[Name of Attorney] NON-DETAINED

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*Pro Bono Counsel for Respondents*

**United States Department of Justice**

**Executive Office for Immigration Review**

**[NAME] Immigration Court**

**New york, new york**

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In the Matters of: )

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First Name LAST NAME ) File Nos.: Axxx-xxx-xxx

First Name LAST NAME ) Axxx-xxx-xxx

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Respondents )

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**Immigration Judge: Unknown Next Hearing: None**

**RESPONDENTS’ MOTION TO RECALENDAR AND TERMINATE REMOVAL PROCEEDINGS**

**United States Department of Justice**

**Executive Office for Immigration Review**

**[NAME] Immigration Court**

**New york, new york**

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Respondents )

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**RESPONDENTS’ MOTION TO RECALENDAR AND TERMINATE REMOVAL PROCEEDINGS**

**I. INTRODUCTION**

Respondents Client One and Client Two, through undersigned *pro bono* counsel, hereby request that this Court recalendar and terminate their removal proceedings based on their special immigrant juvenile status (“SIJS”), so that they may adjust status before U.S. Citizenship and Immigration Services (“USCIS”). Pursuant to the [month, year] Visa Bulletin, visas are immediately available to Respondents in the fourth employment-based preference category for [country]. Further, Respondents are deemed paroled into the United States as special immigrant juveniles. Immigration and Nationality Act (“INA”) § 245(h)(1); *see* Exh. A, *Godinez et al. v. U.S. Dep’t of Homeland Security et al*., Case No. 20-00828-CV-W-GAF (W.D. Mo. Feb. 10, 2021) [“*Godinez* Decision”]; Exh B., *C-E-C-C-* AXXX XXX 498 (BIA Dec. 31, 2020) [“*C-E-C-C-* Decision”]. Termination of these proceedings is warranted because Respondents’ grant of parole overcomes the sole charge of removability alleged in their Notices to Appear (“NTAs”) for presence “without being admitted or paroled” under INA § 212(a)(6)(A)(i), and termination will promote administrative efficiency.

**II. PROCEDURAL HISTORY**

Respondents entered the United States without inspection at or near [city, state] on [date]. They were apprehended and issued NTAs charging them with removal under INA § 212(a)(6)(A)(i) for presence “in the United States without being admitted or paroled.” *See* Exh. C, Notice to Appear for Client One (dated [date]); Notice to Appear for Client Two (dated [date]). Immigration officers determined that Respondents were unaccompanied children and transferred them to the custody of the Office of Refugee Resettlement. On [date], Respondents were released to their mother, with whom they continue to reside.

On [date], the [County Name] County Family Court issued guardianship orders for Respondents and separate orders of findings of fact that would permit Respondents to petition USCIS for SIJS. *See* Exh. D, [County Name] County Family Court, Special Findings Orders for Client One (finding that Client One had been neglected and abandoned by her father) and Client Two (finding that Client Two had been neglected and abandoned by her father). Respondents subsequently filed their Forms I-360 with USCIS. Client One’s application for SIJS was approved by USCIS on [date], with a priority date of [date], while Client Two’s application for SIJS was approved on [date], with a priority date of [date]. *See* Exh. E, USCIS, Forms I-797 C, I-360 Approval Notices for Client One and Client Two. On [date], the Honorable Immigration Judge [Name] issued an order to administratively close Respondents’ proceedings and indicated that it would make sense to terminate the proceedings only once Respondents had approved Forms I-360 and current priority dates. *See* Exh. F, Immigration Judge NAME’s Order granting Administrative Closure, dated [date].

