UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Katherine Yasari Alvarez Portillo,
A[redacted]

c/o SHEHARYAR ALI LAW GROUP
877 N Corona Ave
Valley Stream, NY 11580

Petitioner,

v.

Kristi Noem, *Secretary of Homeland Security*,

245 Murray Lane, SW
Washington, DC 20528

Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*,

500 12th Street, SW
Washington, DC 20536

Kenneth Genalo, *Field Director NYC, U.S. Immigration and Customs Enforcement*,

26 Federal Plaza #500,
New York, NY 10278

Pamela Bondi, *Attorney General*,

950 Pennsylvania Avenue, NW
Washington, DC 20530

Respondent[s].

Case No.:

PETITION FOR WRIT OF HABEAS CORPUS

ORAL ARGUMENTS REQUESTED

Expedited Hearing Requested

PRELIMINARY STATEMENT

The Petitioner, Katherine Yasari Alvarez Portillo ["Petitioner"], hereby petitions this honorable Court for a writ of habeas corpus to remedy Petitioner's unlawful removal from the United States of America while a Motion to Reopen and Rescind an *in absentia* removal order, creating an automatic stay of removal under Federal regulations, was pending before the United States Department of Justice Executive Office for Immigration Review Immigration Court in West Valley, Utah. *See* **Exhibit A**.

The Petitioner also has a pending T-visa before USCIS.

JURISDICTION AND VENUE

1. This action arises under the Constitution of the Unites States and the Immigration and Nationality Act [INA], 8 U.S.C. §1101 et. seq.

2. This Court has subject matter jurisdiction and may grant relief under 28 U.S.C. §2241, 28 U.S.C. §1651, 28 U.S.C. §1331, and Article I, § 9, cl. 2 of the United States Constitution.

3. This Court has the authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2201-2202, Federal Rules of Civil Procedure 57 and 65, 28 U.S.C. §2201-2202, 28 U.S.C. §1651; and this Court's inherent equitable powers.

4. Venue is proper in the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. §§ 1391 [b] and [e]. "As the Supreme Court explained in *Braden* factors to be considered in determining whether venue is proper in a habeas suit include: [1] 'where all of the material events took place'; [2] where 'the records and witnesses pertinent to the petitioner's claims are likely to be found'; and [3] the convenience of the forum for both the respondents and petitioner." *See Nolasco v. United States*, 358 F.Supp.2d 224, 234 n.16 [SDNY 2004].

PARTIES

5. Petitioner is a noncitizen who resides in Freeport, New York. Respondents have deported her to Guatemala without any legal process whatsoever, and in violation of an automatic stay of removal, which

prohibited them from doing so.

6. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security. She is responsible for the implementation and enforcement of the immigration laws and oversees ICE. As such, Respondent Noem has ultimate custodial authority over Petitioner.

7. Respondent Todd Lyons is the Acting Director of the Immigration and Customs Enforcement ["ICE"]. As the head of ICE, an agency within the United States Department of Homeland Security that detains and removes certain noncitizens. Respondent Lyons is a legal custodian of Petitioner.

8. Respondent Kenneth Genalo is the New York City Field Director for ICE, within the United States Department of Homeland Security that detains and removes certain noncitizens. Respondent Genalo is a legal custodian of Petitioner.

9. Respondent Pamela Bondi is the Attorney General of the United States. As the head of the United States Department of Justice, which oversees the immigration courts, Respondent Bondi shares responsibility for enforcement of the immigration laws with Respondent Noem.

10. All Respondents are sued in their official capacities.

STATEMENT OF FACTS

11. Petitioner was born in Guatemala on [redacted]

12. On or about June 22, 2021, Petitioner entered the United States of America at the Brownsville, Texas port of entry and was assigned the Alien Number A[redacted].

13. Petitioner arrived with the hopes and dreams of building a new life after escaping a life of abuse at the hands of her uncle.

[redacted]

[redacted]

16. The physical and emotional abuse at the hands of her family continued for years and in 2021, Petitioner found an escape.

17. Unfortunately, what was supposed to be the beginning of a new chapter and opportunity to achieve her dreams turned into despair and an absolute nightmare.

18. Prior to her arrival to the United States of America, Petitioner met an individual by the name of Raul, online.

19. Raul and the Petitioner developed a long-distance relationship and when she had the opportunity to escape Guatemala and her abusive uncle, Raul encouraged Petitioner to come to the United States of America.

20. Raul lured the Petitioner to Utah where he lived and promised her that he would help her find a job, a place to live safely and away from her uncle. He promised her that he would give her an opportunity to build a new life for herself.

21. Upon arrival to the United States of America on or about June 22, 2021, Petitioner provided the Immigration authorities with Raul's address. The Immigration officials contacted Raul to verify his information, and Raul agreed to receive the Petitioner.

[redacted] By the grace of God, the Petitioner was able to escape to New York with the help of a former partner in New York.

23. The case against Raul is currently being prosecuted by [redacted] under Docket Number [redacted] and the Petitioner is a necessary witness and the victim of the crime that is being prosecuted. The Petitioner provided a detailed statement to the Attorney General's Office

highlighting the abuse she suffered as a victim of human trafficking at the hands of Raul. *See* **Exhibit B**.

24. During a mental health evaluation that was conducted over the course of three days between October 27, 2025, to November 2, 2025, the Petitioner discussed the significant mental health implications that resulted from her being a victim of human trafficking by Raul. "Her behavior responses during the evaluation, including tearfulness, long pauses, and visible distress when recounting specific details, were congruent with the trauma described." *See* **Exhibit C, p. 5**.

