supporting documentation to determine whether to exercise its statutory “consent function” to approve the petition. *See* 8 U.S.C. § 1101(a)(27)(J)(iii). By exercising its statutory consent function to grant SIJ status, the agency recognizes the state court’s determinations, including that the child’s return to their country of origin would be contrary to their best interests. 8 U.S.C. § 1101(a)(27)(J)(iii).

43. The main benefit of SIJ status—and indeed, its core purpose—is that it confers on vulnerable young people like Cristofer the right to seek LPR status while remaining in the United States, through a process called adjustment of status. *See* 8 U.S.C. § 1255(h).

44. To facilitate this process, Congress removed numerous barriers to adjustment of status for SIJ status beneficiaries through amendments to the SIJ provisions in 1991 and again in 2008. For example, SIJ youth are “deemed . . . to have been paroled into the United States” for the purposes of adjustment of status. 8 U.S.C. § 1255(h)(1). Further, Congress exempted SIJ youth from many common inadmissibility grounds and created a generous waiver of many of the non-exempted inadmissibility grounds. 8 U.S.C. § 1255(h)(2). Congress explicitly provided that certain grounds for removal “shall not apply to a special immigrant described in section 1101(a)(27)(J) of this title [the SIJ statute] based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status.” 8 U.S.C. § 1227(c).

45. Although SIJ status renders youth eligible to apply for adjustment, they can only do so when a visa is immediately available to them. 8 U.S.C. § 1255(h). However, there is an annual limit on visas available to SIJ beneficiaries. 8 U.S.C. § 1153(b)(4). And since 2016, the number of SIJ beneficiaries has surpassed the supply of available visas for most countries, leaving what has been estimated to be more than 100,000 young people in a backlog, waiting to apply for a green card despite their approved SIJ petitions and *prima facie* eligibility for adjustment of status.

46. Despite the immediate unavailability of visas, waitlisted SIJ beneficiaries are the same vulnerable young people that the SIJ statute was designed to protect. The fact

that no visa is currently available because a numerical limit has been reached changes nothing about their eligibility determination by USCIS, or Congress's intent that they be afforded a pathway to LPR status and, eventually, citizenship. These are the same individuals who state courts have determined cannot safely be reunited with their parent(s) or returned to their home country.

47. Taken together, the structure of the SIJ program—including the requirement that recipients remain in the United States to move forward in the process, the grant of parole for the purpose of adjustment, and the waiver of grounds of inadmissibility and removability—evinces Congress' intent that SIJ status recipients remain safely in the United States until they can pursue adjustment to become LPRs. *See Del Cid and Marroquin v. Bondi*, No. 3:25-CV-00304, 2025 WL 2985150 at *4 (W.D.P.A. Oct. 23, 2025) (granting habeas for noncitizens with SIJ status and stating that, based on holdings in *Osorio-Martinez* and *Cortez-Amador v. Att'y Gen.*, 66 F.4th 429 (3d Cir. 2023), the government must provide them with an opportunity to pursue adjustment of status and can only remove them after providing such opportunity); *Inlago Tocagon v. Moniz*, No. 25-cv-12453-MJJ, 2025 WL 2778023 at *4 (granting habeas for noncitizen with approved SIJ status and finding that he was deemed to have been paroled into the U.S. as the approval date of his petition for SIJ status).

B. The Government Recently Ceased Granting Deferred Action, Despite Prior Findings that it is Necessary to Give Meaning to Congress' Intent That SIJ Beneficiaries Be Protected

48. In March 2022, to address the SIJ status visa backlog, USCIS announced that all young people granted SIJ status would also be considered for a discretionary grant of deferred action, meaning that they would be protected from deportation while waiting

for a visa to become available. In enacting this policy, USCIS itself acknowledged that “Congress likely did not envision that SIJ status petitioners would have to wait years before a visa became available.”¹ Persons granted deferred action are shielded from deportation and are eligible to apply for employment authorization under 8 C.F.R. § 274a.12(c)(14).

49. Importantly, “USCIS has the sole authority to grant and terminate deferred action for noncitizens with SIJ classification” and generally, USCIS may only terminate deferred action “if the SIJ-classified individual was not eligible at the time of the initial grant of deferred action, the SIJ Form I-360 is revoked, or if they are no longer eligible based on new information.”²

50. In June 2025, USCIS rescinded the SIJ status deferred action policy, deciding to no longer consider granting deferred action to SIJ status youth waiting to apply for a green card in the extensive backlog.

