

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

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██████████<sup>1</sup> a/k/a ██████████  
*Petitioner,*  
v.  
**Mellissa B. Harper**, in her Official Capacity as  
Field Office Director New Orleans ICE Field  
Office; **Scott Ladwig**, in his Official Capacity as  
Deputy Field Office Director, New Orleans ICE  
Field Office; **Kristi Noem**, in her official capacity  
as Secretary, U.S. Department of Homeland  
Security; **U.S. Department of Homeland Security;**  
and **U.S. Immigration and Customs  
Enforcement,**  
*Respondents.*

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Case No.

**Verified Petition for Writ of Habeas  
Corpus**

*Oral Argument Requested*

**INTRODUCTION**

1. This case is about a 32-year-old transgender human rights activist, Petitioner ██████████ a/k/a ██████████ ██████████ ██████████ (“Petitioner” or “██████████ or Ms. Westley”) who, on February 1, 2025, was detained by the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) (“government”) without any notice, warning or an opportunity to defend when she reported to a scheduled appointment with the

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<sup>1</sup> Petitioner identifies as a trans-Latinx woman. She was born with the name ██████████ ██████████ ██████████ but officially changed her name to ██████████ ██████████ in 2022. Respondents in this proceeding identify Petitioner only as ██████████ ██████████ ██████████ and therefore both names are included in the caption.

government. The message that [REDACTED] received from her ICE Intensive Supervision Program (“ISAP”) officer for the February 1, 2025, appointment set forth as follows:

Please send me a photo of any documents you have such as a passport, birth certificate etc. I am going to schedule you to be transferred to Msite which is less supervision. Please come on February 1, 2025, at 8:00am. We are scheduling a group of people so please arrive early, so you won’t have to wait. Thank you!

See Exh. 1, Text Message Appointment Notice.

2. The power of the government to detain and deport immigrants is not without limitations. To the contrary, the power of government to act is delineated by a specific set of statutes and federal regulations, and subject to the limitations of the United States Constitution.
3. On June 3, 2010, when she was 18-years-old, [REDACTED] was ordered removed by an Immigration Judge at the Oakdale Immigration Court pursuant to removal proceedings commenced on April 1, 1997. Because she was so fearful of the conditions of her immigration confinement as a transwoman, [REDACTED] who appeared *pro se* before the Immigration Judge, did not apply for relief from removal and accepted deportation to Honduras.
4. On July 8, 2024, [REDACTED] was granted an Order of Supervision (“OSUP”) by the government. See Exh. 2, OSUP. As is discussed more fully *infra*, in order to grant an OSUP, the government must make a determination that an individual is neither a danger to the community nor a flight risk.
5. Since the time she was granted an OSUP, [REDACTED] has been in complete and full compliance with the OSUP and was in complete and full compliance with the OSUP and all reporting requirements at the time of her unnoticed detention on February 1, 2025.
6. Contrary to the Text Message Appointment Notice, [REDACTED] was not placed on “Msite” but rather detained by the government. [REDACTED] now faces imminent removal to Honduras, a country renowned for the extrajudicial killing of transgender women, particularly those who are

publicly known human rights activists. As is discussed more fully *infra*, the unnoticed detention of Petitioner on February 1, 2025, and unlawful revocation of her OSUP without prior notice or opportunity to be heard, Respondents have acted in violation of statute, regulations, and the United States Constitution.

7. Moreover, as is discussed more fully *infra*, as a survivor of sex and labor trafficking in the United States, [REDACTED] has a pending T Visa application with the United States Citizenship and Immigration Services (“USCIS”). *See* Exh. 2, Declaration of Sarah T. Gillman (“Gillman Decl.”). T Visa status is a form of immigration relief for noncitizen victims of human trafficking in the United States and provides a pathway to lawful permanent residency. The Trafficking Victims Protection Act (“TVPA”) defines human trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 8 U.S.C. § 1101(a)(15)(T).
8. Recognizing that many noncitizens eligible for T visa status are in removal proceedings as a part of their trafficking exploitation, the Immigration and Nationality Act (“INA”) permits a detained victim in removal proceedings with a final order of removal from applying with USCIS, which has sole jurisdiction over such applications. 8 C.F.R. § 214.11(d); INA § 214.11(9). As explained further below, [REDACTED] faces a risk of unlawful deportation because physical presence in the United States is a condition of eligibility, and her T Visa application cannot be granted if she is prematurely removed from the country by the government. *See* 8 C.F.R. 214.11(g).<sup>2</sup>

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<sup>2</sup> The other remaining requirements are: (1) must be a victim of a severe form of human trafficking, (2) reported their experiences to a law enforcement agency, (3) and will suffer severe harm upon return to their home country. *See* 8 U.S.C. § 1101(a)(15)(T).