25. After escaping two abusive households, first in Guatemala and then in Utah, the Petitioner arrived in New York. In New York, Petitioner met and entered into a relationship with Bagny Banai Hernandez Butz. However, the relationship quickly turned into an abusive relationship. On or about August 09, 2024, Bagny was arrested for striking the Petitioner across the head with a ratchet. *See* **Exhibit D**.

26. Throughout her life, the Petitioner has suffered abuse and trauma. The abuse and trauma weren't just at the hands of her uncle, Raul, and Bagny. Unfortunately, the ultimate abuse and trauma was inflicted by the Respondents in this case.

27. Due to the abuse, human trafficking, sexual assault, coercion, fraud, and domestic violence that the Petitioner suffered, she applied for humanitarian relief under the T nonimmigrant visa classification, with prima facie eligibility for U nonimmigrant status.

28. Unbeknownst to Petitioner, while suffering from the trauma, instability, and domestic violence, an Immigration Judge in West Valley, Utah Immigration Court entered an *in absentia* order of removal.

29. Petitioner did not receive proper notice of the hearing and was unable to appear due to the lack of proper notice.

30. Upon learning of the order of removal, Petitioner through counsel, filed a motion to reopen and rescind the *in absentia* removal order pursuant to INA § 240[b][5][c] and 8 C.F.R. § 1003.23[b][4][ii], based on lack of notice and exceptional circumstances.

31. The Court received the motion to reopen and upon receipt, by operation of law, an automatic stay

of removal went into effect, pending adjudication of the matter. *See* 8 C.F.R. §1003.23[b][v].

32. As to Petitioner's immigration status, not only was there the motion to reopen and automatic stay of removal, there was also the Petitioner's application for T nonimmigrant status [Form I-914], supported by documentary evidence establishing that she was a victim of a severe form of trafficking, she was complying with requests for assistance related to the investigation and prosecution, and she would suffer extreme hardship involving unusual and severe harm if removed.

33. USCIS issued a receipt notice confirming the filing of the T-visa application. *See* **Exhibit E**.

34. The Petitioner was scheduled for a biometrics collection on January 14, 2026, and was unable to attend because she was unlawfully and unconstitutionally removed from this Country. *See* **Exhibit F**.

35. A formal request to reschedule the biometrics collection was submitted through the United States Embassy in Guatemala, and the Petitioner is awaiting a call from a Tier-2 officer.

36. It is important to emphasize that the missed biometrics collection was due to good cause and does not negate Petitioner's pending humanitarian protection.

37. Notwithstanding the automatic stay of removal, the pending motion to reopen, the filed T-visa application, the Petitioner's undoubted eligibility for humanitarian discretion, and the Petitioner's documented abuse and trauma, the Respondent's unlawfully and with utter disregard for the law, executed Portioner's removal from the United States.

38. Respondent's actions deprived Petitioner of access to counsel, foreclosed adjudication of her pending claims, interfered with the Immigration Court's jurisdiction, and violated multiple federal regulations and the Constitution of the United States of America.

39. Respondents acted recklessly, willfully, and maliciously by picking the Petitioner up, ripping her away from her minor child and unlawfully removing her from the Country. Upon information and belief, the Respondents knew and/or should have known that the T-visa and U-visa applicants are entitled to heightened humanitarian protections and are not subject to summary or expedited removal.

40. As a result of the Respondent's actions, the Petitioner has been forcibly returned to Guatemala and forced to relive the trauma and abuse of her past. The Petitioner is residing with the same abusive uncle who she had previously ran away from.

41. Bagny, the individual who struck the Petitioner across the head with a ratchet, is a subject for expedited removal due to his criminal conviction and illegal immigration status. Bagny is from the same town that the Petitioner is currently living in Guatemala, which further puts her at risk of harm.

42. The Petitioner is in immediate and grave risk of retaliation, re-trafficking, physical abuse, sexual violence, and irreparable psychological and physical harm.

43. Respondent's actions violated the Petitioner's statutory and constitutional rights, undermined the integrity of the judicial process, nullified an automatic stay imposed by law, and usurped Congress's carefully constructed humanitarian framework.

44. Emergency intervention by this Court is necessary to restore the status quo ante, compel the Respondents to facilitate and effectuate the Petitioner's immediate return to the United States, protect her life and safety, and preserve this Court's jurisdiction over Petitioner's statutory and constitutional rights.

45. This Court possesses inherent and statutory authority to order Respondents to facilitate and effectuate the Petitioner's return to the United States where the government has executed a removal that was unlawful, ultra vires, and in violation of a mandatory stay.

LEGAL FRAMEWORK

46. "A case 'becomes moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome', at which point, the Constitution's case or controversy requirement, is not satisfied and a federal court lacks subject matter jurisdiction over the action … [i]n the context of immigration habeas cases, if a petitioner challenged his or her detention under 28 U.S.C. § 2241 but is subsequently removed, the petition becomes moot because this petitioner is no longer in custody. *See De La Cruz v. Dep't of Homeland Sec.*, 2021 U.S. Dist. LEXIS 23676, *4 [SDNY 2021].