Because the [month, year] Visa Bulletin permitted special immigrant juveniles from [country] with priority dates before [date] to adjust status immediately, *pro bono* counsel reached out to Department of Homeland Security (“the Department”) Trial Attorney [TA Name], who was then assigned to Respondents’ cases, to obtain the Department’s position on our Motion to Terminate. U.S. Department of State, *Visa Bulletin For [month, year]*, [include link to website] (last visited [date]). Ms. TA instructed counsel to provide the Department with USCIS I-485 receipt notices for Respondents. *See* Exh. G, Correspondence with Department of Homeland Security. As a result, counsel filed Respondents’ adjustment of status applications with supporting documents and fee waiver requests with the USCIS Chicago Lockbox. On [date], USCIS issued receipt notices to Respondents, indicating that applicable fees have been waived and their adjustment of status applications are being processed. *See* Exh. H, Copies of USCIS, Forms I-797 C, I-485 Receipt Notices for Client One and Client Two. Counsel then followed up with Ms. TA, who sent back an automated message that she is on leave until [date]. *See* Exh. G. Counsel contacted the [city] Duty Attorney to obtain the Department’s position on our Motion to Terminate in addition to the contact information for the new trial attorney assigned to the case, but neither the Duty Attorney nor the Department has yet responded. *See* Exh. G.

At present, the [month, year] Visa Bulletin permits special immigrant juveniles from [country] with priority dates before [date] to adjust status immediately. U.S. Department of State, *Visa Bulletin For [Month, Year]*, [include link to website] (last visited [date]). Because immigrant visas continue to be immediately available to Respondents, they are both eligible to adjust status to lawful permanent residence in accordance with INA § 245(a).

**III. LEGAL ARGUMENT**

These proceedings should be recalendared and terminated because Respondents’ grant of SIJS and subsequent parole for adjustment of status overcome the sole charge of removability alleged in their NTAs for presence “without being admitted or paroled” under INA § 212(a)(6)(A)(i). Immigration judges possess authority to terminate removal proceedings wherever “the Department of Homeland Security fails to sustain the charges of removability against a respondent.” *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462, 462 (A.G. 2018); *see also* INA § 240(c)(1)(A) (“[T]he immigration judge shall decide whether an alien is removable”); 8 C.F.R. § 1240.12(c) (“[T]he immigration judge shall direct […] termination of the proceedings”).

The text of the INA clearly and unambiguously grants parole to SIJS beneficiaries such as Respondents and exempts them from removability for presence without admission or parole, the charge at issue here. Further, congressional intent to provide stability and permanence to SIJS beneficiaries compels a reading of the INA that prevents Respondents from being removed for a charge of removability under INA § 212(a)(6)(A)(i) while awaiting adjustment of status––particularly where, as here, immigrant visas are immediately available. Importantly, termination of these proceedings will promote administrative efficiency during the COVID-19 pandemic by decreasing this Court’s backlog and allowing USCIS to adjudicate Respondents’ adjustment applications safely and expeditiously, without in-person contact.

**A. Termination Is Warranted Because, Under the Plain and Unambiguous Language of the INA, Respondents’ Grant of Parole as Special Immigrant Juveniles Overcomes Their Sole Charge of Removability.**

Termination is warranted here because Respondents are no longer removable under the sole charge alleged in their respective NTAs, which renders inadmissible “[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General,” INA § 212(a)(6)(A)(i).[[1]](#footnote-1) Because both the first prong of that provision (presence “without being admitted or paroled”) and the second prong (arriving “at any time or place other than as designated by the Attorney General”) no longer apply to Respondents under the plain meaning of the INA, these proceedings should be terminated.

