UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA SONIA ALLAICO PACHECO, **M.A. Q-A., a minor,**	)	
Petitioners,	)	
v.	)	**Civ. No. 5:25-cv-1856 FB**
KRISTI LYNN NOEM, **Secretary of Homeland Security;**	)	
SYLVESTER M. ORTEGA, **San Antonio Acting Field Office Director** **For Detention and Removal, U.S.** **Immigration and Customs Enforcement; and,**	)	
JOSE RODRIGUEZ, JR., **Facility Administrator, Dilley Immigration** **Processing Center,**	)	
in their official capacities;	)	
Respondents.	)	

FIRST PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioners are mother and child. They are noncitizens with pending T-visa applications and they have final orders of removal. Petitioners are filing the instant lawsuit to require Respondents to comply with federal law and cease their interference with their T-visa applications. If removed, Petitioners will lose the opportunity to obtain their T-visas because their physical presence in the United States is a requirement for issuing such visas. In addition, Petitioner M.A.Q-A. has a pending application for a Special Immigrant Juvenile (SIJ) visa which, upon approval and

availability of a visa, will allow her to obtain lawful status in the United States. If removed, Petitioner M.A.Q-A will also lose the opportunity to receive a SIJ visa.

Congress explicitly authorized the Department of Homeland Security ("DHS") to grant a stay of removal to a noncitizen who is subject to a final order of removal but has a pending T-Visa application. 8 U.S.C. § 1227(d)(1). In considering such a request for a stay of removal, DHS is required to determine whether the T-Visa application sets forth a prima facie case for approval. *Id.* Further, to the extent that biometrics and backgrounds checks are necessary to make the prima facie determination, Respondents are obliged by law to complete them notwithstanding the fact that Petitioners are detained. If the T-visa application is determined to be prima facie approvable, then the Petitioners' detention and removal violates the statutory mandate set forth at 8 U.S.C. § 1227(d)(1).

Petitioners seek an order from this Court requiring Respondents to make a determination of prima facie eligibility, including the taking of biometrics and completion of background checks, and adjudicate the stay of removal consistent with § 1227(d)(1).

CUSTODY

1. Petitioner is in the physical custody of Respondent SYLVESTER M. ORTEGA, Acting Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement ("ICE"), DHS, and Respondent JOSE RODRIGUEZ, JR., Facility Administrator of the Dilley Immigration Processing Center in Dilley, Texas. At the time of the filing of this petition, Petitioner is detained at the Dilley Immigration Processing Center. Corecivic, which owns and operates the Karnes County Immigration Processing Center, contracts with the DHS to detain noncitizens, such as Petitioner, pending their removal proceedings. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the present action based on 28 U.S.C. § 1331 (Federal Question), 28 U.S.C. § 1346(b) (Federal Defendant), 28 U.S.C. § 2241 (habeas corpus); 5 U.S.C. § 702 *et seq.* (Administrative Procedure Act), 28 U.S.C. §§ 2201 and 2202 (Declaratory Relief Act), 28 U.S.C. § 1361 (Mandamus), and 28 U.S.C. § 1651 (All Writs Act). The Court has jurisdiction over this petition under 28 U.S.C. §§ 2241(c)(1) and (c)(3), Art. I, § 9, Cl. 2 of the United States Constitution ("Suspension Clause").

3. Venue properly lies within the Western District of Texas because all of the events or omissions giving rise to this action occurred in the district. 28 U.S.C. § 1391(e)(1)(B).

4. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

REQUIREMENTS OF 28 U.S.C. § 2243

5. Because of the importance of the constitutional right to liberty, the Court should grant the petition for writ of habeas corpus "forthwith."

6. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

7. Maria Sonia Allaico Pacheco is a national and citizen of Ecuador. She is currently detained at the Dilley Immigration Processing Center located at 300 El Rancho Way, Dilley, TX 78017.

8. M.A Q-A is a national and citizen of Ecuador. She is currently detained at the Dilley Immigration Processing Center located at 300 El Rancho Way, Dilley, TX 78017.