47. However, since the Petitioner was deported while the automatic stay was in effect, the petition is not moot. The Second Circuit has held that a habeas corpus petition is not mooted by the petitioner's deportation, even where ruling in petitioner's favor on the ultimate merits may not be likely. See *Swaby v. Ashcroft*, 357 F.3d 156 [2d Cir. 2004]. In *Swaby* the Second Circuit analogized a writ of habeas in a criminal context with a writ of habeas in an immigration context. The *Court* stated that, "where a defendant has been convicted of a crime, but is no longer incarcerated, the defendant must show some 'collateral consequence' of the conviction, meaning 'some concrete and continuing injury other than the now-ended incarceration or parole,' to establish a live case or controversy … here, petitioner is no longer imprisoned, but [s]he faces a lifetime bar from reentering the United States as a result of having been ordered removed . . . [s]he thereby suffers a collateral consequence." *See Swaby* 357 F.3d 156 at 160.

48. The Petitioner may no longer be in the custody of the United States, but she has suffered an unimaginable collateral consequence because of the Respondent's unlawful removal back to Guatemala.

49. "Our Constitution embodies these truths, in a limited government of enumerated powers, in its system of checks and balances separating the executive, legislative and judicial branches, and in its guarantee that neither citizen nor alien be 'deprived of life, liberty, or property, without due process of law.'" *See G.F.F. v. Trump,* 781 F.Supp.3d 195, 201 [SDNY 2025].

50. "Parties claiming denial of due process in immigration cases must, in order to prevail, 'allege some cognizable prejudice fairly attributable to the challenged process.'" *See Amarjit Singh v. Quarantillo*, 2026 U.S. Dist. LEXIS 1688, *6 [EDNY 2026]. Although, "[t]he government has significant discretion to enforce the immigration laws [but] it must do so consistent with the requirements of its own regulations and the Due Process Clause." *See Amarjit Singh* 2026 U.S. Dist. LEXIS 1688 at *7.

51. "It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings … [s]o the detainees are entitled to notice and opportunity to be heard appropriate to the nature of the case." See Trump v. J.G.G., 604 U.S. 670, 673 [2025]. In *Trump v. J.G.G.*, the Court

emphasized the importance of notice before a removal occurs in the context of AEA detainees. "More specifically, in this context, AEA detainees must receive notice after the date of this order that they are subject to removal under the ACT. The notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *See Trump* 604 U.S. 670 at 673.

52. ICE cannot rely on discretions allowed by statute when a Petitioner has "a procedural right in connection with the decision by ICE to deprive him of liberty". *See Roman-Cruz v. Lyons*, 2026 U.S. Dist. LEXIS 8630, *6 [SDNY 2026].

51. A preliminary injunction is an extraordinary remedy, but one that is fully warranted where a petitioner demonstrates: (1) a likelihood of success on the merits; (2) irreparable harm absent injunctive relief; (3) that the balance of equities tips in her favor; and (4) that an injunction is in the public interest. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010).

52. Where, as here, a petitioner seeks injunctive relief to restore the status quo ante following unlawful government action, courts in this Circuit recognize that preliminary injunctive relief is particularly appropriate to prevent irreparable injury and to preserve the court's ability to adjudicate the merits. The central purpose of a preliminary injunction is to maintain or restore the last actual, peaceable, uncontested status that preceded the challenged conduct. *See Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 33–35 (2d Cir. 1995). The Second Circuit has repeatedly emphasized that equitable relief is warranted where government action threatens to extinguish substantive rights before judicial review can occur. *See Mastrovincenzo v. City of New York*, 435 F.3d 78, 89 (2d Cir. 2006) (recognizing injunctions as necessary to preserve rights pending adjudication); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (affirming injunctive relief to prevent ongoing and irreparable harm). Here, Respondents' unlawful execution of removal in violation of a mandatory automatic stay disrupted the status quo ante and effectively nullified

pending judicial and administrative proceedings. Injunctive relief restoring Petitioner to her prior position is therefore necessary to prevent irreparable harm, preserve this Court's jurisdiction, and ensure meaningful review of Petitioner's claims.

53. Petitioner satisfies each prong of the preliminary injunction standard. Respondents executed Petitioner's removal in direct violation of a mandatory automatic stay imposed by federal regulation, rendering the removal ultra vires, unlawful, and void. Federal regulation provides that the filing of a motion to reopen to rescind an *in absentia* removal order based on lack of notice or exceptional circumstances automatically stays removal pending adjudication of that motion. *See* 8 C.F.R. § 1003.23(b)(4)(ii).

54. Once an automatic stay attaches by operation of law, Respondents possess no discretion to execute removal. Any removal carried out in violation of a mandatory stay exceeds statutory and regulatory authority and is ultra vires and unlawful. Courts have recognized that where the government's actions interfere with mandatory procedural protections or pending adjudicatory processes, such actions are subject to judicial correction through injunctive relief necessary to preserve access to statutory remedies and meaningful judicial review. *See Devitri v. Cronen,* 289 F. Supp. 3d 287, 295–96 (D. Mass. 2018) (granting preliminary injunctive relief to prevent removal pending access to motion-to-reopen procedures); *Orantes-Hernandez v. Thornburgh,* 919 F.2d 549 (9th Cir. 1990) (affirming broad equitable authority to enjoin unlawful removal practices that undermine statutory and constitutional protections).The Supreme Court has likewise recognized that removal carried out while judicial or administrative proceedings remain pending inflicts irreparable harm and undermines the courts' ability to exercise meaningful review. *See Nken v. Holder,* 556 U.S. 418, 429 (2009). Courts have further acknowledged that removals executed in violation of stays or ongoing proceedings may constitute "extreme circumstances" warranting judicial intervention notwithstanding the petitioner's physical removal. *See Singh v. Waters,* 87 F.3d 346, 349–50 (9th Cir. 1996).

