

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-2469-LMP-LIB

Nabijon N.,

Petitioner,

v.

Markwayne Mullin, *et al.*,

Respondents.

RESPONDENTS'
RESPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS

INTRODUCTION

The question before the Court is whether Petitioner's present detention violates the Constitution or laws of the United States, not whether Petitioner would prefer a different custody framework, additional process, or some other form of discretionary relief. Put differently, the Court's task is to determine whether Respondents presently possess lawful statutory authority to detain Petitioner. They do.

That framing matters because petitions of this kind often attempt to recast mandatory detention as discretionary detention by misunderstanding that mandatory really means what it says. But habeas does not permit Petitioner to obtain a different detention regime merely by repackaging the argument for discretionary detention where the government has invoked mandatory detention. Because the governing statute presently authorizes detention—as it does here—the petition fails regardless of whether Petitioner recasts the same challenge as one sounding in due process, agency procedure, regulatory compliance, or administrative law. Respondents' detention authority arises

under 8 U.S.C. § 1225, and Petitioner's remaining claims fail when analyzed from that premise.

BACKGROUND

Petitioner is a citizen and national of Tajikistan. Declaration of Deportation Officer William J. Robinson ("Robinson Decl.") Ex. B, at 2. On or about July 13, 2023, a Border Patrol Agent encountered Petitioner within the San Diego, California Border Patrol Sector Area of Responsibility. *Id.* The Border Patrol Agent determined this subject had unlawfully entered the United States from Mexico without inspection. *Id.* Petitioner admitted to illegally crossing the border without being inspected by an immigration officer at a designated port of entry. *Id.* at 2-3.

In his first encounter, Petitioner was released due to lack of bed space. *Id.* at 3. On October 10, 2024, Hennepin County Sheriff's Department arrested Petitioner for Criminal Sexual Conduct in violation of Minnesota Statute § 609.3451.1a(1). Ex. A, at 2. It is currently pending in the Hennepin County District Court with a case number of # 27CR2418065. *Id.* On April 18, 2025, U.S. Citizenship and Immigration Services (USCIS) approved Petitioner's Form I-360, declaring him eligible to adjust his status to that of a lawful permanent residence when a visa becomes available. Pet. ¶ 37. Respondents' records do not indicate that Petitioner has been granted deferred action at this time. Ex. A.

On April 16, 2026, U.S. Immigration and Customs Enforcement (ICE) officers encountered Petitioner near his apartment in New Brighton, Minnesota. *Id.* ICE transported Petitioner to Sherburne County Jail in Elk River, Minnesota for processing.

Id. Petitioner was served an I-200, a Notice to Appear, and officially placed in removal proceedings. Exs. C & D. All other facts not specifically admitted in the Response are denied.

ARGUMENT

I. Respondents Did Not Violate Petitioner's Fifth Amendment Right to Due Process of Law

SIJS or Special Immigration Juvenile status is granted to juveniles who have been abused, abandoned, or neglected by at least one of their parents. 8 U.S.C. § 1101(a)(27)(J). The granting of SIJS allows an alien to then apply for lawful permanent residency, but does not in and of itself grant permanent status. *See* 8 C.F.R. § 201.11; 8 U.S.C. § 1255(a).

Despite Petitioner's statements to the contrary, the INA does not prevent placing a noncitizen with SIJS into removal proceedings. 8 U.S.C. § 1255(a) provides the steps that a noncitizen must take in order to become a lawful permanent resident of the United States. First, approval of SIJS is required. 8 U.S.C. § 1255(a). The noncitizen then must make an application for such adjustment. *Id.* If a visa is available to him at the time of application, he is a lawful permanent resident of the United States. *Id.* Until then, he is still not lawfully admitted or paroled into the United States and may be subject to both detention and removal. *Id.* Moreover, the removal proceedings themselves are the correct forum to litigate SIJS's effect on removability once removal proceedings are initiated. Petitioner uses this fact in this habeas case as a red herring.

Petitioner is in removal proceedings. Ex. A, at 2. He is currently receiving due process where he appears before an immigration judge to contest his removability from the United States. Ex. D. The immigration judge may consider any form of relief he has from removability, to include special immigrant juvenile status and weigh it accordingly. 8 U.S.C. § 1229a(b)(1). If Petitioner is not satisfied with the immigration judge, he has the right to reserve appeal to the Board of Immigration Appeals. 8 C.F.R. § 1003.38. If he still not satisfied, he may then appeal to the Eighth Circuit. 8 U.S.C. § 1252(b)(2). Petitioner has extensive due process, but he has simply sought it in the wrong forum.