51. That rescission of the deferred action policy is currently being challenged in a separate lawsuit, *A.C.R. v. Noem*, No. 1:25-cv-3962, in the Eastern District of New York. On November 19, 2025, the judge in that case ordered a preliminary stay of the 2025 rescission of SIJ status-based deferred action, stating that it was likely arbitrary and capricious. Based on that order, USCIS should revert to its 2022 policy of automatically considering youth with approved SIJ status for deferred action. However, there is no mandated timeline in which USCIS must make deferred action determinations for youth

¹ USCIS, Policy Alert PA-2022-10, at 1 (Mar. 7, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf> (“2022 Policy Alert”); see also USCIS, Training regarding SIJ Deferred Action Background, at 11–12, <https://www.ilrc.org/sites/default/files/2025-09/FOIA%20Results%20on%20SIJS%20Deferred%20Action%20Policy.pdf>.

² See USCIS Memo re: Special Immigrant Juvenile (SIJ) Deferred Action, June 26, 2023, <https://www.ilrc.org/sites/default/files/2025-09/FOIA%20Results%20on%20SIJS%20Deferred%20Action%20Policy.pdf> at 131–132.

like Cristofer who were not considered for deferred action at the time their petition for SIJ status was approved.

52. Despite deferred action, ICE's attempts to remove SIJ status youth waiting to apply for a green card undermines the Congressional purpose and intent of the SIJ status statutory scheme. *See Primero v. Mattivelo*, No. 25-cv-11442, 2025 WL 1899115, at *4 (granting habeas petition for a young person with SIJ status deferred action).

C. The INA Only Permits Detention of Individuals With a Final Order of Removal In Limited Circumstances

53. 8 U.S.C. § 1231 authorizes the detention of individuals following a final order of removal only under specifically delineated circumstances. The third subclause of 8 U.S.C. § 1231(a)(3) provides that an individual who is not removed within a 90-day statutory removal period "shall be subject to supervision" (emphasis added) under specific terms, including requirements that he or she appear periodically before an immigration officer and obey any written restrictions.

54. 8 C.F.R. § 241.4 outlines the scope of ICE's authority to continue detention of an individual beyond the 90-day removal period and the procedures that must be followed. 8 C.F.R. § 241.4(e) sets forth the criteria for release and 8 C.F.R. § 241.4(f) contains the factors for consideration.

55. The criteria for release and factors for consideration include whether the individual is non-violent, likely to remain non-violent, not likely to pose a danger to the community, not likely to violate the conditions of release, not a significant flight risk and that either travel documents are not available, or removal is not in the public interest. ICE clearly did not analyze these criteria and factors in Cristofer's case: Cristofer has no criminal history nor any history of violence, he has ties to his community, maintains a fixed

address and is a full-time student. Also, the public interest in honoring Congressional intent in providing Cristofer an opportunity to seek adjustment of status outweighs the general public interest in removal enforcement. Moreover, Cristofer is currently subject to a temporary stay of removal ordered by the U.S. Court of Appeals for Third Circuit.

CLAIMS FOR RELIEF

CLAIM I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE CONSTITUTION (SUBSTANTIVE DUE PROCESS) AND 8 U.S.C. § 1231(a)(6)

56. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

57. ICE detained Cristofer on July 16, 2025, under 8 U.S.C. § 1231(a)(6), which governs the detention of noncitizens with final removal orders, because Cristofer was subject to an order of removal that became final in 2024 when the BIA denied his mother's appeal.

58. 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*, 533 U.S. 678 at 690.

59. Cristofer has a fundamental interest in liberty and being free from official restraint. Cristofer's detention is neither authorized by 8 U.S.C. § 1231(a)(6) nor related to any legitimate government interests and, therefore, violates the substantive due process protections of the Fifth Amendment because Cristofer's removal is not reasonably foreseeable and there is no other justification for his detention.

CLAIM II

**VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT
OF THE CONSTITUTION (PROCEDURAL DUE PROCESS) AND SECTION 241
OF THE IMMIGRATION AND NATURALIZATION ACT**

60. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

61. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

62. While ICE has purportedly conducted a review of Cristofer’s detention as required by 8 U.S.C. §1231(a)(6) [INA §241], and using the factors set forth at 8 C.F.R. § 241.4, ICE did not actually apply the factors as required by the Regulations.

63. The Due Process Clause entitles Cristofer to meaningful process assessing whether his detention is justified. Cristofer’s arrest and detention without an opportunity to contest his detention in front of a neutral adjudicator after he had been living and going to school in the United States for years provide insufficient process and violate the Due Process Clause of the Fifth Amendment of the Constitution.