55. Courts have repeatedly held that removals executed during a mandatory stay are subject to judicial correction, including injunctive relief and orders compelling return to the United States. See *Devitri v. Cronen*, 289 F. Supp. 3d 287, 295–96 (D. Mass. 2018).

56. "Although a preliminary injunction is always an exceptional remedy, never awarded as of right … [c]ourts, including district courts regularly find that return is the appropriate remedy when a removal is found to be unlawful." *See D.V.D. v. United States Dep't of Homeland Sec.*, 784 F. Supp. 3d 401, 406 [D. Mass. 2018].

57. "Moreover, it has been the Government's own well-established policy to 'facilitate [an] alien's return to the United States if … the alien's presence is necessary for continued administrative removal proceedings' in cases where a noncitizen has been removed pending immigration proceedings." *See Noem v. Garcia*, 145 S. Ct. 1017, 1019 [2025].

58. Petitioner therefore has a substantial likelihood of success on the merits of her habeas claim, as Respondents' actions violated governing regulations, deprived Petitioner of due process, and interfered with the jurisdiction of the Immigration Court and this Court.

59. Petitioner has also established irreparable harm. Irreparable harm exists where injury is actual, imminent, and cannot be remedied through monetary damages. See *Winter*, 555 U.S. at 22.

60. As set forth above, Petitioner faces immediate and grave harm, including exposure to re-trafficking, sexual violence, retaliation, and continued abuse. She has been forcibly returned to the very environment from which she fled and is currently residing with her original abuser.

61. Petitioner has further suffered irreparable harm through the loss of access to counsel, obstruction of her pending humanitarian relief, and deprivation of her ability to meaningfully participate in ongoing criminal proceedings in which she is the victim and a necessary witness.

62. Courts routinely find irreparable harm where removal exposes a petitioner to serious bodily harm, persecution, or substantial interference with statutory relief. See *Leiva-Perez v. Holder*, 640 F.3d 962,

969–70 (9th Cir. 2011).

63. The balance of equities overwhelmingly favors Petitioner. She faces life-threatening harm and irreversible consequences, while Respondents face only the administrative obligation to remedy an unlawful removal.

64. The government has no legitimate interest in enforcing an action taken in violation of its own regulations or the Constitution. See *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

65. The public interest strongly favors injunctive relief. The public has a compelling interest in ensuring that executive agencies comply with binding regulations, respect judicial authority, and protect victims of human trafficking.

66. Congress has enacted a comprehensive humanitarian framework affording heightened protections to victims of trafficking, including access to T nonimmigrant status and protection from removal while such relief is pending. See 8 U.S.C. § 1101(a)(15)(T).

67. Absent immediate injunctive relief, this Court's jurisdiction will be irreparably undermined. Respondents' conduct has already nullified an automatic stay imposed by law and interfered with adjudication of Petitioner's claims.

68. This Court possesses inherent and statutory authority to issue injunctive relief necessary to preserve its jurisdiction and restore the status quo ante. See 28 U.S.C. § 1651; *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977).

69. Emergency intervention is therefore necessary to prevent further irreparable harm, protect Petitioner's life and safety and vindicate the rule of law.

CLAIMS FOR RELIEF

COUNT ONE
Unlawful Removal in Violation of Automatic Stay (8 C.F.R. § 1003.23(b)(4)(ii); INA § 240(b)(5)(C))

70. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set

forth herein.

71. Federal regulation mandates that the filing of a motion to reopen and rescind an *in-absentia* removal order based on lack of notice or exceptional circumstances automatically stays removal pending adjudication. *See* 8 C.F.R. § 1003.23(b)(4)(ii).

72. On December 9, 2025, Petitioner filed a Motion to Reopen and Rescind her *in absentia* removal order pursuant to INA § 240(b)(5)(C), and the Immigration Court formally received the motion.

73. By operation of law, an automatic stay of removal immediately attached, and ICE was legally barred from executing Petitioner's removal.

74. Notwithstanding the automatic stay, Respondents executed Petitioner's unlawful removal.

75. Removal undertaken in violation of a mandatory regulatory stay is ultra vires, void ab initio, and without lawful authority.

76. An "agencies … power to act and how they are to act are authoritatively prescribed by Congress, so that when they act improperly, no less than when they act beyond their jurisdiction, what they do is ultra vires." *See City of Arlington v. FCC,* 569 U.S. 290, 298 [2013].

77. Congress expressly authorized rescission of an *in absentia* removal order where the noncitizen did not receive proper notice of the hearing. *See* INA § 240(b)(5)(C)(ii), 8 U.S.C. § 1229a(b)(5)(C)(ii).

78. Furthermore, the filing of the motion creates an automatic stay as a matter of law. *See* 8 C.F.R. § 1003.23(b)(4)(ii).

79. Respondents' actions in the instant action are improper, and a violation of statutes enacted by Congress. The removal of the Petitioner was legally prohibited and was unlawful and void.

80. Petitioner is entitled to habeas relief restoring the status quo ante and compelling Respondents to remedy the unlawful removal.

81. "Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal." *See Nken v. Holder,* 556 U.S. 418, 435 [2009].

COUNT TWO
Violation of Fifth Amendment Right to Due Process

82. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

83.

84. The Fifth Amendment guarantees noncitizens the right to due process of law, including notice and a meaningful opportunity to be heard before deprivation of liberty or removal from the United States. Petitioner possessed constitutionally protected interests in the adjudication of her Motion to Reopen;

a. The enforcement of the automatic stay imposed by law;

b. Access to humanitarian relief authorized by Congress; and

c. Freedom from removal while protected by statute and regulation.