Respondents disagree that being placed in removal proceedings is a violation of the Fifth Amendment when Congress provided the Executive with the authority to do so. By their very nature, placement in removal proceedings in immigration court is due process of law. It is *the* due process Congress intended for contesting removability. 8 U.S.C. § 1229a; *See also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138-39 (2020). If Congress wanted federal district courts to consider the merits of removability, it would have drafted 8 U.S.C. §§ 1229a and 1252 accordingly. This habeas action is confined to the legality of the fact and duration of detention, not to bypass any ancillary proceedings that are still ongoing. Because this Court is not the proper forum in which to litigate Petitioner's removability, he is not entitled to habeas relief sought under Petitioner's creative legal theory in count one.

II. Respondents Do Not Need to Accept That Petitioner is Paroled in the United States While Awaiting the Adjustment of His Status

Petitioner cites case law from another district outside of this circuit as persuasive authority to construe SIJS as being some form of lawful admission or parole into the United States. Pet. ¶ 44. It is neither. SIJS allows for the legal impediment of unlawful presence to be waived for the narrow purpose to enable an adjustment of status when that benefit becomes available. 8 U.S.C. § 1255(a). Unlawful presence in the United States is a legal impediment to becoming a lawful permanent resident, and §1255 contemplates the Attorney General's discretionary waiver of that impediment on the condition that a visa is available to the nonimmigrant petitioning for an adjustment of status. SIJS does not give carte blanche to simply remain in the United States prior to being eligible to effectuate an adjustment of status. Mechanisms are available to defer further action on removability for those granted SIJS, namely deferred action, but the parties have not provided evidence to the Court that Petitioner has been granted deferred action.

Petitioner also cites case law from this district that truncated language from 8 U.S.C. § 1255(h)(1) to claim that special immigrant juveniles are “deemed [for purposes of adjustment of status] to have been paroled into the United States.” *Walter A. v. Easterwood*, 0:26-cv-01393-SRN-LIB, at 5 (D. Minn. Mar. 26, 2026). The bracketed language conceals a reference to 8 U.S.C. § 1255(a), which describes that the deeming of parole is limited in scope to the adjustment of status, not removability writ-large. 8 U.S.C. § 1255(a). It gives the Attorney General discretion to make the adjustment to lawful permanent resident in his or her “discretion and under such regulations as he may prescribe.” 8 U.S.C. § 1255(a). Respondents don’t take the language of the statute to support any mandatory right to let a SIJS wait in limbo for a visa to become available.

By Petitioner's own admission, that benefit to adjust is not yet available to him. Pet. ¶ 44. Respondents are under no legal obligation to wait for that benefit to become available to Petitioner under the text of § 1255. Respondents may proceed to execute the immigration laws of the United States, to include placing an applicant for admission who is seeking admission in detention during the pendency of his removal proceedings under 8 U.S.C. § 1225(b)(2)(A).

III. Respondents Arrest of Petitioner Was Reasonable under the Fourth Amendment

Respondents reincorporates all references in the preceding two Counts. Respondents disagree that Petitioner was arrested in violation of his Fourth Amendment rights. Petitioner does not have lawful status to be present in the United States, as stated in his charging document and the contemporaneous administrative arrest warrant. Respondents may take an applicant for admission into detention under 8 U.S.C. § 1225(b)(2)(A).

Petitioner again is attempting to recast this habeas action as an alternative forum to contest his removability. He is in removal proceedings, and the Supreme Court has made it clear that § 1225(b)(2) detainees *shall* remain in custody until the termination of their removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 282 (2018). Petitioner's charging document and administrative arrest warrant comply with 8 C.F.R. § 236.1(b)(1). Respondents complied with ensuring the arrest and detention of Petitioner is reasonable under the Fourth Amendment.

IV. Because Petitioner Does Not Have Valid Parole Status, Any Procedural Defect Alleged by Petitioner Should Be Denied

Respondents again reject that Petitioner is in “valid parole status” as incorrectly suggested by Petitioner. Pet. ¶ 53 for the same expansive misinterpretation of 8 U.S.C. § 1255(a) as briefed above. Because this Court also relies on the same faulty premise, that Petitioner is paroled, it too should be disposed of.

EVIDENTIARY HEARING

Respondents believe the Court can rule on this Petition without holding an evidentiary hearing. The facts are not likely to be disputed, and the only issues before the Court are ones of legal interpretation capable of resolution on the parties’ submissions.

ADDITIONAL REQUEST

Respondents acknowledge the importance of complying with any order this Court might issue regarding Petitioner’s release. The U.S. Attorney’s Office has been advised that ICE is devoting additional resources to the agency’s inquiry email account for the St. Paul Field Office—both in terms of monitoring and responding to inquiries, and in terms of resolving release-related issues that detainees or their attorneys raise via messages to the address. The email address is StPaul.Outreach@ice.dhs.gov, and Respondents respectfully request that any order requiring Petitioner’s release include a direction that questions about release logistics, detainee property, or conditions of release be sent to that email address in the first instance. This approach will lead to the fastest and most efficient resolution of any such issues.

CONCLUSION

Respondents respectfully request that the Petition be denied in full.

Dated: May 12, 2026

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