9. Respondent PAMELA JO BONDI is the Attorney General of the United States and the most senior official in the United States Department of Justice ("DOJ"). She has the authority to interpret the immigration laws and adjudicate removal cases. 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"). Respondent is named in her official capacity. Respondent's address is 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

10. Respondent KRISTI LYNN NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. Respondent is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). The Secretary is a legal custodian of the Plaintiff-Petitioner. Respondent is named in her official capacity. Her address is Department of Homeland Security, Washington, D.C. 20528.

11. Respondent SYLVESTER M. ORTEGA is the Acting Field Office Director for Detention and Removal (ERO), ICE, DHS, for the San Antonio ERO Office. He is a custodial official acting within the boundaries of the judicial district of the United States Court for the Western District of Texas. Pursuant to Respondent's orders, Petitioner remains detained. Respondent is sued in his official capacity. Respondent can be served with process at U.S.

Immigration and Customs Enforcement, Office of the Principal Legal Advisory, 500 12th St., SW, Mail Stop 5900, Washington, DC 20536-5900.

12. Respondent JOSE RODRIGUEZ, JR. is the Facility Administrator of the Dilley Immigration Processing Center in Karnes City, Texas. She is Petitioner's immediate custodian and resides in the judicial district of the United States Court for the Western District of Texas. Respondent is named in his official capacity. Respondent Thompson can be served with process at CT Corporation System 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

LEGAL FRAMEWORK

T Visa

13. Congress authorized the T-Visa program in 2000 as part of a broad effort to extend the protection of the law to noncitizens who were victimized by crimes committed after their arrival in the United States. *See* Pub. L. No. 106-386, §§ 101-113, 114 Stat. 1464 (codified at 8 U.S.C. § 1101(a)(15)(T)).

14. The purpose of the T-visa provisions is to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.." Pub. L. 106-386 at § 102(a).

15. To be eligible to receive a T-visa, the noncitizen must demonstrate, among other things, that they are "physically present in the United States…" 8 U.S.C. § 1101(a)(15)(T)(i)(II). Thus, removal from the United States results in the loss of eligibility for a T-visa.

16. A grant of a T-Visa is a grant of nonimmigrant status, allowing the noncitizen to live and work in the United States as a visa holder. After being physically present in the United States for the investigation or the prosecution of the trafficking crime and the investigation or

prosecution is complete or after 3 years of continuous physical presence, a person granted T-Visa nonimmigrant status may apply for permanent resident status. *See* 8 U.S.C. § 1255(l).

17. After the filing of the T-visa application, USCIS conducts a review "to determine if the application is a bona fide application for T-1 nonimmigrant status." 8 C.F.R. § 214.11(e). In making that determination, the USCIS considers (1) whether the application is properly filed and complete, (2) whether the application appears fraudulent, (3) whether there is prima facie evidence of each eligibility requirement, (4) whether biometrics and background checks are complete, and (5) whether the applicant is admissible. 8 C.F.R. § 214.11(e)(1)(i)-(iv).

18. Congress has authorized the Secretary of Homeland Security to grant "an administrative stay of a final order of removal" to allow T-visa applicants to remain in the United States pending approval of their application, if the Secretary determines that the application "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1).

19. Thus, "[i]f USCIS determines that an application is bona fide **it automatically stays the execution of any final order of removal, deportation, or exclusion**. This administrative stay will remain in effect until any adverse decision becomes final." 8 C.F.R. § 214.11(e)(3).

20. USCIS must provide notice that an application is bon fide, 8 C.F.R. § 214.11(e)(2), or that the application is incomplete, additional information is required, a notice of intent to deny, or of its decision. 8 C.F.R. § 214.11(e)(2)(i).

21. Thus, Respondents cannot deny Petitioners' stay of removal order until Respondent Noem conducts a review of Petitioners' T-visa application and makes the prima facie determination.

Special Immigrant Juvenile (SIJ) Visa

22. In 1990, Congress created SIJS 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 Immigration and Nationality Act ("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 SIJS, most recently in 2008, through the Trafficking Victims Protection Reauthorization Act, Pub. L. 110-457, § 235(d), 122 Stat. 5044 (2008).