85. Respondents deprived Petitioner of these interests by executing removal while her Motion to Reopen and humanitarian applications were pending and protected by law. Respondents' actions denied Petitioner notice, access to counsel, and a meaningful opportunity to be heard, and foreclosed adjudication of her claims. The government's conduct was arbitrary, conscience-shocking, and fundamentally unfair, and therefore violated the Due Process Clause. Petitioner has suffered and continues to suffer irreparable harm as a direct result of Respondents' constitutional violations.

86. This Court has jurisdiction to review the instant petition because "although Congress barred judicial review of a decision to grant discretionary relief such as §245 adjustment of status, it partially restored jurisdiction by not 'precluding review of constitutional claims or questions of law raised upon a petition." *See Singh v. Gonzales,* 468 F.3d 135, 138 [2d Cir. 2006].

COUNT THREE
Unlawful Interference with Congressionally Mandated Humanitarian Relief (INA §§ 101(a)(15)(T), 101(a)(15)(U)

87. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

88. Congress enacted the T and U nonimmigrant visa statutes to protect victims of trafficking and violent crime from removal, retaliation, and further harm, and to encourage cooperation with law enforcement. Petitioner is a bona fide applicant for T nonimmigrant status and is prima facie eligible for U nonimmigrant status. Federal law and DHS policy require heightened humanitarian discretion for such applicants and prohibit actions that would frustrate statutory purpose. By removing Petitioner while her humanitarian relief applications were pending and while an automatic stay was in place, Respondents unlawfully interfered with, obstructed, and nullified Congressionally mandated protections.

89. Respondents' actions are contrary to law, exceed statutory authority, and frustrate congressional intent. Petitioner is entitled to relief restoring her access to humanitarian adjudication free from unlawful interference.

COUNT FOUR
Unlawful Agency Action and Abuse of Discretion (Ultra Vires Action; Habeas Jurisdiction)

90. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set

forth herein.

91. Federal agencies may act only within the bounds of authority granted by statute and regulation. Respondents lacked legal authority to execute Petitioner's removal while an automatic stay was in effect.

92. Actions taken in excess of delegated authority are unlawful, void, and subject to judicial correction through habeas corpus and equitable relief.

93. Respondents' conduct constitutes an abuse of discretion and an unlawful usurpation of authority reserved to the Immigration Court and Congress.

COUNT FIVE
Irreparable Harm and Necessity of Emergency Relief

94. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

95. As a direct result of Respondents' unlawful conduct, Petitioner faces imminent risk of re-trafficking, sexual violence, retaliation, and severe psychological and physical harm.

96. These injuries are concrete, ongoing, and incapable of remediation through monetary damages.

97. Absent immediate judicial intervention, Petitioner will suffer irreparable harm.

98. Courts have repeatedly held that removals executed during a mandatory stay are subject to judicial correction, including injunctive relief and orders compelling return to the United States. See *Devitri v. Cronen*, 289 F. Supp. 3d 287, 295–96 (D. Mass. 2018).

99. The balance of equities and the public interest strongly favor enforcement of the law, protection of trafficking victims, and restoration of the status quo ante.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that the Court grant the following relief:

a) Issuing an Order to Show Cause, directing Respondents to immediately justify, in fact and in law, their execution of Petitioner's removal while a Motion to Reopen and Rescind an *in absentia* removal order, carrying an automatic stay of removal was pending before the Immigration Court;

b) Declaring that Petitioner's removal was unlawful, void, and ultra vires, because it was executed in direct violation of 8 C.F.R. § 1003.23(b)(4)(ii) and the Due Process Clause of the Fifth Amendment;

c) Issuing a writ of habeas corpus, restoring the status quo ante and ordering Respondents to facilitate and effectuate Petitioner's immediate return to the United States;

d) Immediately ordering respondents to immediately request that the Government of Guatemala deliver Petitioner to the United States of America Embassy in Guatemala;

e) Should the Government of Guatemala decline such request, ordering Respondents to take all steps reasonably available to them, proportionately to the gravity of the ongoing harm, to return Petitioner to the United States of America;

f) Enjoining Respondents from interfering with, obstructing, or prejudicing Petitioner's pending Application for T Nonimmigrant Status (Form I-914), her biometrics rescheduling, Application for Humanitarian Parole (Form I-131) and any related or derivative humanitarian relief, including potential U nonimmigrant status;

g) Ordering that, upon return to the United States, Respondents parole Petitioner or otherwise place her in a lawful, non-detained status sufficient to permit full adjudication of her Motion to Reopen and humanitarian applications without fear of re-removal; and

h) Granting such other relief at law and in equity as justice may require.

Dated: Valley Stream, New York
January 29, 2026

SHEHARYAR ALI LAW GROUP, P.C.

Sheharyar Ali, Esq.
Attorneys for Petitioner
877 N Corona Ave
Valley Stream, NY 11580
ali@salawpc.com
516-734-135

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 29, 2026

Respectfully submitted,

Sheharyar Ali, Esq.
Counsel for Petitioner

EXHIBIT A

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
WEST VALLEY, UTAH

---X

In the Matter o

In Removal Proceedings

KATHERINE YASARI ALVAREZ PORTILLO **A#.: 220-197-678**

Respondent.

