UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[redacted],

Petitioner,

-against-

DONALD J. TRUMP, in his official capacity as President of the United States; JUDITH ALMODOVAR, in her official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement, KRISTI NOEM, in her official capacity as Secretary of the United States Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY, and U.S. IMMIGRATION AND CUSTOMS ENFORCMENT,

Respondents.

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FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

Case No. 25-4826

INTRODUCTION

1. [redacted] (hereinafter "[redacted]" or "Petitioner") is a fifty-three-year-old mother and grandmother with no criminal history who has a pending U-Visa application due to a sexual assault, and who has been in the United States on supervised release for over six years. During those six years, she has complied with every requirement of her supervised release, attending all check-ins and wearing a monitoring device.

2. In 2005, and in 2019, [redacted] came to the United States fleeing domestic violence from her husband—a Honduran police officer—and direct terrifying threats

from a dangerous gang in Honduras. She has survived a string of unimaginable traumas, which are known to the Government.

3. On June 4, 2025, she attended a required check-in at the offices of the Immigration and Customs Enforcement ("ICE") contractor who manages her supervised release.

4. While there, she was separated from her attorney without cause, and thereafter disappeared by Respondents. Petitioner was located and able to have access to counsel only as a result of filing this action.

5. [redacted]'s detention, without cause or any kind of notice or opportunity to be heard, was unconstitutional.

6. Only by virtue of the filing of the within habeas petition, Petitioner escaped being unlawfully removed to Honduras.

7. Since filing this action, Respondents have repeatedly changed course and offered contradictory reasons for the basis of their actions.

8. Specifically, Respondents initially claimed to have detained Ms. [redacted] relying on a 2019 reinstatement of removal order. Then, after this litigation commenced, Respondents determined that the 2019 reinstatement notice was facially invalid and indicated that they intended to remove her as soon as possible by relying on a 2005 removal order.

9. The 2019 reinstatement order, which the Government has acknowledged on the record and under penalty of perjury is invalid on its face, is what the Government has relied on to keep custodial control of Ms. [redacted] for the last six years. The Government's custodial control included subjecting her to regular check-ins at the ICE field office, wearing an uncomfortable and stigmatizing monitoring device and ultimately resulted in her unlawful detention—a detention whereby she did not have the ability to communicate with her loved ones

or her counsel, she lacked access to essential medications and was held for days in an overcrowded temporary holding center where she was denied the most basic necessities—access to showers, regular meals and even a place to sleep. The entirety of the Government's actions, which clearly violated Ms. [redacted]'s constitutional rights, and her humanity, were pursuant to a reinstatement order that was clearly invalid on its face.

10. In addition to Ms. [redacted] being subject to the Government's custody unlawfully for the last six years, she has also been denied the opportunity to seek humanitarian relief which protects her from being removed from the United States based on her fear of death and torture if she returned to Honduras.

11. Now, the Government contends that it intends to rely on the 2005 removal order to deport Ms. [redacted] back to a place where she fears for her safety. However, this 2005 removal order was already executed when Ms. [redacted] departed the United States not long after an *in absentia* order was entered in October 2005. As a result, the 2005 cannot be executed upon again.

12. Based on the Government's egregious conduct, which has continued for a period of six years, Ms. [redacted] must seek injunctive relief from this court to prevent her re-detention, end the Government's continued supervision of her and prohibit the Government from unlawfully removing to a place that she fears persecution.

PARTIES

13. Petitioner [redacted] is a Honduran national. She is a mother of four children, grandmother to two children, and her youngest child recently completed his senior year of high school. Ms. [redacted] has no criminal history; she currently has a pending application for a U nonimmigrant visa based on her status as a crime victim and her cooperation

with law enforcement in prosecuting that crime. Ms. [redacted] and her family live in Staten Island.

14. Respondent Donald J. Trump is named in his official capacity as the President of the United States. In this capacity, he is responsible for the policies and actions of the executive branch, including the Department of Homeland Security. Respondent Trump's address is the White House, 1600 Pennsylvania Ave. NW, Washington, D.C. 20500.

15. Respondent Judith Almodovar is named in her official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations and is a custodian of Petitioner. Respondent Almodovar's address is New York Immigration and Customs Enforcement Field Office, 26 Federal Plaza, New York, New York 10278.

16. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to remove Petitioner; and as such is a custodian of Petitioner. His address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

17. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to Section 103(a) of the

Immigration and Nationality Act, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Southern District of New York; is legally responsible for pursuing any effort to detain and remove Petitioner; and as such is a custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

18. 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.

19. Respondent ICE is a component agency of DHS and is responsible for enforcing federal immigration law, including the detention and removal of immigrants.

JURISDICTION & VENUE

20. The Court has subject matter jurisdiction pursuant to Article 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.").

21. The Court also has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 (habeas corpus) and the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

22. Venue is proper in the Southern District of New York Under 28 U.S.C. § 2241 and 28 U.S.C. § 1391 because Petitioner has been detained at 26 Federal Plaza in New York, New York in the Southern District of New York by ICE and was under the custody and control of ICE officials in the Southern District at the time of the filing of this petition.

23. The New York ICE Field Office and Respondent Almodovar directed Ms. [redacted]'s detention in New York, New York and representatives of the New York ICE

Field Office told her counsel that she was being taken to 26 Federal Plaza in New York, New York. Meanwhile, Respondents have continuously withheld information about Ms. [redacted]'s location from Petitioner's counsel since she was detained more than 60 hours ago.

LEGAL BACKGROUND

Reinstatement of Removal

24. The statutory and regulatory scheme pertaining to reinstatement of removal is found at 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8. These provisions authorize the Attorney General to reinstate a prior removal order without being subject to further review if the petitioner "has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal." 8 U.S.C. § 1231(a)(5).

25. Prior to 1997 amendments, authority to reinstate an order of removal was vested in an Immigration Judge pursuant to a hearing process. After 1997, the Attorney General or his/her designee was designated with such authority. *Compare* 8 C.F.R. § 242.23(b) (repealed 1997) (requiring a hearing before an immigration judge for reinstatement), *with* 8 C.F.R. § 241.8(a) ("The alien has no right to a hearing before an immigration judge in [reinstatement proceedings].")

26. Once a removal order is executed upon, including when a noncitizen subject to a removal order leaves the country, the order of removal continues to exist, but it may not be re-executed absent reinstatement.

Reasonable Fear Interview Process

27. On its face, the reinstatement statute bars noncitizens from immigration relief. However, consistent with the United States' commitment to *nonrefoulement*, two types of mandatory protection are exempt from the relief bar: withholding of removal under 8 U.S.C. §

1231(b)(3) and protection under the United Nations Convention Against Torture ("CAT"). 8 C.F.R. § 208.31.

28. When an individual who is subject to reinstatement of a removal order expresses a fear of return to the country designated in the order, DHS must "immediately" refer the individual to an asylum officer for a screening interview to determine whether the noncitizen's fear is reasonable. 8 C.F.R. §241.8(e). Under 8 C.F.R § 208.31(b), "[i]n the absence of exceptional circumstances, this determination will be conducted within 10 days of the referral" to the asylum officer for a screening.

29. If the asylum officer determines the individual's fear is not reasonable, the individual can seek review of that determination before an immigration judge (IJ). 8 C.F.R. § 208.31(g).

30. If either the asylum officer or the reviewing IJ finds their fear is reasonable, the noncitizen is placed in withholding-only proceedings before an IJ where they can seek protection from deportation by applying for withholding of removal and/or CAT protection. 8 C.F.R. §§ 208.31(e) (requiring asylum officer to refer case to IJ); 1208.31(e) (same); 241.8(e) (same); 1241.8(e) (same); 208.2(c)(2) (IJ jurisdiction in referred cases); 1208.2(c)(2) (same); 1208.16 (withholding only hearings before IJ).

31. If the IJ denies the withholding and/or CAT application, the individual may seek review before the Board of Immigration Appeals. 8 C.F.R. § 208.31(e), (g)(2)(ii).

32. DHS cannot deport an individual who is granted withholding of removal or CAT protection to the country designated for removal, and persons granted withholding can remain in the United States and work legally.

ICE's Authority to Subject Noncitizens to Custody Under an Order of Supervision

33. ICE's authority to subject a noncitizen to Government custody constraints via an order of supervision can only arises from the existence of an actionable removal order.

34. 8 U.S.C. § 1231(a)(3), which sets forth the statutory authority for orders of supervision, provides that an individual who is not removed within a 90-day statutory removal period "shall be subject to supervision" under specific terms, including requirements that he or she appear periodically before an immigration officer and obey any restrictions contained in the order of supervision.

