

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

JUNIO DE OLIVEIRA COSTA)

Petitioner,)

v.)

ANDREW ACKLEY, Acting Warden, FCI Berlin;)

PATRICIA HYDE, Boston Field Office Director,)

U.S. Immigration & Customs Enforcement;)

MICHAEL KROL, HSI New England Special)

Agent in Charge; TODD LYONS, Acting Director,)

U.S. Immigrations and Customs Enforcement;)

KRISTI NOEM, Secretary, U.S. Department of)

Homeland Security; and, PAMELA BONDI,)

Attorney General, U.S. Department of Justice)

Respondents.)

Case No. 1:26-cv-00026

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
UNDER 28 USC § 2241**

INTRODUCTION

1. Petitioner, Junio de Oliveira Costa, moves for his immediate release from unlawful detention. Petitioner is a citizen of Brazil who entered the United States without inspection in April, 2023. He lives in Milford, Massachusetts, but is currently being held by Immigration and Customs Enforcement [ICE] at the Federal Correctional Institute at 1 Success Loop Road in Berlin, New Hampshire. Petitioner has an approved I-360 Special Immigrant Juvenile [hereafter, SIJ or SIJS] petition with a priority date of August 22, 2024 and was granted concomitant Deferred Action on November 22, 2024. *See*, Exh. 1. In addition, Petitioner's prior removal proceedings were terminated on June 23, 2025. *See*, Exh. 2.

2. After arriving in the United States as a child – as defined by 8 U.S.C. § 1101(b) – Petitioner complied with applicable law by obtaining predicate state court orders in advance of

receiving SIJS protection as a vulnerable minor. Congress created Special Immigrant Juvenile Status in 1990 to provide immigration relief for noncitizen children living in the United States, who have been abused, neglected, or abandoned, or similarly mistreated by one or both parents. 8 U.S.C. § 1101(a)(27)(J). United States Citizenship and Immigration Service [USCIS] approved Petitioner for SIJS and granted him Deferred Action from removal by the Department of Homeland Security's [DHS] Immigration and Customs Enforcement [ICE]. For his part, Petitioner is awaiting eligibility to file his application for lawful permanent resident [LPR] status in the United States, subject to his priority date of August 22, 2024 becoming current*. Exh. 1.

3. Despite the that Petitioner's approved I-360 self-petition DHS establishes that: (a) Petitioner is a member of a vulnerable population, namely, juveniles requiring legal protection due to parental abuse, neglect, and/or abandonment; (b) Petitioner has been approved for the benefit of SIJS, including Deferred Action from removal; and (c) Petitioner is required to be physically present for adjustment of status to permanent residence, Respondents have nevertheless detained and continue to hold him absent legitimate cause and without having afforded him even minimal due process protections. Upon information and belief, Petitioner's arrest and continuing detention are a precursor to Respondents efforts to remove him from the United States, thus illegally stripping him of his SIJ status in defiance of Congress' explicit intent to protect vulnerable children who have been victims of abuse, abandonment or neglect.

4. Petitioner has been classified as a SIJ by USCIS on the basis of the approved self-petition after an underlying family court proceeding that resulted in the requisite "predicate order." Simultaneous to his SIJ approval, Petitioner was granted Deferred Action from removal. See, Exh. 1. Neither benefit has been properly rescinded nor lawfully revoked, nor has Petitioner

* SIJS self-petitioners are classified under the employment-based fourth preference category. The February 2026 State Department Visa Bulletin shows an "EB-4" filing priority date of March 15, 2021.

violated his status or any law which would justify Respondents' decision to arrest and continue to detain him.

5. Petitioner has been awaiting an available visa number and has remained physically present as contemplated under the statute because a state Juvenile Court has determined it is in the best interest of Petitioner that he remain in the United States given the history of abuse, abandonment or neglect leading to the predicate orders.

6. Respondents now seek to undercut both the determination of the family court and that of its own sister agency, USCIS, which adjudicated and approved Petitioner for SIJS and granted him Deferred Action. Respondents are pursuing Petitioner's detention and removal despite the benefits that DHS/USCIS and Congress have explicitly afforded to Special Immigrant Juvenile self-petitioners.

7. Consistent with the public interest in protecting vulnerable children who are present in the United States, regardless of nationality or immigration status, 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") – codified at 8 U.S.C. § 1101(a)(27)(J) – to include all unmarried, non-citizen children under the age of twenty-one (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.

