

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Nabijon Niyozov

Petitioner,

v.

Markwayne Mullin, Secretary, U.S.
Department of Homeland Security;
Todd Lyons, in his capacity as Acting Director,
Immigration and Customs Enforcement;
Todd Blanche, Acting U.S. Attorney General;
Executive Office for Immigration Review;
David Easterwood, Acting Director for ICE
Field Office, St. Paul, MN,
Warden, Sherburne County Facility, Elk River,
Minnesota,

In their official capacities,

Respondents.

Case No. 26-cv-2469-LMP-LIB

PETITIONER'S REPLY
TO RESPONDENTS' OPPOSITION TO
THE PETITION FOR HABEAS CORPUS

BACKGROUND

Petitioner, Nabijon Niyozov, is a citizen of Tajikistan who is detained at Sherburne County Facility in Elk River, Minnesota.

Mr. Niyozov last entered the United States in the summer of 2023 when he was 18 years old. The EOIR court information page shows that his immigration court case was docketed in August 2023. Mr. Niyozov was briefly detained by CBP before being released into the United States on his own recognizance.

Mr. Niyozov relocated to Minnesota. He timely applied for asylum, and on December 27, 2024, he also applied for Special Immigration Juvenile Status (SIJS) by submitting Form I-360 to USCIS. On April 18, 2025, USCIS approved Mr. Niyozov's SIJS I-360, and he was waiting for a visa to become available so that he could adjust status to that of permanent resident. Mr. Niyozov also applied for and received work authorization.

On October 10, 2024, Mr. Niyozov was arrested in Hennepin County for criminal sexual conduct in violation of Minnesota Statute § 609.3451.1a(1). According to the online court documents, Mr. Niyozov was released on a monetary bond on October 11, 2024, and ICE did not detain him upon release. **For the next year and a half, he remained at liberty.**

Mr. Niyozov's criminal case remains ongoing, and Mr. Niyozov asserts his innocence. Criminal defense attorney Jane Murray is representing Mr. Niyozov *pro bono*, and they are prepared to take the case to trial if need be. Attorney Jane Murray informed Petitioner's Counsel that this case represents a cultural misunderstanding where Mr. Niyozov hugged a woman after he had only been in the United States for a short period of time. When the police interviewed the woman, the police asked her if she were "groped," and it was only upon being prompted by the police that the woman said that she had been groped. However, the video evidence supports that

Mr. Niyozov hugged her in a normal way. Because of the police officer's attempt to feed answers to the alleged victim and the video evidence, Mr. Niyozov believes that he will be cleared of any sexual charges. Since Mr. Niyozov was released from criminal detention, he has attended counseling in order to better understand American culture, and he has had no further incidents with the police. He submits a letter from his criminal defense attorney to the prosecutor, his counselor letter, and the criminal complaint.

Most importantly, the Respondents do not claim to have detained Mr. Niyozov for any risk of danger or flight related to his arrest. The Respondents do not assert any motive for their detention of Mr. Niyozov. They appear to have only arrested him because they believe they simply can.

ARGUMENT

I. Respondents have violated Petitioner's Fifth Amendment Due Process Rights

A. Respondents have not followed the process Congress authorized for SIJS recipients

Respondents' arguments are indicative of a rogue executive who believes the only process Congress authorized is detention and removal. However, the regulations, which they cite, do not support Mr. Niyozov's *detention*. Instead, the regulations support a specific process for SIJS that allows them to remain in the U.S. while their SIJS remains valid. As such, Petitioner must be released.

Congress prescribed the process for SIJS beneficiaries. In the regulations, which the Respondents cite, it lists the process for approval and revocation of SIJS. After the SIJS I-360 petition is approved, USCIS can only revoke the petition if 1) a family court deems it is in the best interest of the non-citizen to be returned to his country, 2) family court reunifies the

non-citizen with his parent through a court order, or 3) USCIS revokes the petition for good cause. 8 C.F.R. § 204.11.

However, Mr. Niyozov's SIJS petition has not been revoked. Since his SIJS petition has not been revoked, he has the right to present his adjustment case in the United States as authorized by Congress. If he remains detained, he will be deprived of the right to apply for adjustment of status since he must be physically present in the United States in order to receive permanent residency through SIJS. 8 C.F.R. § 204.11(b). Mr. Niyozov must be released so that may receive the due process prescribed by Congress for individuals with approved SIJS.