35. 8 C.F.R. §§ 241.4(d), (l) and 241.13(i)), set forth parameters for imposition of an order of supervision, and revocation of an individual's release on an order of supervision in certain contexts.

36. 8 C.F.R. § 241.4 indicates that "authority to continue an alien in custody or grant release or parole" exclusively applies to noncitizens who have been "ordered removed." *See* §§ 241.4(a)(1)–(4).

37. 8 C.F.R. § 241.8 indicates that a noncitizen who "illegal reenters the United States after having been removed, or have departed voluntarily, which under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order."

U-Visa Background

38. The Administration's draconian enforcement policy with respect to U-Visa applicants like Petitioner directly contradicts the Congressional intent behind the U-Visa program, which is intended to enhance public safety. Upon information and belief, it was the Agency's longstanding practice to refrain from taking enforcement actions against U-Visa

applicants absent serious countervailing factors, which is in keeping with the relevant provisions of the Immigration and Nationality Act.

39. Congress authorized the U-Visa program in 2000 as part of a broad effort to extend legal protection to noncitizens who were victimized by crimes committed after their arrival in the United States. *See* Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464 (codified at 8 U.S.C. § 1101(a)(15)(U)). The purpose of the U-Visa provisions is to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of [noncitizens], and other crimes . . . , while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." Pub. L. 106-386 at § 1513(a)(2)(A).

40. A grant of a U-Visa is a grant of nonimmigrant status, allowing the noncitizen to live and work in the United States as a visa holder. After at least three years of physical presence in the United States, a person granted a U-Visa nonimmigrant status may apply for permanent resident status. *See* 8 U.S.C. § 1255(m).

41. The U-Visa legislation limits the maximum number of persons accepted to 10,000 per year. 8 U.S.C. § 1184(p)(2).

42. The regulations at 8 C.F.R. § 214.14(d)(2) authorize the United States Citizenship and Immigration Service ("USCIS") to issue deferred action and work authorization to U-Visa applicants who, solely due to the 10,000 annual cap, are not granted U-Visa status as a principal applicant. This places the applicant on the waitlist for the visa.

43. In addition, the U-Visa statute and regulations authorize certain family members to qualify for derivative U-Visa nonimmigrant status where they were not the direct victim of a

crime, but were a spouse, child, and sometimes a parent or sibling, of an applicant who was a direct victim of a crime. 8 U.S.C. § 1101(a)(15)(U)(ii); 8 C.F.R. § 214.14(a)(10).

44. Individuals are eligible for U nonimmigrant status if they: (1) are the victim of qualifying criminal activity that occurred in the United States or its territories or possessions; (2) have suffered substantial physical or mental abuse as a result; and (3) have been helpful to law enforcement in the detection, investigation, or prosecution of such criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U).

45. As relevant here, sexual assault, and abusive sexual contact are qualifying crimes for a U-visa. 8 U.S.C. § 1101(a)(15)(U)(iii).

46. To apply for a U-visa, a petitioner must file with USCIS a Form I-918, Petition for U Nonimmigrant Status; Form I-918, Supplement B, a certification from a recognized law enforcement official confirming that the noncitizen has cooperated in the investigation or prosecution of the criminal activity; and a signed statement by the petitioner describing the facts of their victimization. The petitioner may submit additional supporting evidence. The principal U-visa petitioner may request that a qualifying family member, such as the petitioner's spouse, be included as a derivative applicant by filing a Form I-918, Supplement A.

47. If USCIS determines that the petitioner has met the requirements for U-1 nonimmigrant status, regulations indicate that USCIS "*will approve"* Form I-918. 8 CFR§ 214(c)(5)(i).

48. A U-visa applicant also must be admissible to the United States. 8 C.F.R. § 214.14(c)(2)(iv). If an applicant is not admissible, he or she is eligible for a waiver of the grounds that render him inadmissible by filing Form I-192 with supporting documentation with the U-visa petition. 8 C.F.R. § 212.17(a).