9. If [REDACTED] is deported from the United States, it would vitiate her right to access T Visa status and nullify Congress's command that noncitizens have access to protection from human trafficking. Therefore, as explained further below, the government's actions in detaining [REDACTED] for the purpose of removing her from the United States while she has a pending T Visa application violates the Due Process Clause under the Fifth Amendment of the United States Constitution, the Administrative Procedures Act ("APA"), the Trafficking Victims Protection Act ("TVPA"), the Immigration and Nationality Act ("INA"), and federal regulations.
10. The government's actions in taking her into custody without any notice or warning also violate [REDACTED] rights under the Fourth Amendment of the United States Constitution. The Text Message Appointment Notice that [REDACTED] received and complied with constitutes a "ruse" that was used by the government to arrest her without any notice or warning. *See* Ex. 1, The Text Message Appointment Notice. While the use of a "ruse" is not strictly prohibited by the Fourth Amendment, the Supreme Court has held that there are restraints against the government. *See Lewis v. United States*, 385 U.S. 206, 209 (1966). ("The various protections of the Bill of Rights, of course, provide checks upon such official deception for the protection of the individual."). The facts of a particular case will be considered to determine whether the government's use of a ruse violated a person's rights under the Fourth Amendment. In [REDACTED] case, there were no exigent circumstances or any circumstances to justify the use of a "ruse" to take her into custody. [REDACTED] followed the OSUP and all appointments she was required to attend in connection thereto.
11. The government's actions against [REDACTED] also violates the APA. The APA permits persons to challenge final agency actions in the federal courts. 5 U.S.C. §§ 702, 704, 706. Final agency action can be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in

accordance with law.” 5 U.S.C. § 706(2)(A)–(B). The government’s actions in detaining ██████ without any notice or warning and under the circumstances that exist in this case violate the APA.

12. Before she was taken without any notice or warning by the government, ██████ lived in New Orleans with her ten dogs, all of whom she adopted because they had been abandoned. In New Orleans, ██████ is a beloved, long-time community leader who advocates on behalf of LGBTQ+ and immigrant communities. Drawing from her own traumatic migration journey, ██████ became a campaign leader and director at the New Orleans-based community organization BreakOUT!. She has spearheaded initiatives that address the unique challenges faced by LGBTQ+ youth and immigrants, including educational programs, legal aid, and community-building efforts. She is also a founding steering committee member of the Southeast Dignity Not Detention Coalition, a coalition that works to advocate to end immigration detention in the Louisiana region. Most recently, ██████ started her own organization, the Sanctuary New Orleans Abolition Project (“SNAP”) to provide community-based services to LGBTQ+ people released from immigration detention in Louisiana.
13. In recognition of her work as a human rights activist, ██████ was awarded the 2024 Human Rights Award by Robert F. Kennedy Human Rights. In recognition of her efforts to combat injustice, Ms. Westley was recognized with the 2024 Robert F. Kennedy Human Rights Award; the Resilience Strength Award by the Latin American Foundation for Social Action; the 2024 Activist of the Year Award by the Ariana Center; and the Deep South LGBTQ Freedom Fighter Award by the Immigrant Alliance for Justice and Equality of Mississippi.

14. Without this Court's intervention, Respondents will continue the rushed and unnoticed process to remove ██████ to Honduras, where as a transgender human rights activist, she faces imminent violence and even death, in violation of the law.

#### PARTIES

15. ██████ is a 32-year-old transgender woman and a citizen and national of Honduras. She has lived in the United States since she was 11 years old and is a survivor of sex trafficking. She is also a long-time community-member and human rights activist in New Orleans, Louisiana, widely recognized for her work on behalf of LGBTQ+ and immigrant communities. She was detained by the government on February 1, 2025, without any notice or warning after appearing, as directed by her ISAP officer, for what was purported to be an appointment with MSite, a program held out by the government as requiring less supervision. Rather than being placed into the MSite program, ██████ was detained.