23. To be granted SIJS, youths like M.A.Q-A. 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 SIJS 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).

24. Crucially, a noncitizen youth is eligible for SIJS 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 in light of the purpose of the SIJS statute. SIJS 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).

25. Youths can apply for SIJS 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 SIJS 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 SIJS, 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).

26. SIJS may be revoked only for what the Secretary of Homeland Security deems "good and sufficient cause." 8 U.S.C. § 1155; 8 C.F.R. § 205.2. According to USCIS regulations, such revocation must be made upon notice to the youth in question, who must be permitted the opportunity to submit evidence in opposition to the revocation and to appeal an adverse decision. See 8 C.F.R. § 205.2. If status is ultimately revoked, the youth is entitled to notice and the opportunity to appeal the decision. See 8 C.F.R. § 205.2(c) & (d). Revocation of a SIJS petition may only be performed by a USCIS officer authorized to approve such petition in the first instance. See 8 C.F.R. § 205.2(a).

27. The main benefit of SIJS—and indeed, its core purpose—is that it confers on vulnerable young people like M.A.Q-A. 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).

28. To facilitate this process, Congress removed numerous barriers to adjustment of status for SIJS beneficiaries through amendments to the SIJS provisions in 1991 and again in 2008. For example, SIJS 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 SIJS youth from many common inadmissibility grounds and created a generous waiver of many of the nonexempted inadmissibility grounds. 8 U.S.C. § 1255(h)(2). And, 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 SIJS statute] based upon circumstances that existed before the date the [noncitizen] was provided such special immigrant status." 8 U.S.C. § 1227(c).

29. Although SIJS 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 SIJS beneficiaries. 8 U.S.C. § 1153(b)(4). And since 2016, the number of SIJS 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.

30. Despite the immediate unavailability of visas, waitlisted SIJS beneficiaries are the same vulnerable young people that the SIJS 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 whom state courts have determined cannot safely be reunited with their parent(s) or returned to their home country.

31. Taken together, the structure of the SIJS 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 SIJS recipients remain safely in the United States until they can adjust to become LPRs.

FACTS

32. Petitioners are citizens and nationals of Ecuador. They entered the United States on or about August 2, 2021.

33. Upon their entry, immigration authorities detained Petitioners, issued them a Notice to Appear, and released Petitioners on their own recognizance. Exh. A (Notice to Appear)

34. Petitioners applied for asylum and on November 29, 2022, an immigration judge denied their applications for asylum, withholding of removal, and deferral under the Convention Against Torture, and ordered them removed. Exh. B (Immigration Judge Order).

35. Petitioners appealed to the Board of Immigration Appeals (BIA) and on June 13, 2025, the BIA dismissed the appeal. Exh. C (BIA Decision).

36. Petitioners timely filed a petition for review with the Court of Appeals for the Second Circuit. The petition remains pending.

37. On July 28, 2025, Petitioner Allaico Pacheco filed with the USCIS an application for T nonimmigrant visa status. Exh. D (USCIS Receipt Notice for I-914). Petitioner M.A.Q-A. is included in the application as a derivative applicant. Exh. E (USCIS Receipt Notice for I-914A). The applications remain pending.

38. Although Petitioners attended their biometrics appointment relating to their asylum application and DHS conducted background checks for that application, no biometrics appointment has been scheduled for Petitioners. It is anticipated that Respondents will not take

biometrics in an effort to obstruct Petitioners' effort to obtain a prima facie determination of their T-visa.

39. Recently, the U.S. Citizenship and Immigration Services changed its policy as it concerns collecting biometrics from detained persons. "USCIS [will] not grant requests to collect biometrics from aliens or other persons in custody at correctional institutions for immigration petitions or applications under USCIS' exclusive or concurrent jurisdiction. This includes requests from unaccompanied alien children, who have a pending asylum application while in removal proceedings, as USCIS has initial jurisdiction over such cases." USCIS Policy Manual Vol. 1, Part C, chap. 2(B) found at https://www.uscis.gov/policy-manual/volume-1-part-c-chapter-2.

