

NON-DETAINED

UNOPPOSED MOTION TO TERMINATE PROCEEDINGS BASED ON APPROVED SIJS AND GRANTED DEFERRED ACTION

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FORT SNELLING, MN**

In the Matter of:

████████████████████

In removal proceedings

File No. ██████████

MOTION TO RECALENDAR AND TERMINATE

Respondent, ██████████ (hereinafter, "Respondent"), by and through counsel, hereby moves the Immigration Court to terminate the instant proceedings in the matter described because he was granted Special Immigrant Juvenile Status by the U.S. Citizenship and Immigration Services (hereinafter, "USCIS"), and granted deferred action.

FACTS AND PROCEDURAL HISTORY

The Respondent is a ██████-year-old national of ██████████ entered the United States on December ██████████. *See attached Notice to Appear.* On August ██████████ USCIS received ██████████ application for Special Immigrant Juvenile Status (SIJS). On May ██████████, USCIS issued an amended notice, approving Respondent's SIJS, while also granting deferred action. *See attached I-360 Approval Notice.* Respondent's priority date has not yet become current and thus, he is unable to apply for adjustment of status. He respectfully requests that this court terminate removal proceedings until his priority date becomes current, so that he is able to then apply for a status adjustment before USCIS.

ARGUMENT

In order to apply for a status adjustment as a Special Immigrant Juvenile, an applicant must have both an approved I-360 and USCIS must afford them the opportunity to apply. *See INA §*

203(b)(4). Whether USCIS will accept an application for a status adjustment from a Special Immigrant Juvenile is determined by reviewing the EB-4 category of the Department of State visa bulletin and assessing via USCIS' published guidance whether they are accepting applications based on final action dates for employment-based immigrant visas and dates for filing employment-based immigrant visas.¹ Currently, the visa bulletin lists filing dates for EB-4 visas for [REDACTED] as December [REDACTED] and before. Respondent has been approved for deferred action as of May [REDACTED].

Deferred action, as per the USCIS, is an act of prosecutorial discretion that defers removal proceedings for non-citizens for four years. This process promotes congressional intent to provide humanitarian protection for abused, neglected, or abandoned non-citizen children, who have qualified for SIJS. *See Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 4, Adjudication.*

Lastly, the Department of Homeland Security does not oppose this motion. *See copy of email to opposing counsel's non-opposition to Respondent's motion, in the exercise of prosecutorial discretion.*

Therefore, the Respondent respectfully requests that the Immigration Judge grant this motion to terminate removal proceedings until his priority date becomes current and he is able to apply for adjustment of status with USCIS. Pending any termination of these proceedings, Respondent acknowledges his obligation to timely notify the Department and Immigration Court of each change of address and new address, consistent with INA §265 and 8 C.F.R. §1003.15(d)(2).

Dated: [REDACTED]

Respectfully submitted,

[REDACTED]
EOIR ID: [REDACTED]
330 Second Avenue South Ste. 800
Minneapolis, MN 55401

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FORT SNELLING, MN**

In the Matter of: _____


In removal proceedings _____

File No. _____

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I-797 | NOTICE OF ACTIONDEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Receipt Number [REDACTED]		Case Type I360 - PETITION FOR AMERASIAN, WIDOWER, OR SPECIAL IMMIGRANT
Received Date 03/07/2022	Priority Date 03/07/2022	Petitioner [REDACTED]
Notice Date [REDACTED]	Page 1 of 1	Beneficiary A208 679 087 PINEDA [REDACTED]
THE ADVOCATES FOR HUMAN RIGHTS c/o KIMBERLY BOCHE 330 SECOND AVE SOUTH STE 800 MINNEAPOLIS MN 55401		Notice Type: Approval Notice Class: SL6 Section: Special Immigrant-Juvenile
<p>Amended I-797 Approval Notice for Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, with Deferred Action.</p> <p>USCIS previously approved your Form I-360. This Amended Approval Notice adds a grant of deferred action to the previous approval.</p> <p>Grant of Deferred Action:</p> <p>The above referenced Form I-360, filed by you, was approved on 03/07/2022. This notice is supplemental to the approval notice previously sent to you. USCIS approved your Form I-360, but you do not yet have an available visa to file an application for adjustment of status. USCIS has determined that you warrant a favorable exercise of discretion to receive deferred action. As a result, you have been placed in deferred action and you may be issued an employment authorization document. Deferred action is an act of administrative convenience to the government which gives some individuals lower priority for removal from the United States for a specific period of time. Your grant of deferred action will remain in effect for a period of four years from the date of this notice, unless terminated earlier by USCIS.</p> <p>Pursuant to 8 CFR Sec. 274a.12(c)(14), a noncitizen with approved deferred action is eligible to apply for employment authorization with the appropriate fee. If you would like to apply for employment authorization, you must properly file Form I-765, Application for Employment Authorization and enter eligibility category (c)(14). If you file Form I-765, you will receive separate correspondence regarding the adjudication of your Form I-765.</p> <p>If you are represented by an attorney, all further correspondence should be accompanied by Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.</p> <p>USCIS will notify you separately about any other cases you have filed.</p> <p>This form is not a visa, nor may you use it in place of a visa.</p> <p>This form does not constitute employment authorization, nor may you use it in place of an Employment Authorization Document.</p>		
Please see the additional information on the back. You will be notified separately about any other cases you filed.		
USCIS encourages you to sign up for a USCIS online account. To learn more about creating an account and the benefits, go to https://www.uscis.gov/file-online .		
National Benefits Center U.S. CITIZENSHIP & IMMIGRATION SVC P.O. Box 648003 Lee's Summit MO 64002 USCIS Contact Center: www.uscis.gov/contactcenter		