8. Congress's goal for the SIJ program was to create a process to give qualifying juveniles legal protection, ultimately providing 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 strengthen their connections with the United States, giving them the ability to study and work while waiting for their petition priority date to become current. Since these children had become *de facto* wards of the United States, Congress determined that these children are entitled to the protection of the federal government.

9. Special Immigrant Juveniles are afforded a number of unique – a.k.a., *special* – statutory and procedural protections not otherwise afforded to applicants for admission. *See, e.g., Osorio-Martínez v. Attorney General*, 893 F.3d 153 (3d Cir. 2018). Those protections limit DHS’ removal-related authority and are enforceable in federal district court. *Id.* The protections include waivers of multiple 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 protection from being deprived of such designation without due process of law and a finding of “good and sufficient cause”. *Osorio-Martínez* at 168, 170-72.

10. However, notwithstanding the protections Congress has afforded to SIJ applicants, 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 interpretation under 8 U.S.C. § 1225, and removal from the United States. Both actions by the Respondents including subjecting 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.

11. Despite not any having a criminal record, there being no order of removal**, and being the beneficiary of unambiguous protections as an approved SIJ self-petitioner and recipient

** As noted above in Paragraph 1, Petitioner’s removal proceedings were terminated on June 23, 2025, with no opposition from the government. *See*, Exh. 2.

of Deferred Action, Petitioner was arrested at the courthouse, detained in ICE custody at a federal prison, and placed back into removal proceedings, with his next hearing scheduled via video with the Chelmsford Immigration Court on February 24, 2026.

12. Respondents are – or certainly should be – aware that Petitioner has been afforded SIJS and Deferred Action, yet they persist in seeking to detain and remove him.

13. As noted above, Petitioner’s removal proceedings were terminated last summer, a request which the government did not oppose at the time. Although undersigned counsel – as local *habeas* counsel who is not handling Petitioner’s immigration proceedings – has not seen the full removal proceedings file, upon information and belief, the Government will aver that Petitioner entered the United States (as a minor) without inspection. As with tens of thousands of similar cases around the country, Respondents have or will deem Petitioner ineligible for bond and thus deny him the opportunity to present his case, resulting in his continued detention. Such a determination is consistent with a DHS policy memorandum 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.

14. On September 5, 2025, the Board of Immigration Appeals (BIA) published the precedent decision *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that IJs lack authority to hear bond requests or grant bond to noncitizens who are present in the United States without authorization, continuing the agency’s flawed rationale and constitutionally infirm interpretation of 8 U.S.C. § 1225, laid out for the first time in its history in 2025.

15. Notwithstanding *Yajure Hurtado*, Petitioner’s detention violates the plain language of the Immigration and Nationality Act and Congress’ intentions for the SIJ program

and is consequently beyond the statutory authority granted to Respondents by Congress.

Petitioner's detention and potential removal run counter to the protections afforded to SIJs, and as such are actions outside of the agency's authority that have effectively stripped Petitioner of his SIJ status without due process of law.

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

17. Historically, §1225(b)(2)(A) did not apply to individuals like 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 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.

18. Accordingly, Petitioner seeks 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 Petitioner's continued detention by clear and convincing evidence; and (b) a declaration that § 1225, as applied by current agency practice, is void *ab initio* as applied to SIJ beneficiaries, and violates Petitioner's constitutional rights, as well as pertinent statutory and agency protections.

19. On November 26, 2025, Petitioner was detained by ICE while entering the Woburn District Court to address an arrest warrant relating to driving without a license. On December 29, 2025, however, the warrant for Petitioner's arrest was vacated and the charge of

Unlicensed Operation of a Motor Vehicle was dismissed, while Petitioner was convicted of a state traffic highway violation. Petitioner submits that he has no other criminal record nor pending charges in Massachusetts or any other jurisdiction.

20. Because Petitioner should never have been detained in the first place, Petitioner requests that this Honorable Court order his immediate release from ICE custody.

21. As recently as December 17, 2025, the United States District Court for the district of Massachusetts granted a habeas petition under circumstances which are very similar to the instant matter. In *Oliveira v. Hyde*, No. 25-CV-13733-FDS, 2025 WL 3653826, at *3 (D. Mass. Dec. 17, 2025), Judge Saylor concluded that “Respondent Patricia Hyde is hereby ORDERED to either release petitioner or provide him a bond hearing no later than December 24, 2025”, i.e., seven (7) days from the court’s order.