B. Respondents conflate the detention process with the removal process

Respondents argue that they should be able to detain Petitioner because they can initiate removal proceedings against him. However, this conflates removal with detention. Through this habeas petition, Mr. Niyozov argues that his *detention* is unlawful. If Mr. Niyozov remains detained, he will not be able to present his application for SIJS adjustment of status because there is only a visa available for non-citizens who filed their SIJS application on or before July 15, 2022.¹ SIJS beneficiaries adjust status to that of permanent residency under section EB-4 (employment based 4th preference) of the visa bulletin.² A visa will also not become available for another year or two. Based on recent BIA precedent, Mr. Niyozov cannot ask for administrative closure of his removal proceedings while he is detained so that he can wait for a visa to become available. *Matter of B-N-K-*, 29 I&N Dec. 96 (BIA 2025) (finding the non-citizen's detained status indicates that administrative closure is not warranted and should have been denied by the Immigration Judge). By detaining Mr. Niyozov, the Respondents have essentially stripped him of his ability to present his SIJS adjustment case- which is the process

¹ Visa Bulletin, Dep't of State, June 2026, found at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-june-2026.html>

² Special Immigration Juvenile, USCIS, "Green Card Based on SIJS Classification," found at <https://www.uscis.gov/working-in-US/eb4/SIJ>

authorized by Congress. If he remains detained and he does not win his asylum case, then he will be removed from the United States before an SIJS visa becomes available to him.

While Mr. Niyozov agrees that his removal case is important, it is not what he challenges through this petition. Respondents present no arguments for why they decided to detain Mr. Niyozov, other than they now believe it is now mandatory. The Respondents' rogue authoritarian attitude is not a legitimate basis to detain Mr. Niyozov. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is detained]"). Because detaining Mr. Niyozov violates his due process rights and is not required in order to initiate removal proceedings, Mr. Niyozov must be released.

II. The Case Law and Regulations Support that Petitioner has Parole Status

Respondents argue that the Third Circuit's holding on this issue should not be considered persuasive because it is outside the Eighth Circuit. But persuasive decisions are just that- cases from outside this Court's Circuit. Since the Eighth has not decided this issue, this Court may, and should, consider the Third Circuit's reasoning here: it is "belied by the text of the INA, which explicitly designates SIJ as a 'status' that affords its designees a host of legal rights and protections." *Osorio-Martinez v. Att'y Gen.*, 893 F.3d 153, 161 n. 7 (3d Cir. 2018).

The Respondents ignore the full language of 8 U.S.C. § 1255(h)(1) when they argue that Petitioner is not paroled for the purposes of removability but only for the purpose of adjustment of status. The statute states that the non-citizen "shall be deemed, for purposes of subsection (a), **to have been paroled** into the United States," and then the statute continues by explaining that certain issues of inadmissibility shall not apply to the non-citizen, including accrual of unlawful presence, lack of valid travel documents or valid visa, and entry without inspection. 8 U.S.C. § 1255(h)(1). As the Minnesota District Court and the Third Circuit both previously considered,

this statutory language indicates that SIJS beneficiaries have been granted parole at the time their SIJS was approved. *Walter A. v. Easterwood*, 0:26-cv-01393-SRN-LIB, at 44-45 (D. Minn. Mar. 26, 2026); *Osorio-Martinez v. Att’y Gen.*, 893 F.3d 153, 161 n. 7 (3d Cir. 2018). The fact that the language uses “to have been paroled” in the past tense and combines it with issues of inadmissibility all indicate that Mr. Niyozov was paroled at the time that his SIJS was granted. 8 U.S.C. § 1255(h)(1).

Using the retroactive tense, Congress did not delay parole into the United States for SIJS beneficiaries until they are eligible to apply for adjustment of status. Instead, it treated SIJS beneficiaries, for the purpose of adjustment of status, “as if they had been lawfully paroled into the country upon entry or, at the latest, upon approval of the SIJS petition.” (Scholtz Report ¶ 44) (emphasis added).

Walter A. v. Easterwood, 0:26-cv-01393-SRN-LIB, at 44-45 (D. Minn. Mar. 26, 2026).

III. Petitioner’s Arrest was a Violation of the Fourth Amendment

Respondents ignore the parameters that The U.S. Supreme Court placed on Respondents for searches and seizures of non-citizens. Respondents may only detain an individual for the time necessary to determine if they are “illegally present.” *Trump v. Illinois*, 607 U.S. ---, No. 25A443, 2025 WL 3715211, at *9 n. 4 (Dec. 23, 2025) (Kavanaugh, J., concurring in the judgment).