---X

RESPONDENT'S MOTION TO REOPEN AND RESCIND *IN ABSENTIA* ORDER
AND
STAY OF REMOVAL

Respondent, KATHERINE YASARI ALVAREZ PORTILLO, through counsel, hereby requests this Court to rescind the in absentia removal order that was entered on July 28, 2022, and to reopen the instant removal proceedings pursuant to sections §240(b)(5)(C)(ii) and §240(c)(7) of the Immigration and Nationality Act ("INA") for lack of notice, exceptional circumstances, on account of new prima facie eligibility for T nonimmigrant status, and potentially U nonimmigrant status. Alternatively, Respondent requests that this Court exercise its *sua sponte* authority and grant the within motion given Respondent's positive equities and prima facie eligibility for relief.

BRIEF STATEMENT OF FACTS AND PROCEDURE

Respondent is a native and citizen of Guatemala who entered the United States at the Brownsville, Texas port of entry on or about June 22, 2021. Respondent fled Guatemala after suffering years of abuse by her uncle. In 2019, while still in Guatemala, Respondent met a man named Raul online. She and Raul developed a connection, and when the time came that Respondent needed to flee Guatemala for her safety, Raul encouraged her to come to the United States. More specifically, Raul directed Respondent to come to Utah where he lived. Raul promised Respondent that he would help her find a job, a place to live, and to build a new, safe life for herself.

When Respondent entered the United States, she provided immigration with Raul's address. Immigration officials contacted Raul, and he agreed to receive Respondent. Unfortunately, when she arrived, Respondent discovered that she had been deceived and lured to Utah under false pretenses. [redacted] Respondent was, luckily, able to escape to New York with the help of her ex-partner.

When Respondent arrived in New York, she quickly met and entered into a relationship with the would-be father of her son. Instead of the safe life Respondent was seeking, she was subjected to more violence. Respondent was severely abused by her partner during their relationship. On August 9, 2024, however, the violence got to the point where Respondent felt her life was at risk, and that she needed to contact the police and leave for good. [redacted] The police were called, a report was filed, and respondent's former-partner was placed in criminal proceedings. He ultimately plead guilty, and Respondent maintains and order of protection against him.

Throughout her time in the United States, Respondent was put through abuse and trauma. Resultingly, she never got the chance to receive notice of her hearing and could not have appeared in court for her hearing, as her life was controlled and dominated by abusive men.

RESPONDENT'S MOTION SHOULD BE DEEMED COMPLIANT WITH TIME AND NUMERICAL LIMITATIONS

Here, although the motion comes past the 90-day allotted window, this motion may still be properly adjudicated as the limitations prescribed by the statute do not apply where the motion to reopen is based upon lack of notice (INA § 240(b)(5)(C)(ii)).

Additionally, under the general reopening statute at 8 USC 1229a(c)(7), a request to reopen may be granted upon a showing of new facts that will be proven at a hearing, including that the evidence should be offered is "material and was not available and/or could not be discovered or presented at the former hearing." If an individual seeks reopening to apply for relief from removal, the motion must include the relief applications and supporting documents which demonstrate prima facie eligibility for the request relief (8 C.F.R. §§ 1003.2(c)(1); 1003.23(b)(3)). In this regard, Respondent is entitled to have her case reopened as she is newly eligible for relief that was not previously available, as will be demonstrated more fully below.

As an alternative, the immigration court may at any time reopen proceedings *sua sponte* (see 8 C.F.R. § 1003.2(a); Menendez-Gonzalez v. Barr, 929 F.3d 1113, 1116 [9th Cir. 2019]). Similarly, an Immigration Judge may upon his or her own motion at any time, or upon motion of the Service or the alien, reopen or reconsider any case (see Menendez-Gonzalez, 929 F.3d at 1116 [quoting 8 C.F.R. § 1003.23(b)(1)]). The election to reopen or reconsider on its own motion is commonly called the exercise of 'sua sponte' authority (see Id at 1116). Given the arguments set forth within, we urge the Court to exercise this authority.

POINT ONE

RESPONDENT DID NOT RECEIVE PROPER NOTICE OF HER HEARING

In this case, Respondent did not receive notice of her hearing. Respondent was misled by Raul to believe that she would have a safe place to stay in the United States. Trusting in that belief, Respondent provided the address Raul gave her to immigration. However, as it turned out, Respondent had no freedom whatsoever at this apartment and could not possibly have been monitoring the mail while she was being abused, raped, and controlled.

The BIA, IJs, and federal courts should assess no receipt claims by considering "all relevant evidence" (Matter of M-R-A-, 24 I. & N. Dec. 665, 673-75 [BIA 2008]). Those factors the BIA has deemed relevant to determine whether there has been a lack of notice such that re-opening proceedings is warranted are as follows:

(1) respondent's affidavit;

(2) affidavits from family members and other individuals who are knowledgeable about the relevant facts;

(3) respondent's actions upon learning about the in-absentia order and whether he or she exercised due diligence in seeking redress;

(4) any prior affirmative application for relief or application filed with USCIS or prima facie eligibility for relief (to help establish an incentive to appear);

(5) previous attendance at immigration court hearings -- other circumstances or evidence indicating possible non-receipt.

(see Matter of Grijalva, 21 I&N Dec. 27, 37 [BIA 1995]; Matter of M-R-A-, 24 I&N Dec. 665 [BIA 2008]; Matter of C-R-C-, 24 I&N Dec. 677 [BIA 2008]).

