

**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.

Case No. 1:25-cv-483-PB-TSM

Judge Paul J. Barbadoro

**PETITIONER'S REPLY TO FEDERAL RESPONDENT'S
OBJECTION TO MOTION FOR TEMPORARY RESTRAINING ORDER**

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Petitioner Cristofer A. Ortega-Varela (“Cristofer”) has a petition for a writ of habeas corpus pending before this Court. Cristofer respectfully submits this Reply in response to Federal Respondents’ Objection to Emergency Motion for a Temporary Restraining Order (“Resp Obj”) at ECF 14.

ARGUMENT

Cristofer has met the standard required to succeed on his Motion for a Temporary Restraining Order (“TRO”).

I. Cristofer Will Suffer Irreparable Harm Absent a TRO

The harm that Cristofer continues to suffer in the deprivation of his liberty, especially as a recipient of Special Immigrant Juvenile (“SIJ”) Status and someone who the Respondents themselves do not deem a danger to the community nor a flight risk, is well-established in this case. Without a TRO in place, however, Cristofer will suffer additional harm that will be irreparable: Cristofer’s removal at this time would effectively strip him of his SIJ Status and such unlawful, de facto revocation would not be reviewable nor subject to remedy by any court.

II. The Balance of Hardships and Public Interest Weigh Heavily in Cristofer’s Favor

To the extent that the Respondents have raised or are raising their own stake or interest in freeing Cristofer from detention through effecting his removal, that is not a legitimate government interest at stake here because ICE has the power and authority to release Cristofer, thereby ending his detention, at any moment of their choosing: they do not need to remove him in order to fulfill their interest in liberating him. Any contention by Respondents that they object to this TRO, even in part, because they do not wish to prolong his detention is disingenuous.

Respondents continually cite to their interest in seeing that removable immigrants are removed and in the efficient execution of final orders of removal. However, Respondents have failed to address their own competing interest in seeing that the policies and procedures of USCIS, as the granting agency of Cristofer's SIJ Status, are adhered to. Respondents include the Secretary of DHS and while ICE is an agency of DHS, USCIS is a co-equal agency of DHS. It would seem illogical for DHS to seek to enforce the interests of one of its agencies while simultaneously subverting the interests of another agency. Moreover, in this case, Respondents could honor and enforce the interests of both agencies, yet they have chosen not to do so. Respondents *could* seek to formally and properly revoke Cristofer's SIJ Status via existing procedures but instead they seek to circumvent that process and use a "back door" to revoke through removal rather than procedure. Respondents cannot, then, be understood to have a legitimate interest in purposefully failing to abide by their own procedures which are mandated by law. At a minimum, if they do have such a valid interest, it is surely not as great as Cristofer's interest in having the benefit of those procedural safeguards for SIJ Status revocation.

III. Cristofer Is Likely to Succeed on the Merits of his Claims

Cristofer has raised numerous claims in his habeas petition: he has alleged violations of his Constitutional rights to due process and raised claims under the Immigration and Nationality Act ("INA"), the Administrative Procedures Act ("APA") and the *Accardi* Doctrine. *See* ECF 1, ECF 1-10, and ECF 10.

Cristofer has shown a likelihood of success on the merits of his procedural due process claims under *Matthews* and his *Accardi* claim regarding ICE's failure to abide by the procedures for review of his detention at 8 C.F.R. § 241.4. *See* ECF 10 and ECF 12.

Cristofer has also shown a likelihood of success of his claim for violation of his right to substantive due process. Cristofer cannot be lawfully removed from the U.S. at this time, nor in the reasonably foreseeable future, because such removal would amount to an unlawful revocation of his SIJ Status. If his removal is not reasonably foreseeable, as long as he maintains valid SIJ Status, then his detention can serve no lawful purpose.