49. A person with an order of removal is eligible to apply for a U-Visa. Once the U-Visa is approved, he or she may seek reopening of the removal order before an immigration judge to terminate removal proceedings. 8 C.F.R. § 214.14(f)(6)). If the removal order was issued by the Department of Homeland Security, as opposed to an immigration judge, then the removal order is cancelled by operation of law once the U-Visa is approved. *Id.*

50. Congress has authorized the Secretary of Homeland Security to grant "an administrative stay of a final order of removal" to allow U-Visa applicants to remain in the United States pending approval of their application, if the Secretary determines that the application "sets forth a prima facie case for approval." 8 U.S.C. § 1227(d)(1).

51. USCIS has sole jurisdiction over all petitions for U-Visas, but ICE is responsible for granting administrative stays of removal to U-Visa applicants subject to final orders of removal. 8 C.F.R. § 241.6; 8 C.F.R. § 214.14(c)(ii). U-Visa Stay Directives.

52. An application is bona fide where it 1) is complete and properly filed; 2) includes completed biometric and biographical background checks; and 3) presents a prima facie case for approval of the benefit as the phrase is used in 8 U.S.C. §1227(d)(1). *Id.* at § 3.1.

53. USCIS guidance indicates that the bona fide determination process "satisfies the prima facie standard that ICE previously requested in specific circumstances."[1]

54. Upon information and belief, USCIS guidance indicates that the bona fide determination process "satisfies the prima facie standard ICE previously requested in specific circumstances."

[1] USCIS, *Policy Manual, Volume 3 – Humanitarian Protections and Parole, Part C - Victims of Crime, Chapter 5 – Bonafide Determination Process*, https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited June 10, 2025).

55. Moreover, USCIS guidance indicates that "As a matter of policy, USCIS interprets 'bona fide' as part of its administrative authority to implement the statute as outlined below. Bona fide generally means 'made in good faith; without fraud or deceit.' Accordingly, when interpreting the statutory term within the context of U nonimmigrant status, USCIS determines whether a petition is bona fide based on the petitioner's compliance with initial evidence requirements and successful completion of background checks. If USCIS determines a petition is bona fide, USCIS then considers any national security and public safety risks, as well as any other relevant considerations, as part of the discretionary adjudication."[2]

FACTUAL SUMMARY

Ms. [redacted]'s Arrival and Early Days Seeks Refuge in the United States in 2005 and 2019.

56. Ms. [redacted] first came to the United States in or around April 23, 2005, fleeing from her abusive husband in Honduras. After she entered, she had contact with immigration authorities and was put into removal proceedings.

57. Ms. [redacted] was in a severely traumatized state at the time of her 2005 entry into the United States. Just before crossing into the United States, she was raped at gunpoint in Mexico. Ms. [redacted] relayed this fact to immigration officials.

58. Upon being released from custody, [redacted] moved to Louisiana, and subsequently Boston for a period of time, where she had family that could support her. However, her husband came to find her in the United States, and he continued to torment and abuse her.

59. She was ordered removed *in absentia* by the Harlingen Immigration Court on October 21, 2005.

[2] *Id*.

60. Fortunately, her husband returned to Honduras, and Ms. [redacted] believed she was safe. However, while she was pregnant with her youngest child, she received a call that her husband had attacked her eldest child back in Honduras. She flew back to Honduras, knowing that she had to protect her children from her husband.

61. While living in Honduras, Ms. [redacted] ran a small restaurant out of their home. Gang members from MS-13 began threatening her, telling her that she needed to pay them a "war tax." She did not pay them, and they demanded that she start selling drugs for them. After she refused to cooperate, they threatened to harm her and her family.

62. One night, a gang member came by her house and shot at Ms. [redacted], killing one of her patrons. After the murder attempt, Ms. [redacted] was able to convince her husband that she and her youngest child should seek safety in the United States.

63. Ms. [redacted] and her son [redacted] arrived in the United States on March 9, 2019. [redacted] was placed into removal proceedings, and Ms. [redacted] was placed under an order of supervision, as she had a prior removal order. [redacted] applied for political asylum and also applied for Special Immigrant Juvenile Status (SIJS), based on abandonment by his father. His SIJS application was granted in December 2023. [redacted] recently graduated from high school in Staten Island.

64. Ms. [redacted] was issued a Notice of Intent/Decision to Reinstate Prior Order dated March 14, 2019, indicating that Respondents "intends to reinstate the order of removal . . . entered on October 21, 2005 at Harlingen, Texas."