Respondents argue that Mr. Niyozov’s approved SIJS does not prevent them from detaining Mr. Niyozov because SIJS is not a valid parole status. However, such an argument does not comply with the statutory scheme and the intent of Congress. As explained in Section II, *supra*, Congress used the past tense to describe the parole of a non-citizen in order to indicate that they are deemed to have been paroled at the time that their SIJS is approved. 8 U.S.C. § 1255(h)(1). Such an interpretation agrees with the benefits which Congress afforded to SIJS beneficiaries while they are awaiting the availability of a visa, including educational opportunities. 8 U.S.C. § 1232(d)(4)(A), 1153(b). Such an interpretation also agrees with the

revocation process for SIJS approved petitions and the overall adjustment process. 8 C.F.R. § 204.11(j); 8 U.S.C. § 1255(h)(1). If Mr. Niyozov is detained and deported before his visa becomes available, then he will not be able to obtain permanent residency through the SIJS process- he must be physically present in the United States in order to obtain permanent residency through SIJS. 8 C.F.R. § 204.11(b). If he is deported, he will no longer be eligible. *Id.*

Because Mr. Niyozov has valid parole status, he is lawfully present, and Respondents violated his Fourth Amendment rights at the time that they detained him. The cure to a Fourth Amendment violation is the Petitioner's immediate release from custody. *See Garrison G.*, 2026 WL 157677, at *4 (citations omitted).

IV. Respondents Argue that they do not Need to Follow the SIJS Revocation Procedures because Petitioner is not in Valid Parole Status

Respondents completely ignore the revocation procedures for SIJS. 8 C.F.R. § 204.11(j) The Respondents argue that because Petitioner is not in valid parole status then they can issue a *de facto* revocation of his SIJS by detaining and deporting him. But the Minnesota District Court previously considered this issue and found it was "perverse" that Respondents would try to deport a non-citizen with approved SIJS:

Given this endorsement, it is perverse that "the very federal Department that here attempts to remove Walter earlier acknowledged that he had shown a bona fide need to avoid re-exposure to parental abuse, neglect, and Abandonment, and that it would not be in his best interest to return to Guatemala." (Scholtz Report ¶ 43.) As the Third Circuit noted, under the rigorous statutory scheme that requires the approval of both state and federal authorities, a successful applicant is essentially "a ward of the United States." *Osorio-Martinez*, 893 F.3d at 168.

Walter A. v. Easterwood, 0:26-cv-01393-SRN-LIB, at 47 (D. Minn. March 26, 2026).

Respondents' refusal to follow their own regulations violates the INA, the regulations, the TVPRA, and the *Accardi* Doctrine. The remedy is to order Petitioner's immediate release from custody.

V. **The DOJ's U.S. Attorney is the Proper Individual to Ensure Respondents Comply with this Court's Orders**

The U.S. Attorney requests that Petitioner's attorney contact ICE directly to ensure that orders are timely followed. But Petitioner's Counsel does not represent the Respondents, and she should not be charged with ensuring Respondents comply with this Court's order. Importantly, how would that work if Petitioner were *pro se*? Would the Petitioner be responsible for calling ICE from jail to ask ICE for to release him? Such a request is absurd. The U.S. attorney is the attorney for the Respondents, and this Court must delegate the responsibility for compliance with any grant onto the Respondents and their Counsel. It is unfair to Petitioner's Counsel for Respondents to unlawfully detain non-citizens and then shift the work of enforcing these orders onto the Petitioner and his Counsel.

If the workload for Respondents' attorneys is too large, then the solution is to cease with the unlawful detentions. A recent *Politico* article found that District Court Judges had held Respondents' detention of non-citizens to be unlawful in approximately 90% of the approximately 11,600 habeas cases filed since July 2025.³ A 90% denial rate indicates the overwhelming illegality of this Administration's actions. If Respondents would simply comply with the law, their attorneys would not be so overwhelmed. Shifting the burden to Petitioner for follow-up or enforcement of any Court grant would only enable Respondents' flagrant and brazen constitutional violations. This Court should not grant Respondents' request and should place on Respondents' attorneys all follow-up with ICE should this habeas be granted.

³ 10,000 Rulings: The Court's Overwhelming Rebuke of Trump's Detention Policy, *Politico*, 13 May 2026, found at <https://www.politico.com/news/2026/05/13/10k-rulings-ice-mandatory-detention-trump-analysis-00914195>

Dated: 05/18/2026

/s/ Jennifer Scarborough

Jennifer Scarborough
Law Firm of Jennifer Scarborough
P.O. Box 18460
Minneapolis, MN 55418
956-513-7633
jennifer@texasborderlawyer.com
Texas State Bar No. 24106401
Attorney for Petitioner
Admitted Pro Hac Vice

Certificate of Service

I certify that all parties were served through this Court's ECF system.

/s/ Jennifer Scarborough

Dated: 05/18/2026

Jennifer Scarborough