Here, Cristofer is not attacking the removal order itself but rather he is seeking to preserve his SIJ Status and prevent DHS from breaking its own rules to unlawfully revoke it. SIJS is a form of relief that only DHS can grant, and here, DHS has already agreed that Cristofer cannot safely be removed to Honduras through its act of approving his petition for SIJ Status. DHS must take its own prior actions and regulations into account in exercising its other duties under the law. This is about whether DHS can remove Cristofer without first abiding by its own procedures.

Respondents have contended that Cristofer's SIJ status has not been revoked and would not be revoked upon his removal because where SIJ Status does not prevent a person's removal, removal cannot be deemed a de facto revocation. *See* ECF 11 at 11. That argument is wholly unsupported by law or fact. Under the INA, an SIJ beneficiary must be present, and remain present, in the United States to retain their SIJ status. 8 U.S.C. § 1101(a)(27)(J).

"An SIJ may have their classification revoked *automatically* if either of two events occurs before final adjustment to LPR status: (1) "[r]eunification of the [SIJ] beneficiary with one or both parents by virtue of a juvenile court order...or (2) "[a]dministrative or judicial proceedings determine that it is in the [SIJ] beneficiary's best interest to be returned to the country of nationality or last habitual residence of the [SIJ] beneficiary or of their parent(s)." 8 C.F.R. § 204.11(j)(1). *Sarmiento v. Perry*, No. 1:25-CV-01644-AJT-WBP, 2026 WL 131917, at *5 (E.D. Va. Jan. 19, 2026). Beyond such *automatic* revocation, "SIJ status may be revoked only for what the Secretary

of Homeland Security deems “good and sufficient cause.” *Osorio-Martinez v. Att’y Gen. United States of Am.*, 893 F.3d 153, 171 (3d Cir. 2018) (citing 8 U.S.C. § 1155; 8 C.F.R. § 205.2). “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.* (citing 8 C.F.R. § 205.2). SIJ Status recipients are, therefore, already given procedural protections through the establishment of a formal process for SIJ Status revocation and the unique features of SIJ Status enable them to forge significant ties to the U.S. which affords them significant Constitutional due process protections.

Cristofer is also seeking to enforce his rights as an SIJ Status recipient and preserve his opportunity to seek adjustment of status when a visa is available, regardless of the outcome of removal proceedings. As long as he maintains his SIJ Status, he must be allowed to remain in the U.S. until he arrives at the moment of adjustment, the moment when, according to the statute, he is deemed to have been paroled.¹

Cristofer can be removable, in general, despite his SIJ Status but he still must be accorded an opportunity to seek adjustment of status. See *Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 433, FN 11 (3d Cir. 2023), (stating that such an interpretation does not produce absurd results because “Congress could have rationally decided that SIJS recipients should be given the opportunity to apply for adjustment of status, while also contemplating that they may be removed *if* their application is denied *or* for *another* appropriate basis.) See also *Del Cid v. Bondi*, No. 3:25-CV-

¹ See 8 U.S.C. § 1255(h)(2), which provides that, with regard to an individual granted SIJ Status, for purposes of adjustment of status, they shall be deemed to have been paroled into the U.S.

00304, 2025 WL 2985150, at *4 (W.D. Pa. Oct. 23, 2025) (finding that the government may ultimately remove an individual with SIJ Status from the country, so long as it provides them an opportunity to pursue adjustment of status, and the way in which the government seeks to remove SIJ recipients must adequately take stock of their SIJ Status). Pursuing Cristofer’s removal before he is eligible to apply for adjustment of status “summarily strip[s]” him of his right to do so, *Osorio-Martinez*, 893 F.3d at 178–79. At that moment in the future, when a visa is available and Cristofer can submit an application for adjustment of status, he will be deemed to have been paroled and he will no longer be subject to the sole ground of inadmissibility that underlies his order of removal.