65. The reinstatement order further indicates that Ms. [redacted] "departed voluntarily on September 15, 2005" *prior* to the October 2005 in absentia order. This fact stems from a statement taken from Ms. [redacted] at 4:01 a.m. on March 14, 2019. Upon

information and belief, no surrounding context was elicited from Ms. [redacted] to pinpoint the accuracy of this date estimation.

66. Since 2019, when Ms. [redacted] was released pursuant to the order of supervision, she has dutifully complied with its terms, diligently reporting to scheduled check-ins and wearing an uncomfortable and humiliating electronic wrist monitor issued to her in connection with the Intensive Supervision Appearance Program ("ISAP").

Ms. [redacted]'s U-Visa Application

67. In May 2021, Ms. [redacted] was the victim of attempted rape and abusive sexual contact at her home in Staten Island. She made a complaint to the New York Police Department, and cooperated with the investigation. Based on this incident, Ms. [redacted] has applied for a U-Visa, for immigrant victims of crime who cooperate with law enforcement.

68. Her U-Visa application remains pending as of February 14, 2025.

69. This incident of sexual assault, in addition to the other traumatic incidents that Ms. [redacted] suffered in her life, have caused her to suffer adverse effects of trauma. She works with a psychologist to help process her experiences.

70. Ms. [redacted] also suffers from high blood pressure, for which she takes 20 mg Lisinopril daily.

Ms. [redacted]'s Repeated Requests for a Reasonable Fear Interview

71. For several years, Ms. [redacted] has been under an order of supervision from both ICE and ICE contractors, through the ISAP.

72. Ms. [redacted] has reported to her ICE check-ins consistently since she first entered the United States.

73. In preparation for her check-in on March 6, 2025, Ms. [redacted] and her attorneys at Legal Services NYC, submitted a request for a Reasonable Fear Interview to the NYC ICE Outreach email mailbox and to the New York Asylum Office.

74. At the March 6 check-in, Ms. [redacted] and her counsel, David Wilkins, appeared at the ICE office on the 5th floor of 26 Federal Plaza. There, they submitted the original signed copy of Ms. [redacted]'s request for a Reasonable Fear Interview to ICE and also told the deportation officer on duty about her pending U-Visa application (whose receipt had not yet been issued by USCIS).

75. In fact, on or about April 23, 2025, Ms. [redacted] Petitioner's counsel was informed by also received a notice from the New York Asylum Office that they were not scheduling Credible and Reasonable Fear Interviews for immigrants who, like Ms. [redacted], were not detained.

76. ICE scheduled her to return on June 17, 2025.

77. In the interim, her counsel David Wilkins reached out to and corresponded with the ICE officers assigned to the case, Christopher Finnie, Anthony Caballero, and David Scott.

Ms. [redacted]'s June 4, 2025 Detention

78. Ms. [redacted] was also subject to an ISAP order of supervision. As a result, she was wearing an electronic monitor on her wrist and was required to report in-person and virtually. She was at all times compliant with her ISAP order of supervision.

79. On Monday, June 2, 2025, Ms. [redacted] received an automated message that she was expected to check-in in person at the ISAP offices on Tuesday June 3rd or Wednesday June 4th.

80. On Wednesday, June 4, her counsel, David Wilkins, accompanied Ms. [redacted] to the ISAP facility at 7 Elk Street, New York, NY.

81. From the waiting room, Ms. [redacted] was called to go into the ISAP offices.

82. When her attorney attempted to accompany her, he was told that he had to wait in the hallway.

83. Thereafter, another official came out and asked her attorney, Mr. Wilkins, whether he had submitted a notice of appearance, also known as a G-28 form, for her case and he confirmed that he had.

84. Then a different officer came out to the waiting room and told Mr. Wilkins that, actually, ICE could not speak to the attorney as his name did not appear in the "USCIS" system.

85. Mr. Wilkins indicated that he had previously submitted the G-28 for Ms. [redacted] *directly* to ICE, which meant that he had made an appearance on her case and as authorized as her attorney to speak with the agents.

86. The officer insisted that if the G-28 notice of appearance was not "in the USCIS system," that ICE would not give information to Mr. Wilkins.

87. Mr. Wilkins, concerned that he was not being permitted to represent his client, demanded to speak to a supervisor. A supervisor then came out to the lobby, reviewed the physical G-28 notice of appearance form, and said that he would email it to the corresponding ICE deportation officers.