The plain meaning of a particular provision in the INA is best understood “in context with and by reference to the whole statutory scheme, by appreciating how sections relate to one another” as envisioned by Congress. *Auburn Hous. Auth. v. Martinez*, 277 F.3d 138, 144 (2d Cir. 2002); *see Dobrova v. Holder*, 607 F.3d 297, 301 (2d Cir. 2010) (emphasizing that analysis of statutory text involves review of “the placement and purpose of those words in the statutory scheme”). Here, the plain and unambiguous language of INA § 212(a)(6)(A)(i)’s first prong covering individuals not “admitted or paroled”––read in light of Congress’s decision to grant SIJS beneficiaries parole under INA § 245(h)(1)––no longer applies to Respondents. As special immigrant juveniles, Respondents are “deemed […] to have been paroled into the United States, regardless of the actual method of entry.” 8 C.F.R. § 1245.1(a). For SIJS beneficiaries, parole is recognized “for purposes of” adjusting status. INA § 245(h)(1). Because parole “effectively halts removal of the alien until the underlying humanitarian or public benefit is achieved,” *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011), Congress’s decision to grant SIJS beneficiaries parole reflects its clear intent to protect them from removal for presence “without being admitted or paroled” while they await adjustment of status––the precise purpose of the SIJS statutory scheme. Moreover, “[a]lthough § 1255(h) expressly states that SIJs are deemed paroled for purposes of adjustment, this does not preclude SIJs from being deemed paroled for some other purpose,” including “humanitarian purposes.” *See* Exh. A, *Godinez* Decision, pp. 21, 22; Exh. B, *C-E-C-C-* Decision (acknowledging possibility that grant of SIJ status could extinguish removability under INA § 212(a)(6)(A)(i)).

Federal circuit court jurisprudence confirms a reading of the INA that protects SIJS beneficiaries from removal pending adjustment of status, emphasizing that “SIJS-based parolees gain special benefits set by Congress [including] the permission to remain in the country pending the outcome of their adjustment of status application” and “exemption from certain inadmissibility grounds applicable to other aliens.” *Garcia v. Holder*, 659 F.3d 1261, 1270-71 (9th Cir. 2011); *accord Osorio-Martinez v. U.S. Att’y Gen.*, 893 F.3d 153, 170-71 (3d Cir. 2018) (noting that in granting SIJS beneficiaries parole, “Congress provided opportunities for [them] to strengthen their connections to the United States” while awaiting adjustment of status).

Moreover, it is a “rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.” *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018) (internal quotation marks omitted); *see Matter of Alyazji*, 25 I&N Dec. 397, 404 (BIA 2011) (“a single statutory term should be interpreted consistently”). Parole under INA § 212(d)(5) has been interpreted to allow an individual to remain in the United States “for as long as the humanitarian or public benefit purpose persists.” *Cruz-Miguel*, 650 F.3d at 198; *see Matter of Castillo-Padilla*, 25 I&N Dec. 257, 259 (BIA 2010). It stands to reason that parole of SIJS beneficiaries under INA § 245(h)(1) should similarly be interpreted to allow them to remain in the United States until they have completed the adjustment of status process. Indeed, Congress’s grant of parole would have no “reasonable meaning,” *United States v. Arnold*, 126 F.3d 82, 89 (2d Cir. 1997), if SIJS beneficiaries could be removed for a charge under INA § 212(a)(6)(A)(i) for presence without admission or parole before actually adjusting status.

Further, as SIJS beneficiaries and parole recipients, the second prong of INA § 212(a)(6)(A)(i) covering individuals “who arrive[] in the United States at any time or place other than as designated by the Attorney General” no longer applies to Respondents. By its plain and unambiguous language, this prong applies only to an individual who “arrives” at an undesignated time or place. The USCIS Adjudicator’s Field Manual (“AFM”) explains that an individual “who *arrived* in the past is already outside the ambit of that second ground” (emphasis added) and concludes that “an alien who entered the United States without inspection, but subsequently receives parole, is not inadmissible under either of the two inadmissibility grounds contained in section 212(a)(6)(A)(i).” AFM Ch. 40.6.2(a)(1).

In sum, the plain and unambiguous language of INA §§ 212(a)(6)(A)(i) and 245(h)(1) supports recalendaring and termination of these proceedings because Respondents’ grant of parole as special immigrant juveniles overcomes their sole charge of removability. Because the charge can no longer be sustained, termination is appropriate.