An application for adjustment of status based upon SIJ status cannot be filed by someone who is not physically present in the United States. 8 U.S.C. § 1255(i); 8 C.F.R. § 245.1(a). Only this Court can decide, therefore, whether DHS will be allowed to prevent Cristofer from reaching that moment of having a current priority date², being deemed paroled and accessing his statutorily-given right to pursue permanent status in the U.S

Additionally, revocation of the Deferred Action (“DA”) Policy for SIJ Recipients does not change the protections afforded under the SIJ statute. *Osorio-Martinez*’s long analysis of the protections afforded SIJ recipients predates that policy by several years. DA does nothing to

² It should be noted that SIJ recipients are in the EB-4 category and that priority dates, and thus “visa availability”, for that category have shifted dramatically since the commencement of these proceedings. As of February 2026, individuals who filed their petitions for SIJ status on March 15, 2021 or earlier could apply for adjustment. (See <https://www.uscis.gov/green-card/green-card-processes-and-procedures/visa-availability-priority-dates/when-to-file-your-adjustment-of-status-application-for-family-sponsored-or-employment-based-121>). However, as of March 2026, individuals who filed their petitions for SIJ Status on or before January 1, 2023 can submit applications for adjustment of status. (See <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-march-2026.html>) That reflects an almost 2-year jump in visa availability for SIJ recipients in only one month. It remains to be seen if the category’s priority dates will keep advancing in the coming months but it does seem likely that there are now more visas available in the category due to the visa “pause” for all applicants from 75 countries announced in January 2026. The visa “pause” has affected the EB-4 category as a whole but does not apply to SIJ recipients.

change the structure of the SIJ statute, the rights that attach to SIJ Status, nor the due process procedures that must be lawfully taken to revoke it. SIJS Status, which necessarily underlies any grant of DA to a SIJ recipient, can still be revoked regardless of DA. Also, when Cristofer filed his I360 petition for SIJ Status on February 7, 2025, the prior DA policy, enacted in 2022, was still in effect. In fact, USCIS did not publicly announce the rescission of the SIJ DA policy until June 6, 2025, a mere six days before Cristofer's SIJ petition was approved so Cristofer was able to have reliance upon the policy during almost the entire time his petition for SIJ was pending.

Finally, the revocation of the DA Policy is still subject to ongoing class-action litigation in *A.C.R. v. Noem*, No. 25-cv-3962 (E.D.N.Y.). On November 19, 2025, that court issued a decision staying the 2025 rescission of the SIJ Status DA Policy under the APA and ordering that "the government . . . conduct deferred-action and employment authorization adjudications pursuant to the 2022 Policy Alert." According to that stay, USCIS should be operating under the 2022 policy and considering Cristofer for DA.

IV. This Court Has the Power and Authority to Grant Cristofer's Relief

A. This Court Can Grant a Request for a TRO

As Cristofer noted in his Memorandum of Law in Support of his Motion for a TRO, courts have granted TRO's in habeas proceedings that involved SIJ Status and complex questions of law to allow the court sufficient time to analyze those questions. See *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 674–75 (E.D. Va. 2020). See also *Walter A. v. Berg*, No. 25-CV-4720 (SRN/LIB), 2025 WL 3707593, at *2 (D. Minn. Dec. 22, 2025), which contrary to Respondent's contention, is not distinguishable from Cristofer's case. Cristofer is not directly challenging his removal order and the TRO in *Walter A.* was not granted because of the petitioner's grant of deferred action. In that case the judge noted the same concerns and issues present here: that the petitioner faced imminent

removal which would cause irreparable harm due to loss of SIJ Status and noted that the parties raised complex questions of law. See also *Xol-Maas v. Francis*, No. 26-CV-00025 (JAV), 2026 WL 21825, at *1 (S.D.N.Y. Jan. 5, 2026), where a TRO was granted “to preserve the Court’s jurisdiction pending a ruling on the Petition”, for a similarly situated habeas petitioner, an SIJ recipient without deferred action and with a pending case to reopen his final removal order.