Here, there is no question that Respondent's failure to appear was based upon no-receipt of her hearing. Indeed, nearly each of the above factors weighs in her favor. Respondent's affidavit confirms that she could not receive mail at the address she provided by virtue of being held captive and systematically raped when she arrived in the United States. Additionally, when she finally arrived in New York, Respondent found herself in yet another abusive relationship. In short, since she entered this country, Respondent has been in survival mode; she was held against her will, degraded, controlled; raped, and beaten. It is by virtue of the abuse she suffered that she did not receive notice of her hearing. When Respondent discovered her removal order, she immediately contacted your affirmant.

POINT TWO

RESPONDENT'S FAILURE TO APPEAR WAS DUE TO EXCEPTIONAL CIRCUMSTANCES

The term "exceptional circumstances" was added to the INA by the Immigration Act of 1990 and is defined as those "exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illnesses or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien. See INA § 240(e)(1). Here, Respondent suffered extreme forms of physical, sexual, and emotional abuse up until from the time of her entry until 2024; thus, there can be no legitimate dispute that her failure to appear was due to exceptional circumstances.

Immigration Courts generally employ a "totality of the circumstances" test to determine whether the respondent's reason for not attending the hearing is an exceptional circumstance (Matter of W-F-, 21 I&N Dec. 503, 509 [BIA 1996] [citing H.R. Conf. Rep. No. 955, 101st Cong., 2d Sess. 132 1990]). According to the BIA, such factors include supporting documentary evidence, the respondent's efforts in contacting the immigration court, and the respondent's promptness in filing the motion to reopen (Matter of B-A-S, 22 I&N Dec. 57, 58-59 [BIA 1998]). Other possible factors articulated by the U.S. Court of Appeals include the strength of the respondent's underlying claim, the harm the respondent would suffer if the motion was denied, and the inconvenience the government would suffer if the motion was granted (Singh v INS, 295 F.3d 1037, 1039-40 [9th Cir. 2002] [finding that if a respondent has no reason to try to delay their hearing and denying a Motion to Reopen would lead to the "unconscionable result" of deporting a non-citizen who is eligible for relief, the totality of circumstances approach would weigh in favor of finding exceptional circumstances]) The Court of Appeals has repeatedly given considerable weight in the totality of the circumstances test to situations where nothing in the respondent's record reflected an intent to avoid a hearing or delay removal (Kaweesa v Gonzales, 450 F.3d 62, 68-69 [1st Cir. 2006]).

In the present action, Respondent didn't appear for her court hearing because she didn't know about it, and even if she had, she was in the throes of an abusive relationship and struggling with mental health concerns [redacted] Additionally, during this time, Respondent had a young child to protect, which further complicated her ability to appear. In an evaluation conducted by George Ramos, LMCH in October/November 2025, Dr. Ramos concluded that Respondent suffers from post-traumatic stress disorder, major depressive disorder, and generalized anxiety disorder (Exhibit E). In particular, Dr. Ramos indicated the following:

[redacted]

Certainly, these circumstances are extraordinary and directly impacted Respondent's ability to appear in court. Simply stated, she did not have the ability to appear in Court while she was struggling to survive, taking care of (and trying to protect) a young child, and managing the psychological impacts of having been abused. In addition to the above, Respondent has a strong likelihood of being granted T nonimmigration status, as she was a victim of trafficking. Her eligibility for a U-visa is also currently being investigated.

In light of the above, the Court should find that exceptional circumstances prevented her appearance in Court.

POINT THREE

THIS CASE SHOULD BE REOPENED BECAUSE RESPONDENT IS PRIMA FACIE ELIGIBLE FOR T NONIMMIGRANT STATUS, AND POSSIBLY U NONIMMIGRANT STATUS

Immigration Judge and the Board of Immigration appeals are authorized to reopen cases in a wide variety of circumstances, including circumstances presenting fairness concerns (see generally 8 CFR 1003.2, 1003.23; Matter of Yewondwosen, 21 I&N Dec. 1025, 1027 [BIA 1997] [stating that the "Board has the ability to reopen or remand proceedings when appropriate, such as for good cause, fairness, or reasons of administrative economy"]).

Here, good cause by virtue of Respondent's likelihood of obtaining a visa to remain in the United States legally has been established. In November 2025, Respondent filed her application for a T-Visa. In order to establish eligibility for T nonimmigrant status, an applicant must demonstrate that they: (1) are or where a victim of a severe form of trafficking in persons; (2) are physically present in the United States; (3) have complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; (4) would suffer extreme hardship involving unusual and severe harm if they were removed from the United States; and (5) are admissible to the United States (see 8 U.S.C.A. § 110).

Respondent's eligibility for a T-visa is fully set forth at Exhibit G, which contains her complete application. However, for ease of the Court, Respondent has established the following: She was a victim of trafficking, which defined under federal law as either sex trafficking or labor trafficking. Here, Respondent can establish that she was a victim of severe sex and labor trafficking wherein she was recruited, harbored, and transported for labor or services through the use of force, fraud, or coercion for the purpose of a commercial sex act, involuntary servitude, peonage, debt bondage, or slavery (see 22 U.S.C.A § 7102). In particular, Respondent was lured by fraud to the United States by Raul; [redacted]

Furthermore, Respondent is present in the United States, filed a formal complaint with the Utah Attorney General's office and provided a statement (the case is currently under investigation), and would suffer extreme hardship if she were returned to Guatemala, the country she originally fled to escape abuse. Notably, Guatemala does not offer the same protection as the United States to women, like Respondent, who are abused. Returning her to Guatemala will place her squarely back in harm's way, both physically and psychologically.