88. At that time, Mr. Wilkins also sent an email to the deportation officers (Finnie and Caballero) to request that ISAP speak with him as her counsel of record.

89. Shortly thereafter, Mr. [redacted] asked the supervisor where Ms. [redacted] was. The supervisor would not say where she was, only that she was no longer in the building, and had probably been brought to the ICE building across the street at 26 Federal Plaza.

90. Mr. Wilkins went to the ICE offices on the fifth floor of 26 Federal Plaza and spoke with Christopher Finnie who told him that Ms. [redacted] had been detained and was upstairs for processing.

91. Officer Finnie told Mr. Wilkins that he could locate his client through the ICE detainee locator website.

92. Immediately thereafter, Mr. Wilkins began monitoring the ICE detainee locator website.

93. The next day, June 5, no information about Ms. [redacted] or her location appeared on the ICE detainee locator. Mr. Wilkins emailed Officers Finnie and Caballero, inquiring about his client's whereabouts. Officer Finnie responded that he was out of office, but would check and respond the next day.

94. The next day, June 6, a full 48 hours after her detention, the ICE detainee locator still showed no information about Ms. [redacted] or her whereabouts.

95. In his continuing attempts to find his client who had been suddenly detained without notice and who had been disappeared for a full two days, Mr. Wilkins emailed Officers Finnie and Caballero again, but received no response.

96. That same day, Mr. Wilkins emailed William Joyce and Judith Almodovar of ICE, again without response other than an automated out-of-office message from Officer Joyce, directing correspondents to reach out to Bryan Flanagan.

97. Mr. Wilkins then emailed Bryan Flanagan of ICE, and received no response.

98. Mr. Wilkins then emailed Mayra Pardo-Figueroa, Michael V. Charles, and Joseph T. Pujol of ICE, also without response.

99. Mr. Wilkins was also calling detention facilities that detain female inmates, desperate to find his client. He called the Aldine, Texas ICE detention facility, where they indicated they did not have any information about the whereabouts of Ms. [redacted]

100. Mr. Wilkins also called the Oakdale, Louisiana, ICE facility, which did not answer, and he left a message.

101. Finally, on June 6 at 4:48 p.m., Officer Pujol responded to Mr. Wilkins's email, stating that Ms. [redacted] "remains in transit to their final detention housing."

102. As of 10:30 PM on June 6, 2025, Ms. [redacted]'s information did not appear at all in the ICE online detainee locator system.

103. As of 7:00 PM on June 6, 2025, Ms. [redacted] had not been in contact with her attorneys, her son, or partner since she was detained on June 4, 2025.

Thwarted Attempt to Request a Stay of Removal from the New York ICE Field Office

104. On Friday, June 6th at approximately 3:00 p.m., after being unable to locate Ms. [redacted] for more than 48 hours, another of Ms. [redacted]'s attorneys at Legal Services NYC, Carolyn Norton, went to the ICE Field Office located at 26 Federal Plaza to submit an Application for a Stay of Deportation or Removal, ICE Form I-246 ("Stay Application").

105. ICE policy requires that Stay Applications be submitted to the local Enforcement and Removal Operations Field Office that has jurisdiction over the detainee's custody. Upon information and belief, at the time Ms. Norton attempted to submit the Stay Application, Ms. [redacted] was still being held at 26 Federal Plaza, New York, New York.

106. Attorney Norton submitted the Stay Application at the window on the 9th floor and was told the Stay Application would be subject to supervisor review. Approximately thirty minutes later, an ICE employee returned the Stay Application to Ms. Norton, stating ICE could not accept the application Ms. Norton inquired as to where Ms. [redacted] was being transited to and was told that information would not be disclosed for "security reasons."

107. Ms. Norton was instructed to check the ICE online detainee locator system to determine Ms. [redacted]'s whereabouts.

108. Ms. Norton explained that her office had been repeatedly checking the locator system for the past 48 hours and that there was no information available about Ms. [redacted] in the system.

109. Ms. Norton was then instructed to check the system in a few days and to then resubmit the Stay Application at the Enforcement and Removal Operations Field Office closest to where Ms. [redacted] was detained.

110. Ms. Norton requested again that the New York Field Office accept the Stay Application as that was the last known location where Ms. [redacted] was detained and therefore the location that had jurisdiction.