B. 8 U.S.C. § 1252(a)(5) Does Not Bar This Court’s Jurisdiction

Respondents argue that this Court is without power to grant Cristofer the relief he seeks because 8 U.S.C. § 1252(a)(5) bars this Court’s review of the merits of Cristofer’s order of removal. What Respondents fail to recognize is that Cristofer is not attacking the merits or validity of his removal order nor challenging the removal order itself in any way in his habeas petition. In fact, he has challenged the merits of his removal order by seeking judicial review of that order through a motion to reopen his removal proceedings that is still currently pending with the Third Circuit court of appeals in full accordance with 8 U.S.C. 1252(a)(5). The cites and quotes that the government relies upon, *Luzolo v. Strafford County Department of Corrections, Superintendent et al.*, 1:26-cv-00031-LM-TSM (D.N.H.) and *De Gonzalez v. Holder*, Civ. No. 12-11539-FDS, 2012 WL 3610958, at *1 (D. Mass. Aug. 20, 2012), only address § 1252(a)(5). As explained above, Cristofer seeks to preserve his rights as an SIJ recipient and to prevent ICE from unlawfully stripping him of SIJ Status. Cristofer is not asking this Court to review the order of removal and therefore any argument that the relief he seeks is barred by 8 U.S.C. § 1252(a)(5) cannot stand.

C. 8 U.S.C. § 1252(g)³ Does Not Bar This Court’s Jurisdiction or it’s Jurisdiction-Stripping Violates the Suspension Clause

³ 8 U.S.C. § 1252(a)(5) is the only bar raised by Respondents in their objection to the TRO. However, being that Respondents have raised the jurisdiction-stripping provisions of the INA codified at 8 U.S.C. § 1252 generally, and because they have raised jurisdictional challenges pursuant to 8 U.S.C. § 1252(g) in their objection to Cristofer’s Motion for Release or Bond at ECF 11, Cristofer will also address those potential arguments.

i. Cristofer is not seeking review of a discretionary decision barred by § 1252(g)

Section 1252(g) provides that “no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” 8 U.S.C. § 1252(g). Despite its broad language, “Section 1252(g) is not a “zipper” clause that precludes judicial review of all cases involving removal.” *MARVIN ESTUARDO XOL-MAAS, Plaintiff, v. LADEON FRANCIS, et al., Defendant.*, No. 26-CV-00025 (JAV), 2026 WL 457005, at *4 (S.D.N.Y. Feb. 18, 2026) (citing *Reno v. Am.-Arab Anti-Discrimination Comm.* 525 U.S. 471, 482 (1999)). “The provision applies only to three discrete actions that the Attorney General may take: her “decision or action” to “commence proceedings, adjudicate cases, or execute removal orders.” *Id.* (emphasis added).

As the Supreme Court has explained, “Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.” *Id.* at 485 n.9. It was passed in response to equal protection and selective prosecution claims that had been brought against the government regarding decisions to defer action only for certain classes or categories of immigrants. “There are ‘many other decisions or actions that may be part of the deportation process’ but that do not fall within the three discrete exercises of “prosecutorial discretion” covered by § 1252(g). *Ozturk v. Hyde*, 136 F.4th 382, 397 (2d Cir. 2025) (quoting *Reno* at 482, 489, 119 S.Ct. 936.). Indeed one of those decisions, the government’s decision to detain an individual, is reviewable by this Court because Section 1252(g) “does not preclude jurisdiction over the challenges to the legality of [a noncitizen’s] detention.” *Kong v. United States*, 62 F.4th 608, 609 (1st Cir. 2023).

In this case, Cristofer is challenging ICE's decision to continue his detention beyond the 90 day period authorized under 8 U.S.C. § 1231(a) and ICE's purported review of his detention in which its decision to maintain detention was illogical and untethered by the facts. Cristofer has put forth those arguments, related to violations of his procedural due process rights, to this Court in his initial Petition for Writ of habeas corpus at ECF 1 and ECF 1-10 and in a Motion for Release or Bond at ECF 10. Clearly, 1252(g) would not preclude this Court's jurisdiction over those procedural due process claims surrounding Cristofer's detention.