22. Upon information and belief, particular facts presented here have not been the subject of a *habeas* decision in this Court. However, other orders granting *habeas* relief to SIJ petitioners include the following matters:

- *Sena Gomes v. Wesling*, No. 25-CV-13727-FDS, 2025 WL 3636712, at *3 (D. Mass. Dec. 16, 2025)
- *Dondoni v. Moniz*, No. 1:25-CV-13438-IT, 2025 WL 3470501, at *3 (D. Mass. Dec. 3, 2025)
- *Martinez Cruz v. Hyde*, No. 1:25-CV-12854-IT, 2025 WL 3197614, at *2 (D. Mass. Oct. 10, 2025)(Ordering petitioner’s immediate release)
- *Casun v. Hyde*, No. 25-CV-427-JJM-AEM, 2025 WL 2806769, at *4 (D.R.I. Oct. 2, 2025)
- *Primero v. Mattivelo*, No. 1:25-CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025)

23. Accordingly, Petitioner petitions this Court to assume jurisdiction and issue a writ of *habeas corpus* ordering his immediate release.

JURISDICTION

24. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

25. Venue is proper because Petitioner is being detained at the Federal Correctional Institution in Berlin, New Hampshire.

PARTIES

26. Petitioner Junio de Oliveira Costa resides in Milford, Massachusetts but is currently detained at FCI Berlin in New Hampshire. He is a Brazilian national.

27. Respondent Andrew Ackley is the Acting warden at FCI Berlin. He is Petitioner's immediate physical custodian. He is sued in his official capacity.

28. Respondent Patricia Hyde is the New England Field Office Director for U.S. Immigration and Customs Enforcement. She is one of Petitioner's legal custodians. She is sued in her official capacity.

29. Respondent Michael Krol is the New England Special Agent in Charge for Homeland Security Investigations for U.S. Immigration and Customs Enforcement. He is another of Petitioner's legal custodians. He is sued in his official capacity.

30. Respondent Todd Lyons is the Acting Director for U.S. Immigration and Customs Enforcement. He is another of Petitioner's legal custodians. He is sued in his official capacity.

31. Respondent Kristi Noem is the U.S. Secretary of Homeland Security. She is another of Petitioner's legal custodians. She is sued in her official capacity.

32. Respondent Attorney General of the United States is sued in her official capacity as the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration

Review (EOIR), which administers the immigration courts and the BIA. This includes setting agency policy relating to immigration bond hearings. This Respondent is therefore also a legal custodian of Petitioner. She is sued in her official capacity.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Due Process

33. The Fifth Amendment guarantees that no person shall be deprived of life, liberty, or property without due process of law. Petitioner is currently detained by Immigration and Customs Enforcement (ICE). His continuing detention deprives him of his liberty without constitutionally adequate process.

34. Petitioner charges in the Woburn District Court have been fully adjudicated, with the only conviction being for a traffic violation under 720 CMR, § 9.06 relating to “Operation of Vehicles”. As a result, there exists no justification to detain Petitioner.

35. Immigration detention must bear a “reasonable relation” to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

36. Petitioner’s summary arrest and continued detention in ICE custody violate his due process rights as applied. As an approved SIJ self-petitioner with Deferred Action, Petitioner should not have been detained under the circumstances. See generally, Destino v. FCI Berlin, Warden, et al., No. 1:25-CV-374-SE-AJ, 2025 WL 4010424, at *1 (D.N.H. Dec. 24, 2025).

37. Accordingly, Petitioner’s arrest and detention constitute a violation of the Fifth

Amendment's Due Process Clause, warranting habeas relief. Petitioner's detention is therefore unlawful, regardless of what statute might apply to purportedly authorize such detention.

COUNT II

Violation of the Immigration and Nationality Act

38. 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.

39. As relevant here, § 1225(b)(2) 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, which is not the case here. *See, Destino, supra*.

40. The application of § 1225(b)(2) to Petitioner unlawfully mandates a person's like Petitioner's continued detention and violates the INA.

41. Further, as set forth above, SIJ beneficiaries are a special class of noncitizens present in the United States. As such, they are exempted from numerous grounds of inadmissibility under the express text of the INA and the TVPRA. Substantial benefits have been afforded to Petitioner in light of his grant of SIJS, including his right to remain in the United States for the purpose of adjustment of status. *See, e.g., Osorio-Martínez v. Attorney General, supra*.