16. Respondent Mellissa B. Harper is the New Orleans ICE Field Office Director and is responsible for ICE policies and operations in the New Orleans District, which stretches across Alabama, Arkansas, Louisiana, Mississippi, and Tennessee. ██████ is currently detained by ICE within this area of responsibility. Along with the other named Respondents, Respondent Harper is responsible for ICE's unlawful detention for the purposes of removal of ██████ She is named in her official capacity.

17. Respondent Scott Ladwig is the New Orleans ICE Deputy Field Office Director and, upon information and belief, is responsible for ICE policies and operations in the New Orleans ICE Field Office's Area of Responsibility, which stretches across Alabama, Arkansas, Louisiana, Mississippi, and Tennessee. Upon information and belief, Respondent Ladwig is supervised by Respondent Mellissa Harper. Along with the other named Respondent Ladwig is

responsible for ICE's unlawful detention for the purposes of removal of [REDACTED] He is named in his official capacity.

18. Respondent, Kristi Noem, is named in her official capacity as the Secretary, U.S. Department of Homeland Security. In this capacity, she is responsible for overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondents Harper and Ladwig.
19. Respondent U.S. Department of Homeland Security ("DHS") is an executive department of the United States Government headquartered in Washington, D.C. DHS is the parent agency of ICE.
20. Respondent ICE is a component agency of DHS and is responsible for enforcing federal immigration law, including the detention and removal of immigrants.

#### **JURISDICTION AND VENUE**

21. This Court has jurisdiction under the U.S. Constitution. U.S. Const. art. I § 9, cl. 2 ("The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require.").
22. This Court also has jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act), the Immigration and Nationality Act ("INA") and regulations thereunder; the Fifth Amendment of the United States Constitution; the Fourth Amendment of the United States Constitution and the Administrative Procedure Act ("APA"), 5 U.S.C § 701.
23. Petitioner's current arrest and detention – and the rushed efforts to remove her – constitutes a "severe restraint" on her individual liberty such that Petitioner is "in custody" of the

Respondent in violation of the . . . laws of the United States. *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

24. Additionally, this Court has the jurisdiction to grant declaratory relief pursuant to the Declaratory Judgement Act, 28 U.S.C. § 2201.

25. Venue is proper in the U.S. District Court for the Eastern District of Louisiana because [REDACTED] was detained within this District on February 1, 2025, and remains in this District. *See* 28 U.S.C. § 1391(e).

26. Venue is also proper because, upon information and belief, Respondents Melissa B. Harper and Scott Ladwig are in this District.

#### **RELEVANT STATEMENT OF FACTS AND PROCEDURAL HISTORY**

27. [REDACTED] was born in Santa Barbara, Honduras.

28. [REDACTED] has lived in the United States for nearly two decades.

29. She has lived in New Orleans for nearly two decades.

30. [REDACTED] has been the victim of trafficking as a minor and an adult.

31. [REDACTED] identifies as a trans-Latinx woman. She officially changed her name to [REDACTED] in 2022.

32. [REDACTED] was granted an OSUP in July 2024.

33. On February 1, 2025, [REDACTED] was detained without notice or warning. *See supra*.

34. [REDACTED] has a pending T Visa application and if she is deported her right to pursue this relief will be vitiated.

## LEGAL FRAMEWORK

### ██████████ Due Process, Statutory, and Regulatory Rights to Release from Detention and Unlawful Re-Detention

35. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. 678, 690-691 (2001).
36. ██████████ is neither a danger nor a flight risk. ICE determined that ██████████ is neither a flight risk nor a danger when they granted her an OSUP.
37. Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment. Because ██████████ detention on February 1, 2025, has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, her continued detention is unlawful. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *see also Perry v. Sindermann*, 408 U.S. 593, 601-03 (1972) (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).
38. The revocation of ██████████ release based solely on her removal now being foreseeable does not satisfy the minimum requirements of due process, because that revocation is not the product of any individualized review and alleges no relevant change in circumstances altering the original assessment of her risk of flight. *See Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017). (finding that “[t]he Supreme Court has recognized that an ‘alien may no doubt be

returned to custody upon a violation of [supervision] conditions,’ , but it has never given ICE a carte blanche to re-incarcerate someone without basic due process protection.”) (citing *Zadvydas*, 533 U.S. at 700).