However, Cristofer also makes a substantive due process claim in which he argues that his removal, at this time, is unlawful because it would amount to an illegal revocation of his SIJS status. Therefore, since his removal is not reasonably foreseeable, his detention serves no lawful purpose. At least one other District Court confronting similar facts has reasoned that such a claim, although framed as a challenge to detention, is effectively a challenge to the execution of a removal order and that "a request for a stay of removal implicates the executive branch's decision to execute a final removal order and thus can fall with Section 1252(g)'s jurisdictional bar." *XOL-MAAS*, 2026 WL 457005, at *5.

The *XOL-MAAS* Court goes on to explain that "a number of district courts within the Second Circuit have reasoned that, given its narrow scope and its focus on preserving prosecutorial discretion, Section 1252(g) does not prohibit the exercise of jurisdiction over habeas petitions seeking to challenge ICE's legal authority over a removal order, rather than its discretionary decisions regarding removal orders." *Id.* (quoting *R.O.A. v. Edlow*, 805 F. Supp. 3d 565, 574 (D. Vt. 2025)). Pursuant to that reasoning, a habeas claim is not barred as long as "it does not call into question " 'why the Secretary chose to execute the removal order,' but [rather] 'whether the way Respondents acted accords with the Constitution and the laws of this country.' While the first

question challenges ICE's discretion to execute a removal order, the second question asks whether the Constitution or other law deprives ICE of power over the removal order.” *Id.* (quoting *S.N.C. v. Sessions*, No. 18-CV-7680 (LGS), 2018 WL 6175902, at *5 (S.D.N.Y. Nov. 26, 2018) (cleaned up)). The Court then goes on to compare how various Courts of Appeals have decided this issue, finding that there is a split amongst the four circuits that have considered it. While the Ninth and Sixth Circuits have both endorsed the view that 1252(g) only applies to challenges of discretionary decisions, the Seventh and Eighth Circuits have found that there is no distinction between DHS’s discretionary and nondiscretionary decisions. The First Circuit has not considered the exact issue.

Ultimately, without any binding authority, this Court should do as the XOL-MAAS Court did and look to the Supreme Court’s original decision in *Reno*, which held that 1252(g) should be narrowly read. “The Supreme Court examined the structure and text of the Illegal Immigration Reform and Immigrant Responsibility Act in its entirety and determined that, if Section 1252(g) were interpreted to widely preclude jurisdiction over all removal-related actions, other provisions of the statute would be rendered redundant or a nullity. Limiting the scope of Section 1252(g), so that it is construed to protect only the “limited subset” of claims arising from discretionary decision-making, avoids interpretive anomalies and “makes sense of the statutory scheme as a whole.” *XOL-MAAS*, 2026 WL 457005, at *6 (citing *Reno*, 525 U.S. at 482-87.).

This narrow reading of 1252(g) also comports with this Circuit’s decision in *Kong v. United States*, 62 F.4th 608, 609 (1st Cir. 2023). There, the First Circuit endorsed the Supreme Court’s narrow reading of 1252(g) announced in *Reno* and reaffirmed in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), stating that the Supreme Court reaffirmed its narrow construction of § 1252(g), noting that *Reno* “did not interpret [the phrase “arising from” in § 1252(g)] to sweep in any claim that can technically be said to ‘arise from’ the three listed actions of the Attorney General. *Kong*, 62