**B. Termination of Respondents’ Proceedings Will Promote Administrative Efficiency.**

Termination of Respondents’ proceedings will promote administrative efficiency and judicial economy by conserving scarce court resources. Termination “ensure[s] finality, cutting down on the number of cases orphaned within the immigration courts” and resulting in “a final, transparent order from the immigration judge who ends the case.” *Matter of Castro-Tum*, 27 I&N Dec. 271, 292 (A.G. 2018). The regulatory framework governing immigration court proceedings was designed “to assist in the expeditious, fair, and proper resolution of matters coming before Immigration Judges.” 8 C.F.R. § 1003.12; *see* 8 C.F.R. § 1003.10(b) (“[I]mmigration judges shall seek to resolve the questions before them in a timely and impartial manner”).

It is more efficient to permit USCIS rather than this Court to adjudicate Respondents’ adjustment of status applications. USCIS is likely to deem Respondents’ adjustment of status interviews unnecessary because their sole charge of inadmissibility under INA § 212(a)(6)(A)(i) is inapplicable to them as special immigrant juveniles, they have not triggered any additional grounds of inadmissibility, they have no criminal records, and visas are immediately available to them. By contrast, adjudication in immigration court would require this Court to maintain an unnecessary additional hearing on an already-overcrowded docket. Further, should the Visa Bulletin later retrogress, USCIS is in a better position to adjudicate Respondents’ adjustment applications; as long as the applications are filed while Respondents’ priority date is current, USCIS has clear procedures in place to hold the applications in abeyance and issue their visas as soon as they become available. *See* 7 USCIS Policy Manual Chapter 6(C)(5). By contrast, if faced with a Visa Bulletin retrogression, this Court would be required to maintain Respondents’ cases on an already-overburdened docket and tasked with monitoring the Visa Bulletin’s fluctuating priority dates before approving Respondents’ adjustment applications. In effect, the administrative burden would be much greater for this Court than for USCIS.

In sum, termination of Respondents’ removal proceedings is the most appropriate vehicle for promoting administrative efficiency and judicial economy during the COVID-19 pandemic. Termination will reduce the Court’s sizeable backlog and allow USCIS to adjudicate Respondents’ adjustment applications expeditiously and safely, without in-person contact.

**IV. CONCLUSION**

For the aforementioned reasons, Respondents respectfully request that this Court terminate their removal proceedings.

Respectfully submitted, Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name of Attorney]

[Name of Firm/Organization]

[Address of Firm/Organization]

**United States Department of Justice**

**Executive Office for Immigration Review**

**[Name] Immigration Court**

**[CITY, STATE]**

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In the Matters of: )

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First Name LAST NAME ) File Nos.: Axxx-xxx-xxx

First Name LAST NAME ) Axxx-xxx-xxx

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Respondents )

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**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of the Respondents’ Motion to Recalendar and 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 Honorable Immigration Judge

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service

To: [ ] Alien [ ] Alien c/of Custodial Officer [ ] Alien’s Atty/Rep [ ] DHS

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Court Staff \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

First Name LAST NAME, Axxx-xxx-xxx

First Name LAST NAME, Axxx-xxx-xxx

**PROOF OF SERVICE**

On [date] , I, [name] ,

(date of mailing or delivery) (printed name of person signing below)

Delivered a copy of this Motion to Recalendar and Terminate Removal

Proceedings

(name of document being served)

And any attached pages to Immigration and Customs Enforcement (“ICE”)

(name of party served)

At the following address: Office of the Principal Legal Advisor, [City]

(address of party served)

[OPLA address]

(address of party served)

By [Certified mail/ICE e-service/etc.]

(method of delivery)

(Signature) (Date)

1. Although Respondents initially conceded removability under INA §212(a)(6)(A)(i), they are no longer bound by their concession because the facts underlying the charge have changed, rendering it inaccurate. [↑](#footnote-ref-1)