39. The government’s presumed basis for re-detaining ██████ is 8 U.S.C. § 1231, the statute governing detention following a final order of removal (“post-order detention”). Under the terms of this statute and the governing regulations, ██████ detention is unlawful.
40. The INA specifies circumstances upon which a person may be released from custody, and it does not provide for re-detention except impliedly for a violation of those terms. The relevant regulatory framework (8 C.F.R. §§ 241.4(l) and 241.13(i)) authorizes revocation of an individual’s release on an OSUP only in certain contexts. Section 241.4(l) specifies revocation may occur upon violation of the conditions of release or when, in the district director’s opinion, revocation is in the public interest because one of four conditions is met: “(1) the purposes of release have been served; (2) the alien violates any condition of release; (3) it is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (4) the conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R. § 241.4(l)(2). Section 241.13(i) provides further conditions where release decisions may be revoked, only for the purpose of removal. Notably, several of these provisions are found only in the regulations and not the statute and are ultra-vires, but even to the extent they apply, Respondents have failed to comply with the process.
41. 8 U.S.C. § 1231 authorizes the detention of individuals following a final order of removal only under specifically delineated circumstances. The third subclause of 8 U.S.C. § 1231(a)(3) provides that an individual who is not removed within a 90-day statutory removal period “*shall* be subject to supervision” (emphasis added) under specific terms, including requirements that

he or she appear periodically before an immigration officer and obey any written restrictions. *See also* 8 C.F.R. § 241.5 (specific conditions for release—involving but not limited to reporting requirements and travel document acquisition requirements—should an order of supervision be issued).

42. Under 8 C.F.R. § 241.13(i), [REDACTED] has, at minimum, a regulatory right to a detailed explanation for the reasons of revocation as well as an interview to contest the basis for the revocation. At a minimum, ICE “has the duty to follow its own federal regulations.” *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003) (quoting *Nelson v. I.N.S.*, 232 F.3d 258, 262 (1st Cir. 2000)). It has failed to do so here.

43. To the extent that Respondents have revoked [REDACTED] OSUP without notice or an opportunity to be heard, they violated the statute and the applicable regulations – 8 C.F.R. §§ 241.4(l) and 241.13(i) – by failing to provide her with a particularized notice of the reason(s) of the revocation of her release or an opportunity to respond to the allegations contained therein. When the government fails to comply with its own federal regulations, as it did when it revoked [REDACTED] release in violation of its own procedures, the action should be found invalid. *See Rombot*, 296 F. Supp. 3d at 388.

44. Moreover, under the APA, “final agency action for which there is no other adequate remedy in a 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 . . . 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).

45. The decision to detain [REDACTED] who had previously been released on an OSUP, and neither violated nor failed to comply with the OSUP, must be reviewed by this Court and found to be

“arbitrary, capricious, an abuse of discretion and not in accordance with the law.” 5 U.S.C. §§ 706(2)(A), (E). Absent this Court’s intervention, ██████ does not have any “remedy” to challenge the decision of Respondent

### T Visa

46. At issue in this case is the “physical presence requirement” of ██████ currently pending T visa. 8 U.S.C. §1101(a)(15)(T) (as amended). The applicant’s physical presence in the United States must be on account of a severe form of trafficking in persons. USCIS has historically interpreted this requirement in the present tense, meaning that the victim has not left the United States since the trafficking occurred. 8 C.F.R. § 214.11(g) (2002); *see also* “Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status,” [www.federalregister.gov/d/2016-29900/p-222](http://www.federalregister.gov/d/2016-29900/p-222). Therefore, an executed order of removal from the United States would render a noncitizen survivor of human trafficking ineligible to apply for T Nonimmigrant Status because they are no longer present in the United States.
47. Individuals who pursue lawful immigrant status in the United States have rights under the Due Process Clause of the Fifth Amendment. The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citations omitted). Procedural due process “imposes constraints on government decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Id.* at 332.
48. Once a party has identified a protected liberty or property interest, the Court must determine whether constitutionally sufficient process has been provided. *See id.* In making this determination, the Court balances: (1) “the private interest that will be affected by the official

action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probably value, if any, of additional or substitute procedural requirement would entail;” (3) “the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

49. Due process cases recognize a broad liberty interest rooted in both the *fact* of deportation and the *process* of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation “visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom.”); *see also Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1160 (C.D. Cal. 2018) (finding a noncitizen possesses a “strong liberty interest” where being deported means being separated from home and family). While this liberty interest typically arises in removal proceedings, courts have found procedural due process violations for persons not in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (forms issued to noncitizens charged with civil document fraud violated due process clause); *Rojas v. Johnson*, 305 F. Supp. 3d 1176, 1187 (W.D. Wash. 2018) (concluding that “Agency Defendants do not provide sufficient notice of the one-year deadline to satisfy the Due Process clause” to asylum-seeker subclasses both in and out of removal proceedings).
50. █████ has a protected due process interest in having her T Visa adjudicated and to remain in the United States and ultimately receive lawful permanent residence status. Should █████ be removed prior to the adjudication of her T visa application, Petitioner would be permanently deprived of her ability to acquire T nonimmigrant status because she would no longer be physically present in the United States. Thus, █████ faces a risk of erroneous deportation because physical presence in the United States is a condition of eligibility, and her T Visa

application cannot be granted if she is prematurely removed from the country by Respondent.  
*See* 8 C.F.R. 214.11(g).