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED]

File No: [REDACTED]

DOB: 0 [REDACTED]

No [REDACTED]

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In the Matter of: [REDACTED]

currently residing at:

(Number, street, city and ZIP code)

(Area code and phone number)

- ☐ 1. You are an arriving alien.
- ☒ 2. You are an alien present in the United States who has not been admitted or paroled.
- ☐ 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of [REDACTED] and a citizen of HONDURAS ;
3. You arrived in the United States at or near SAN YSIDRO, CALIFORNIA, on or about [REDACTED]
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30(f)(2) ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:
1 FEDERAL DRIVE, SUITE 1850, FORT SNELLING, MN 55111

(Complete Address of Immigration Court, including Room Number, if any)

on January 31, 2019 at 01:00 PM to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

PAUL CARR

ACTING WATCH COMMANDER

(Signature and Title of Issuing Officer)

Date: December 15, 2018

San Diego, California

(City and State)

See reverse for important information

From: Stolley, Jim
To: Kim Boche
Subject: RE: Position on Motion to Terminate - Grant of SDS and Deferred Action
Date: Thursday, September 15, 2022 8:26:19 AM

CAUTION: EXTERNAL

Please let this email serve as evidence of this office's non-opposition to your motion to dismiss in the exercise of our prosecutorial discretion given USCIS's action ([REDACTED]).

Jim Stolley
Chief Counsel
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
Minneapolis/St. Paul, MN
(612) 843-8938

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Absent clear and express consent contained in the body of the email, there is no consent to disclose this email.

From: Kim Boche <kboche@advrights.org>
Sent: Wednesday, September 14, 2022 4:16 PM
To: ICE OPLA SAINT PAUL, PD <ICE-OPLA-SPM-PD@ice.dhs.gov>
Cc: 11045050719@ahr.legalserver.org; 11046050519@ahr.legalserver.org
Subject: Position on Motion to Terminate - Grant of SDS and Deferred Action

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Dear Counsel:

③

Our office represents the two individuals listed below and plans to submit Motions to Terminate proceedings for our two sibling clients:

██████████ – A ██████████ and
██

They have both been approved for SIJS and have been granted Deferred Action. Please see attached approval notices.

They both have hearings on ██████████ with ██████████ AM. If you require additional information, please let me know.

Thank you for your time,

Kimberly Boche (They/Them/Elle *what is this?*)

Staff Attorney, Refugee and Immigrant Program

The Advocates for Human Rights

330 Second Ave. S., Suite 800 | Minneapolis, MN 55401-2447 | USA

Direct: 612-746-4673 | General: 612-341-3302 | Client Intake: 612-341-9845

kboche@advrights.org | *Hablo Español*

TheAdvocatesForHumanRights.org

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**United States Department of Justice
Executive Office for Immigration Review
Immigration Court
Fort Snelling, Minnesota**

In the Matter of: [REDACTED] A# [REDACTED]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Terminate Removal Proceedings, it is HEREBY ORDERED that the motion be ☐ **GRANTED** ☐ **DENIED** because:

- ☐ DHS does not oppose the motion.
- ☐ The respondent does not oppose the motion.
- ☐ A response to the motion has not been filed with the court.
- ☐ Good cause has been established for the motion.
- ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ The motion is untimely per _____.
- ☐ Other: _____.

Deadlines:

- ☐ The application(s) for relief must be filed by _____.
- ☐ The respondent must comply with DHS biometrics instructions by _____.

Date

[REDACTED]
Immigration Judge

Certificate of Service

This document was served by: ☐ Mail ☐ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date: _____ By: Court Staff _____

[REDACTED]
A# [REDACTED]

PROOF OF SERVICE

On [REDACTED] served a copy of this Motion to Terminate Removal Proceedings and any attached pages on the Office of the Principal Legal Advisor at the following address: 1 Federal Drive, Suite 1800, Fort Snelling, MN 55111 by hand delivery

[REDACTED]
Kimberly Boche

[REDACTED]
Date