40. On August 29, 2025, Petitioner M.A.Q.-A. filed Form I-360, a petition to grant her SIJ status. Exh. F (USCIS Receipt for I-360). The petition remains pending.

41. On November 8, 2025, Petitioners reported to the U.S. Immigration and Customs Enforcement (ICE) Office at 26 Federal Plaza in New York City.

42. ICE took Petitioners into custody and later that afternoon, ICE agents drove Petitioners to an airport. That same day, ICE flew Petitioners to an undisclosed location. ICE agents refused to inform Petitioners of their location and did not allow them to make a telephone call.

43. On November 10, 2025, ICE agents drove Petitioners to Texas and delivered to Respondent Rodriguez at the Dilley Immigration Processing Center to be detained pending execution of Petitioners' removal orders.

44. On January 6, 2026, Petitioners, through undersigned counsel, requested an administrative stay of deportation or removal. Exh. G.

45. On January 15, 2026, Defendants-Respondents denied the request without complying with federal law, namely 8 U.S.C. § 1227(d)(1). Exh. H.

CAUSES OF ACTION

COUNT I
DUE PROCESS CLAUSE

46. Petitioners re-allege and incorporate herein by reference every allegation set forth in the preceding paragraphs.

47. Congress requires that DHS must determine whether a pending T-visa presents a prima facie case for approval before a request for a stay of removal is denied. 8 U.S.C. § 1227(d).

48. While the stay of removal itself is discretionary, DHS cannot choose to disregard a statutory requirement when adjudicating a request to stay a removal order, namely consideration of whether a prima facie case for approval of the T-Visa has been presented. 8 U.S.C. § 1227(d).

49. By ignoring the requirement that the DHS review the T-visa application and make a prima facie determination before denying a stay of removal, Respondents denied Petitioners their procedural rights guaranteed by the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

COUNT II
Violation of the APA
Contrary to Law and Arbitrary, Capricious Agency Policy;
Unlawful Withholding of Agency Action

50. Petitioners re-allege and incorporate herein by reference every allegation set forth in the preceding paragraphs.

51. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; or without observance of procedure required by law." 5 U.S.C. § 706(2)(A).

52. Congress requires that DHS must determine whether a pending T-visa presents a prima facie case for approval before a request for a stay of removal is denied. 8 U.S.C. § 1227(d).

53. While the stay of removal itself is discretionary, DHS cannot choose to disregard a statutory requirement when adjudicating a request to stay a removal order, namely consideration of whether a prima facie case for approval of the U-Visa has been presented. 8 U.S.C. § 1227(d).

54. Respondents' failure to comply with § 1227(d) before denying Petitioners' stay request is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; in excess of statutory jurisdiction, authority, or limitations; or without observance of procedure required by law." *See* 5 U.S.C. § 706(2).

55. Further, Respondents' refusal to make a prima facie determination as required by § 1227(d) violates § 706(1) of the APA. Respondents' actions constitute an unlawful withholding of an agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

56. Finally, Respondents' refusal to collect biometrics from Petitioners to make a prima facie determination as required by § 1227(d) violates § 706(1) of the APA. Respondents' actions constitute an unlawful withholding of an agency action in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant the following relief:

1. Assume jurisdiction over the instant petition for writ of habeas corpus;
2. Issue a writ of habeas corpus requiring that within 3 days, Respondents release Petitioners;
3. Alternatively, issue a writ of habeas corpus requiring Respondent Noem to review Petitioners' T-visa application and make a bona fide determination;
4. Adjudicate Petitioners' request for a stay of removal consistent with 8 U.S.C. § 1227(d);
5. Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act ("EAJA"), as amended, pursuant to 28 U.S.C. § 2412.; and,
6. Grant any other relief which this Court deems just and proper.

Dated: January 28, 2026

Respectfully submitted,

/s/ Javier N. Maldonado

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ATTORNEY FOR PETITIONERS

VERIFICATION OF COUNSEL

I, Javier N. Maldonado, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/ Javier N. Maldonado
Javier N. Maldonado

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