51. Two federal courts to have addressed this issue have agreed that people seeking T Nonimmigrant Status have acute liberty interests to be protected. *See S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902, at \*7 (S.D.N.Y. Nov. 26, 2018) (ordering a stay of petitioner’s removal pending adjudication of a T visa); *Fatty v. Nielsen*, No. C17-1535-MJP, 2018 WL 3491278, at \*5 (W.D. Wash. July 20, 2018) (same).
52. Interpreted in light of the Constitution, the INA and its applicable regulations do not permit potential deportation while an individual is engaged in the process of attempting to regularize her immigration status through a T Visa application. Rather, the INA seeks to protect individuals who are victims of human trafficking, even if they live in the United States unlawfully and are under final orders and removal.
53. █████ has a liberty interest and property interest at stake under the statute. ICE’s effort to prematurely deport █████ before USCIS can adjudicate her T Visa application constitutes an unlawful attempt to shortchange this process.

#### **Fourth Amendment**

54. The facts of a particular case will be considered to determine whether the government’s use of a ruse violated a person’s rights under the Fourth Amendment. In █████ case, there were no exigent circumstances or any circumstances to justify the use of a “ruse” to take her into custody. █████ followed the OSUP and all appointments she was required to attend in connection thereto. *See Lewis v. United States*, 385 U.S. 206, 209 (1966). (“The various protections of the Bill of Rights, of course, provide checks upon such official deception for the protection of the individual.”).

**CLAIMS FOR RELIEF**

**COUNT I:**

**██████████ DETENTION IS VIOLATES THE FIFTH AMENDMENT'S DUE  
PROCESS CLAUSE BECAUSE IT BEARS NO REASONABLE RELATIONSHIP  
TO ANY LEGITIMATE PURPOSE**

55. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
56. To comport with due process, detention must bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-691.
57. Petitioner is neither a danger nor a flight risk. The detention of Petitioner is arbitrary on its face.
58. ██████████ has dutifully complied with every condition of her OSUP. Further, Petitioner's OSUP became administratively final as of 2010, her continued detention is arbitrary and violates due process.
59. Because Petitioner's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, her continued detention is unlawful.

**COUNT II:**

**██████████ DETENTION VIOLATES THE INA, REGULATIONS THEREUNDER,  
AND THE FIFTH AMENDMENT DUE PROCESS CLAUSE BECAUSE SHE HAS  
BEEN RELEASED ON A VALID ORDER OF SUPERVISION**

60. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

61. Respondents' presumed basis for re-detaining Petitioner is 8 U.S.C. § 1231, the statute governing detention following a final order of removal ("post-order detention").

62. Under the terms of this statute and the governing regulations, Petitioner's detention is unlawful.

**COUNT III:**

**REMOVAL PRIOR TO THE ADJUDICATION OF HER T VISA APPLICATION VIOLATES THE APA**

63. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

64. Under the APA, "final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. §704.

65. The reviewing court "shall ... 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," 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." *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations omitted).

66. Moreover, under the APA, "final agency action for which there is no other adequate remedy in a 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 . . . 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).

67. The APA also sets forth rule-making procedures that agencies must follow before adopting substantive rules. *See* 5 U.S.C. 553. DHS followed these rulemaking procedures following the

passage of the Trafficking Victims Protection Act (“TVPA”), authorizing T Nonimmigrant Status, *see* 867 Fed. Reg. 4784.