F.4th at 613 (quoting *Jennings*). In examining the history of the passage of 1252(g), the Circuit Court found that “§ 1252(g) was passed with the understanding that collateral challenges to the legality of a petitioner’s detention would not constitute “cause[s] or claim[s]” that “aris[e] from the decision or action by the Attorney General to ... execute removal orders.” *Id.* at 615. Like *Kong*, Cristofer is not challenging a discretionary decision by ICE regarding whether or not to execute his removal order, but rather, like in *XOL-MAAS*, Cristofer is challenging ICE’s authority, rather than its discretion, to remove him and effect an unlawful and irreparable revocation of his SIJ status in violation of his due process rights. Such an action is not within the scope of DHS’s discretionary decisions that 1252(g) sought to insulate from selective prosecution and equal protection claims.

ii. If § 1252(g) Strips This Court of Jurisdiction, the Writ of Habeas Would be Unlawfully Suspended

Cristofer’s claims fall within the scope of 28 U.S.C. § 2241. Cristofer is seeking release from detention, which is a classic form of relief sought in habeas. Moreover, Cristofer alleges that his continued detention and imminent removal violate his rights under the Constitution. If this Court finds that imminent removal would be unlawful because it would effect to revoke his SIJ Status without notice nor an opportunity to be heard, then such a finding could then necessitate a further finding that his continued detention serves no lawful purpose. Therefore, because Cristofer “seeks relief that may alter the fact or execution of his detention and such detention presents a clear restraint on his liberty, habeas presents the appropriate procedural vehicle for him to employ.” *Joshua M. v. Barr*, 439 F. Supp. 3d 632, 670 (E.D. Va. 2020).

Cristofer may invoke the suspension clause. If a provision of the INA potentially strips a federal district court’s jurisdiction over a claim, such stripping may violate the Suspension Clause and the Court must undertake the analysis laid out by the Supreme Court in *Boumediene v. Bush*.

553 U.S. at 739, 128 S.Ct. 2229. That analysis has two steps: a court “must first determine whether a given habeas petitioner is prohibited from invoking the Suspension Clause due to some attribute of the petitioner or to the circumstances surrounding his arrest or detention.” *Osorio-Martinez*, 893 F.3d at 166 (internal quotation marks and citations omitted). “Then, if the petitioner is not prohibited from invoking the Suspension Clause, [this Court must] turn to the question whether the substitute for habeas is adequate and effective to test the legality of the petitioner's detention (or removal).” *Id.* “A statute may violate the Suspension Clause where habeas corpus relief is foreclosed and alternative remedies are inadequate to ensure that the petitioner's continued detention does not violate federal law.” *Joshua M.*, 439 F. Supp. 3d at 671 (citing *Boumediene*, 553 U.S. at 792, 128 S.Ct. 2229.).

As to the **first step in the *Boumediene* test**, there are three factors that are relevant in evaluating whether Cristofer can invoke the Suspension Clause: “(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ.” *Boumediene*, 553 U.S. at 766, 128 S.Ct. 2229. For the first factor, Cristofer has SIJ Status, which, as outlined above and in previous submissions, includes statutory and constitutional protections. Cristofer has developed ties to the U.S., where he has lived for over ten years and where he has graduated high school and began higher education. Cristofer's SIJ Status “puts this case in a unique procedural posture given the Congressional protections provided to young immigrations through the enactment of the SIJ statutes.” *Joshua M.*, 439 F. Supp. 3d at 672. As to the second factor, Cristofer has never been arrested for nor accused of any crime and was detained by ICE after they pulled him out of a car stopped at red light because, presumably, he looked like an immigrant. Regarding the last factor,

there are no obstacles to habeas proceedings “other than the kind of “incremental expenditure of resources” that the Supreme Court deemed not dispositive to the question of granting the writ.” *Id.* (citing *Boumediene*, 553 U.S. at 769, 128 S.Ct. 2229.). Cristofer meets all three prongs of the first step and is not prohibited from invoking the Suspension Clause.

The remedies available are an inadequate substitute for habeas corpus relief in this case.