111. The ICE agent once again refused to accept the Stay Application, leaving Ms. [redacted] with no recourse to request relief from her government.

Subsequent Procedural and Factual History After Ms. [redacted]'s Detention

112. As of 10:30 p.m. on June 6, 2025, Ms. [redacted]—who has no criminal background and who has appeared for every required check in for the past six years—was detained for completely unknown reasons while being repeatedly and intentionally prevented by Respondents from consulting with or being adequately represented by her attorneys.

113. Ms. [redacted] was effectively disappeared by Respondents, her whereabouts unknown, her attorneys and family unable to contact her, and her attorneys unable to provide effective representation after having been repeatedly and intentionally impeded by Respondents.

114. Nothing in Ms. [redacted]'s situation had changed since she was initially put on supervised release six years ago, and certainly nothing that would warrant detaining her without access to counsel.

115. By detaining Ms. [redacted] while her U-Visa application is pending, Respondents acted counter to the clear statutory purpose of the U-Visa enabling legislation, to protect immigrant crime victims so that they may assist in the prosecution of the serious crimes to which they have fallen victim.

116. Upon information and belief, it was the Agency's longstanding practice to refrain from taking enforcement actions against U-Visa applicants absent serious countervailing factors.

117. On June 6, 2025, Petitioner filed the within habeas corpus action, bringing claims to redress Respondents' violation of the Due Process Clause of the United States Constitution, the Administrative Procedures Act, the *Accardi* Doctrine, and in the alternative, release on bail pending adjudication. (ECF No. 1.)

118. But for a single two-minute phone call with her daughter, Ms. [redacted] was completely incommunicado and her whereabouts remained unknown until June 9, 2025, when Petitioner's counsel learned from the Assistant U.S. Attorney's office that she was being booked into a detention facility in Houston, Texas.

119. On June 10, 2025, Petitioner filed an Emergency Motion for a Temporary Restraining Order ("TRO") and Preliminary Injunction, seeking relief including that the Court

order her returned to the district, enjoin her removal from the United States, and order her immediate release from detention. (ECF Nos. 8, 9.)

120. On June 10, 2025, the Court ordered the parties to appear for a conference on June 11, 2025, and enjoined Petitioner's removal pending a ruling on the petition and TRO. (ECF No. 10.)

121. At the June 11, 2025 conference, the Court set a briefing schedule and set a return date of June 20, 2025 on Petitioner's emergency motion.

122. On June 20, 2025, after oral argument, the Court ordered Respondents to release Petitioner and return her to the District by Monday June 23, 2025. The Court reserved decision on Petitioner's request for a stay of removal, but enjoined Petitioner's removal pending her written decision. (ECF No. 26.)

123. Respondents timely complied, and Ms. [redacted] was reunited with her family in New York City.

124. By its decision dated July 10, 2025, the Court (i) granted the TRO, enjoining Petitioner's removal through August 11, 2025; (ii) set a hearing date on the preliminary injunction for August 6, 2025; and held that (iii) Respondents must show cause why the TRO should not be converted to a preliminary injunction no later than July 28, 2025, with Petitioner to file a response by July 31, 2025. (ECF No. 31.)

125. By way of the Declaration of Deportation Officer Matthew Alexander, submitted in support of Respondents' opposition papers, Respondents indicated that on June 16, 2025, ICE had rescinded the reinstatement order due to its facial deficiency, and now intended to undertake Petitioner's removal as soon as practicable by executing on the 2005 removal order. (ECF Nos. 21, ¶¶ 21–24; *see also* ECF No. 22, p. 4.)

126. In its July 10th decision, the Court noted the facial deficiency of the 2019 reinstatement order (ECF No. 31, p. 8.), now rescinded, and that "ICE was now removing Petitioner pursuant to the October 2005 final order of removal." *(Id*., p. 12.)

127. The Court held that Petitioner's "abrupt detention by ICE, without any notice or an opportunity to be heard and in violation of ICE regulations, violated her right to due process." (ECF No. 31, p. 16.)

128. The Court noted that "at the TRO hearing, Respondents could not even confirm whether or not ICE had actually revoked Petitioner's OSUP, let alone what authority ICE had relied upon, who the revoking official was, and whether the official had adhered to ICE's regulations in doing so" (*Id*., p. 18.) and that Petitioner had offered no evidence that Petitioner posed a flight risk or a danger to the community. (*Id.*, p. 22.)