68. Petitioner’s deportation would render her statutorily ineligible for a T Visa which would be a direct violation of the APA since it is not in accordance with the law and is an abuse of discretion, arbitrary, capricious and not in accordance with the law. 5 U.S.C. §§ 706(2)(A),
69. Absent this Court’s intervention, [REDACTED] does not have any “remedy” to challenge the decision of Respondent

#### COUNT IV:

#### **[REDACTED] REMOVAL PRIOR TO THE ADJUDICATION OF HER T VISA APPLICATION VIOLATES THE TVPA, THE IMMIGRATION AND NATIONALITY ACT, AND FEDERAL REGULATIONS**

70. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
71. To be statutorily eligible for a T Visa, Petitioner *must* be physically in the U.S. on account of trafficking per 22 U.S.C. § 7102(8); INA § 101(a)(15)(T)(i).
72. First, in attempting to execute Petitioner’s order of removal, Respondents have attempted to strip Petitioner’s right to pursue a T Visa. Congress passed the TVPA with specific findings that it intended to grant T Visa status to detained victims with final orders of removal with the underlying goal of treating victims as “... victims, not criminals.” Trafficking Victims Protection Act of 2000, Purpose and Findings (H.R. 8856).” Sec.102(b)(17). Congressional Record (October 5, 2000) (“Existing laws fail to make clear distinctions between victims of trafficking and the perpetrators”); *see also* Senator Clinton (NY), Trafficking Victims Protection Act of 2000, *Congressional Record*, S8276 (July 16, 2004) (noting that many victims are mischaracterized as “illegal” migrants and are deported).

73. Second, by attempting to deport Petitioner, Respondents are acting in an arbitrary and capricious manner.

74. The *Accardi* doctrine applies in a broad set of contexts, including where the agency rules in question implicate an individual's due process rights, or in circumstances involving violation of the APA. *Accardi* is the bedrock for the proposition that federal agencies are required to follow their own procedures. *Morton*, 415 U.S. at 233–35; *United States v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) (courts must overturn agency actions which do not scrupulously follow the regulations and procedures promulgated by the agency itself); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 341 (D.D.C. 2018) (finding plaintiffs demonstrated a likelihood of success on the merits of their *Accardi* claim by arguing that DHS was not abiding by their own policies and procedures when adjudicating parole requests submitted by asylum seekers.)

75. Third, in addition to the Petitioner's due process interests, there is also a significant government interest favoring a stay to effectuate the T Visa program and permit victims of human trafficking to assist law enforcement to detect and disrupt criminal activity. T Nonimmigrant Status was created to "substantially allow for more aggressive prosecution." Trafficking Victims Protection Act of 2000, Section 12, Strengthening Prosecution and Punishment of Traffickers. (H.R. 8881)," Sec.102(a), *Congressional Record* (October 5, 2000); *see also* Senator Brownback (WY), "Victims of Trafficking and Violence Protection Act of 2000," *Congressional Record*, S10139 (October 10, 2000).

#### COUNT V:

#### **██████████ RIGHTS UNDER THE FOURTH AMENDMENT WERE VIOLATED**

76. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

77. [REDACTED] followed the OSUP and all appointments she was required to attend in connection thereto.

78. There were no exigent circumstances or any circumstances to justify the use of a “ruse” to take her into custody. [REDACTED] followed the OSUP and all appointments she was required to attend in connection thereto. *See Lewis*, 385 U.S. at 209

79. Respondents violated [REDACTED] rights under the Fourth Amendment.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Temporarily stay [REDACTED] removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;
- c. Declare that [REDACTED] detention violates the INA, regulations and the Due Process Clause of the Fifth Amendment because she has been released on an OSUP;
- d. Declare that [REDACTED] unlawful detention violated her rights under the Fourth Amendment;
- e. Declare that any deportation of [REDACTED] prior to the full adjudication of her application for T Nonimmigrant Status would violate the Due Process Clause of the Fifth Amendment, the TVPA, INA, APA, and federal regulations;
- f. Order [REDACTED] immediate release or, in the alternative, a constitutionally adequate, individualized hearing before a neutral decisionmaker in which Respondents bear the burden of establishing that Petitioner’s continuing detention is justified;
- g. Order a stay of removal until [REDACTED] application for a T visa is fully adjudicated, including all administrative appeals;

- h. Award Petitioner costs and reasonable attorneys' fees; and
- i. Order such other relief as this Court may deem just and proper.

Date: February 1, 2025

Respectfully submitted,

/s/ Charles Andrew Perry  
Charles Andrew Perry  
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\*Pro hac vice applications forthcoming

† Not admitted in DC; working remotely from and admitted in Louisiana only

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

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner's legal team the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated:           New Orleans, Louisiana  
                  February 1, 2025

/s/ Charles Andrew Perry  
Charles Andrew Perry  
Louisiana Bar No. 40906  
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