42. Holding Petitioner without even an opportunity to seek bond 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.

COUNT III

Violation of the Administrative Procedure Act

43. 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).

44. The APA also sets forth rule-making procedures that agencies must follow before adopting substantive rules. *See* 5 U.S.C. 553. DHS ostensibly followed these rulemaking procedures to establish relief under the TVPRA, *supra*, and the Violence Against Women Act (“VAWA”). *See*, 867 Fed. Reg. 4784.

45. The Petitioner’s detention and removal under the facts alleged violates the APA.

46. Petitioner’s detention and removal would ultimately render him ineligible for adjustment of status as an SIJ beneficiary in violation of the APA; violates a number of provisions of law; and constitutes an abuse of agency discretion. 5 U.S.C. §706(2)(A). In order to be statutorily eligible for SIJ Status, Petitioner must be physically present in the United States. 8 U.S.C. 1101(a)(27)(J)(i). If he is removed, however, Petitioner will no longer satisfy the

physical presence requirement; his SIJ status would be nullified; and he would be unable to pursue adjustment of status, which is the entire endpoint of the SIJ process. Therefore, Respondents remove Petitioner before his SIJ priority date becomes current, they will have summarily and intentionally stripped Petitioner of his right to see through the immigration process made available to him, which amounts to an abuse of discretion which this Honorable Court may address pursuant to 5 USC § 706(2)(A), which obliges the Court to “hold unlawful and set aside agency action, findings, and conclusions found to be [] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”.

47. By detaining Petitioner and seeking an order of removal, Respondents are trying to strip Petitioner of his SIJS status and related Deferred Action protection.

48. The Respondents’ actions are consequently “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”. *Id.*

COUNT IV

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

49. “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).

50. The “procedures” that agencies are required to follow include both formal agency regulations and informal operating procedures and guidance. See, *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).

51. Respondents’ detention of and intent to strip 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. *See also, A.C.R. v. Noem*, No. 25-CV-3962 (EK)(TAM), 2025 WL 3228840, at *18 (E.D.N.Y. Nov. 19, 2025) (rescinding USCIS policy removing certain SIJ protections such as Deferred Action pending further judicial review)(reconsideration denial citation omitted for clarity).

52. In violating the *Accardi* doctrine, Respondents have irreparably injured Petitioner depriving him of his personal liberty and preventing him from remaining in the United States for the purpose of adjustment, as well as a host of additional protections. *See Osorio-Martínez v. Attorney General, supra*.

COUNT V

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

53. 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).

54. Petitioner seeks a declaration from this Honorable Court that the process of detention and removal as applied to Petitioner by Respondents violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and additional applicable federal regulations, exceeds Respondents’ statutory authority, is an unlawful taking of Petitioner’s statutorily authorized benefits without appropriate process, is arbitrary and capricious, and is

an abuse of discretion and contrary to law.

PRAYERS FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue a writ of *habeas corpus* **requiring that Respondents release Petitioner immediately**;
3. Issue a writ of habeas corpus directing Respondents to pursue a constitutionally adequate process before taking any adverse immigration actions against Petitioner;
4. Enjoin Respondents from removing Petitioner from the United States pending the resolution of this matter;
5. Declare that the procedures and processes applied to Petitioner by Respondents violate the Due Process Clause of the Fifth Amendment and the Suspension Clause, the INA, the APA, and federal regulations;
6. Declare that Petitioner may remain in the United States pursuant to his November 22, 2024 grant of Deferred Action in order to pursue adjustment of status when his priority date becomes current;
7. Stay 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. Given Petitioner's unlawful detention despite having an approved SIJ self-petition and Deferred Action, award 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.

Respectfully submitted,

Dated: January 20, 2026

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**Motion for Pro Hac Vice to follow*

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

I represent Petitioner Junio de Oliveira Costa as Local Counsel and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, based upon representations from Lead Counsel and available documentation at the time of drafting/filing.

Dated: January 6, 2026

/s/ Ronald L. Abramson
Ronald L. Abramson

CERTIFICATE OF SERVICE

I declare under penalty of perjury that a copy of the Petition for Writ of *Habeas Corpus* was filed electronically and is available to authorized parties for viewing and downloading from the ECF system, with a courtesy copy sent to the Civil Division of the United States Attorney's Office.

Dated: January 20, 2026

/s/ Ronald L. Abramson
Ronald L. Abramson