CLAIM III

**VIOLATION OF THE *ACCARDI* DOCTRINE WITH RESPECT TO
8 C.F.R. § 241**

64. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

65. 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 the agencies are bound to follow their own “existing valid regulations.” *United States ex rel. Accardi Shaughnessy*, 347 U.S. 260, 266, 268 (1954). The *Accardi* doctrine also obligates agencies to comply with procedures set out in their operative manuals and binding guidance. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

66. Respondents have violated the applicable regulations governing detention following a final order of removal—8 C.F.R. §§ 241.4(l), 241.5, and 241.13(i)—by failing to take all the enumerated, relevant factors into consideration and provide Cristofer with a *particularized* notice of the reason(s) for his continued detention.

CLAIM IV

VIOLATION OF THE FOURTH AMENDMENT OF THE CONSTITUTION AND 8 U.S.C. § 1357(a)(2)

67. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

68. The Fourth Amendment protects “[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has consistently recognized that immigration arrests and detentions are “seizures” within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S.

1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the person).

69. Congress enacted a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2).

70. Cristofer’s arrest was not pursuant to a warrant and occurred in violation of the clear, narrow circumstances permitted by statute. There has been no finding of probable cause or other determination by a neutral magistrate that would cure this infirmity; his arrest lacked any legal basis and there continues to be no legal basis for his detention. Therefore, his arrest and ensuing detention constitute an unreasonable and unlawful seizure in violation of the Fourth Amendment and 8 U.S.C. § 1357(a)(2).

CLAIM V

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

71. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

72. Under the APA, a court must “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

73. Respondents’ continued detention of Petitioner pursuant to 8 U.S.C. § 1231(a)(6) beyond the ninety-day removal period is arbitrary and capricious, not in

accordance with the law, and contrary to constitutional right because he has SIJ status, has no criminal history, his removal is not reasonably foreseeable, and there is no other justification for his detention.

74. Respondents failed to articulate a reasoned explanation for their decision to continue Cristofer's detention in light of all available evidence and failed to consider less-restrictive alternatives to custody.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- a. Assume jurisdiction over this matter;
- b. Enjoin the Respondents from transferring Cristofer outside of this District and enjoin his removal pending these proceedings;
- c. Pursuant to *Woodcock v. Donnelly*, 470 F.2d 93 (1st Cir. 1972) and *Gomes v. US Dep't of Homeland Sec., Acting Sec'y*, 460 F. Supp. 3d 132, 144 (D.N.H. 2020), grant bail to Cristofer on an *expedited basis* because he has a clear case on the law and facts.
- d. Declare that Cristofer's arrest and detention violate the Due Process Clause of the Fifth Amendment; the Fourth Amendment; 8 U.S.C. § 1231(a)(6), the Administrative Procedure Act; the *Accardi* Doctrine; and the Immigration and Nationality Act and implementing regulations;
- e. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Cristofer from ICE custody without restraints on his liberty;
- f. As long as Cristofer remains removable based solely upon grounds of inadmissibility and deportability expressly waived for SIJ status recipients seeking

adjustment of status, Enjoin the Respondents from removing Cristofer from the United States until he has had the opportunity to:

- i. submit an Application for Adjustment of Status to that of a Legal Permanent Resident (Form I-485) based upon his approved SIJ status within 60 days of his priority date becoming current; and
- ii. obtain a full and complete adjudication of that I-485;
- g. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
- h. Grant such other and further relief as law and justice require.

Dated: November 26, 2025

Respectfully submitted,

/s/ Amy McGarry
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**Pro hac vice application forthcoming*

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition and reviewed relevant documentation. Based on those discussions and review, upon information and belief, I hereby verify that the factual statements made in the Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

/s/ Jessica Charniga
Jessica Charniga

Attorney for Petitioner

INDEX OF ATTACHED EXHIBITS

Document	Exhibit	Page
Notice to Appear	A	01
Order of Removal, dated November 15, 2019	B	03
2024 Decision of the BIA, dated April 9, 2024	C	05
I-797 Notice of Action – Approval Notice for Special Immigrant Juvenile Status, dated June 12, 2025	D	08
Declaration of Cristofer A. Ortega-Varela	E	09
ICE Form I-205, Warrant of Removal, dated July 16, 2025	F	13
Decision to Continue Detention	G	15
2025 Decision of the BIA, dated October 21, 2025	H	19
Order for Stay of Removal, dated October 31, 2025	I	21
Memorandum of Law in Support of Verified Petition	J	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this date via the Court's CM/ ECF system upon all parties and counsel of record.

Dated: 11/26/2025

By: /s/ Amy B. McGarry
Amy B. McGarry, Esq.