129. The Court observed that for six years, Petitioner's "liberty was restricted under an invalid Reinstatement notice" resulting in the "long term consequence" of confusing the avenues of relief available to her. (*Id.*, pp. 26–27.)

130. Based on recent communications between Respondents' counsel and the undersigned, Respondents intend to imminently undertake Petitioner's removal, as soon as the TRO is lifted.

131. Petitioner intends to move to reopen/rescind her 2005 removal order by filing a motion with the Immigration Court in Harlingen, Texas. Petitioner's counsel has now submitted the Motion to Reopen and the supporting documentation they intend to file with the Harlingen Immigration Court to Respondent's counsel to determine if the Government is willing to join the motion.

132. Petitioner now amends the petition, in light of the fact that Petitioner remains in ICE custody under the auspices of the 2019 order of supervision, which is not based on any actionable order of removal, contravening the Immigration and Nationality Act, the regulatory scheme, and the United States Constitution.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of Fifth Amendment Right to Due Process

133. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

134. Petitioner is in ICE custody pursuant to the 2019 order of supervision.

135. The 2019 order of supervision is not predicted on any valid removal order, inasmuch as the 2019 reinstatement of removal order is rescinded, and Respondents may not re-execute on the 2005 order of removal outside of the reinstatement of removal process.

136. For six years, Petitioner's liberty has been restricted under the auspices of an invalid order of supervision.

137. All along, Respondents have unconscionably deprived Petitioner of the opportunity to assert her entitlement to humanitarian relief including CAT and withholding claims.

138. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

139. Ms. [redacted] has been, and continues to be, subjected to a significant deprivation of liberty by being made subject to an unlawful order of supervision, and being threatened with imminent removal where there is no lawful basis to undertake such removal.

140. The Government's continued custody via supervision of Ms. [redacted] is unjustified, and the course of events suggest she is going to be summarily removed despite her reasonable fear of return to Honduras, and the pendency of her meritorious U-visa application.

141. The Government has not demonstrated that Ms. [redacted] —who has no criminal history, has close ties in the community, and has a U-Visa application pending based on her status as a crime victim—needs to be subject to an order of supervision given there is currently not a valid removal order that can be executed upon. *See Zadvyda*s, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

142. Ms. [redacted]'s continued custodial supervision is arbitrary and unlawful on its face.

143. Respondent's continued custodial control of Ms. [redacted] 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 and therefore her continued detention is unlawful.

SECOND CLAIM

Violation of the Administrative Procedure Act and the *Accardi* Doctrine

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

145. The Administrative Procedures Act ("APA") provides that a court "shall . . . hold unlawful and set aside agency action . . . found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). When the government has promulgated "[r]egulations with the force and effect of law," those regulations "supplement the bare bones" of federal statutes, such that the agencies are bound to follow their

own "existing valid regulations." *United States ex rel. Accardi Shaugnessy*, 347 U.S. 260, 266, 268 (1954). The *Accardi* doctrine also obligates agencies to comply with procedures it outlines in its internal manuals. *See Mortov. Ruiz*, 415 U.S. 199, 235 (1974) (finding that an agency is obligated to comply with procedural rules outlined in its internal manual).

146. Respondents' course of enforcement action against Ms. [redacted], including unlawfully detaining her, and taking steps to remove her, depriving her of the humanitarian protections she is entitled to pursue as the victim of horrific violent crimes, subjecting her to an invalid order of supervision, and threatening to imminently remove her without a lawful basis to undertake such removal plainly violate the Administrative Procedures Act and *Accardi* doctrine.

147. Ms. [redacted] has no adequate remedy at law.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1) Assume jurisdiction over this matter;
2) Enjoin Respondents from detaining Petitioner under the auspices of the 2019 order of supervision or 2005 removal order;
3) Declare that Respondents' continued custody of Petitioner via the order of supervision violates the Due Process Clause of the Fifth Amendment;
4) Declare that Respondents' actions in exerting custody over Petitioner violate the Administrative Procedures Act;
5) Enjoin Respondents from removing Petitioner from the United States pending these proceedings;
6) Award reasonable attorneys' fees and costs for this action; and
7) Grant such further relief as the Court deems just and proper.

Dated: July 25, 2025
New York, New York

Respectfully submitted,

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