In the **second *Boumediene* step**, the Court must decide if the substitute for habeas is adequate and effective to test the legality of the petitioner's detention or removal. Here, the motion to reopen Cristofer's removal proceedings and the subsequent review by the Third Circuit is not an effective habeas substitute. As discussed above, removal at this time would strip Cristofer of his SIJ Status and eliminate his eligibility for adjustment of status, which is provided to him under law. That revocation of his SIJ Status would be irreparable; Cristofer would never be able to regain his SIJ Status. While petitions for review can generally be maintained and pursued outside of the U.S., in this specific case, upon removal, Cristofer would lose his SIJ Status and be unable to seek adjustment of status *even if* the Third Circuit remands his appeal to the BIA and his removal proceedings are ultimately reopened. Only in habeas at this Court can Cristofer preserve his SIJ Status. *See Joshua M.*, 439 F. Supp. 3d at 674, finding that a SIJ recipient did not have adequate administrative review because he would lose his SIJ status if he was removed. *See also Compere v. Nielsen*, 358 F. Supp. 3d 170, 173, 179 (D.N.H. 2019) (holding that § 1252(g) does not violate the Suspension Clause where a noncitizen *can* continue to litigate a motion to reopen after removal, but that the petitioner would be unable to litigate his motion to reopen if he were removed to Haiti, and therefore the Suspension Clause prevented § 1252(g) from stripping district court of habeas jurisdiction). Here, similarly, although Cristofer could theoretically continue to litigate his motion to reopen after removal, he would never be able to “litigate” the loss of SIJ Status.

V. **Cristofer's Claims in Habeas Can Not Be Raised in a PFR to the Third Circuit Court of Appeals and are not barred by 8 U.S.C. § 1252(b)(9)**

SIJ Status is a form of collateral relief that is separate and apart from removal proceedings before the Executive Office for Immigration Review (“EOIR”) and the Board of Immigration Appeals (“BIA”). Neither EOIR nor the BIA have any power or authority to grant or revoke SIJ Status. Such authority to grant or revoke SIJ status rests entirely with DHS, specifically with USCIS. While the Third Circuit has the power to review, and is currently reviewing, the BIA’s denial of Cristofer’s Motion to Reopen his removal proceedings, the imminent actions by ICE in seeking to remove Cristofer and thereby unlawfully revoke his SIJ Status, are not reviewable by the Third Circuit at this point because those actions are also collateral to Cristofer’s removal proceedings. In short, the Third Circuit does not have the authority or power to stop DHS from unlawfully revoking Cristofer’s SIJ status; such unlawful revocation is an action that ICE seeks to take in New Hampshire where he is detained.

Section 1252(b)(9), which strips the district courts of jurisdiction over claims arising from any action taken or proceeding brought to remove an alien from the United States is not interpreted to bar so-called “now or never” claims. In deciding if Cristofer’s habeas claims arise from his removal proceedings, courts “ask: If not now, when? If the answer would otherwise be never, then § 1252(b)(9) poses no jurisdictional bar.” *Khalil v. President, United States*, 164 F.4th 259, 273–74 (3d Cir. 2026) (quoting *E.O.H.C. v. Sec’y, U.S. Dep’t of Homeland Sec.*, 950 F.3d 177, 184 (3d Cir. 2020)).

In this case, Cristofer’s habeas claims raises legal questions that can never be reviewed in his Petition for Review. As explained above, if Cristofer is removed, his SIJ status will be immediately and unlawfully revoked and such revocation would be collateral to his removal proceedings. The removal order can still be challenged and is being challenged in a PFR. But

unless the issue of unlawful revocation of his SIJ status and unlawful stripping of his eligibility for adjustment of status is addressed now, it can never be effectively addressed.

CONCLUSION

For the foregoing reasons, and the reasons contained in Cristofer's prior filings in this matter, this Court should grant his motion for a temporary order enjoining Respondents from removing him from the United States.

Dated: March 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica Charniga, 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: 03/06/2026

By: /s/ Jessica Charniga
JESSICA CHARNIGA, ESQ.