In addition to the above, Respondent's eligibility for a U-visa is currently being reviewed, as she was a victim of domestic abuse in New York by her son's father. She filed a criminal complaint, cooperated with the police, and it resulted in conviction against her abuser.

Accordingly, because Respondent is prima facie eligible for, and will likely receive a T-visa (or alternatively, a U-visa), the Court should exercise its discretion to reopen these proceedings.

POINT FOUR

RESPONDENT WARRANTS A FAVORABLE EXERCISE OF DISCRETION

Deportation has serious consequences (Fong Haw Tan v. Phelan, 333 U.S. 6 [1948]. A person in removal proceedings is entitled to full due process, which, in this context, requires that a respondent be given an opportunity to be heard at a meaningful time and in a meaningful manner (Reno v. Flores, 533 U.S. 678, 693 [2001]; Armstrong v. Manzo, 380 U.S 545, 552 [1952]; Jacinto v. INS, 208 F.3d 725, 727 [9th Cir. 2000]. Removal proceedings involve the potential deprivation of a significant liberty interest and must be conducted according to the principles of fundamental fairness and substantial justice (Landon v. Plasencia, 459 U.S. 21, 34-35 [1982]; Goldberg v. Kelly, 397 U.S. 254 [1970]).

In this case, justice and notions of fairness will be best served by reopening this case. Given the arguments set forth in this motion, it is abundantly clear that Respondent would have been present at her court hearing had she been aware of it. She is a hardworking mother of a U.S. born child who came to this country seeking nothing more than safety and peace. Due to the abhorrent and vile actions of others, Respondent endured trauma in the United States that she should have never been forced to endure. Respondent has been in constant fear of her safety since she arrived in this country. She has finally found the courage to escape, and to start a new life for herself and for her son. After what Respondent has had to go through to get to this point, she should be permitted a chance to seek the legal relief she is eligible for.

Respondent has a strong possibility of being granted legal status to remain in this country. She has no criminal history at all. The circumstances she now finds herself in are not attributable to any mal intent or willful failure to comply with the immigration laws and customs of this nation. For all of these reasons, Respondent's case should be reopened.

POINT FIVE

RESPONDENT IS ENTITLED TO AN AUTOMATIC STAY OF REMOVAL

An immigration judge's removal order is stayed during the period between the filing of a motion to reopen removal proceedings conducted *in absentia* and the immigration judge's ruling on that motion. (8 C.F.R. § 1003.23(b)(4)(ii)). Accordingly, until this motion is decided upon, Respondent's removal order may not be executed.

Secondarily, this Court has the authority to issue an administrative stay under the circumstances (see 8 C.F.R. §§ 1003.2(f), 1003.1(d)(1)(ii)). When evaluating Respondents' motion to stay removal, the Court should employ a two-factor test, which balances the likelihood of success on the merits and the risk of irreparable harm (Nken v. Holder, 556 U.S. 418, 432 [2009] ["The authority to grant stays has historically been justified by the perceived need to prevent irreparable injury to the parties or to the public pending review"]; In re Revel AC, Inc., 802 F.3d 558, 569 [3d Cir. 2015] [finding that stay adjudication requires sliding-scale balancing test so showing of high risk of irreparable harm reduces necessary degree of possibility of success on the merits]).

Based on the above, it is indisputable that Respondent's likelihood of obtaining legal permanent residency is great. If she is deported back Guatemala—where she will likely find herself thrust back into an abusive relationship without recourse, the consequences for herself and her son will be unimaginable.

Lastly, denying the stay motion without adjudicating the underlying motion to reopen would conflict with the right to seek a judicial stay of removal in conjunction with filing a petition for review (see 8 U.S.C. §§ 1252(a), (b)(3)(B)). Were the Board to deny a stay of removal before adjudicating the motion to reopen and Respondents are deported, it would deprive them of the right to seek a judicial stay from the Circuit Court of Appeals.[1] Until the Board rules on Respondent's pending motion to reopen, there is no final order of removal of which Respondent can seek judicial review (8 U.S.C. §§ 1101(a)(47)(B), 1252(a)(1); Shaboyan v. Holder, 652 F.3d 988, 989-90 [9th Cir. 2011] [concluding the court lacked jurisdiction to review interim BIA order denying stay request where BIA had not yet adjudicated pending motion to reopen]). Thus, to ensure that Respondents can exercise their statutory right to seek a judicial stay of removal in federal court, the Board must not deny the instant motion to stay removal without concurrently adjudicating the pending motion to reopen.

CONCLUSION

Respondent has established her entitlement to have her case reopened, so that she can pursue legal status by virtue of her T-Visa application, or alternatively, a U-Visa application. If the Court requires additional information to adjudicate this motion, we are happy to provide the same under separate cover.

[1] In many circuits, filing of a judicial stay motion triggers a temporary stay of removal pending briefing and a decision on the stay motion (see, e.g., First Circuit Local Rule 18.0; In re Immigrant Petitions, 702 F.3d 160, 162 [2d Cir. 2012]; Third Circuit Standing Order Regarding Immigration Cases [Aug. 5, 2015]; Fourth Circuit Standing Order 19-01; Ninth Circuit General Order 6.4(c)).

Dated: December 7, 2025
Freeport, NY

Respectfully submitted,

Erick Marroquin, Esq.

EXHIBIT B

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

Kristi Noem, *Secretary of Homeland Security*,
245 Murray Lane, SW
Washington, DC 20528

Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*,
500 12th Street, SW
Washington, DC 20536

Kenneth Genalo, *Field Director NYC, U.S. Immigration and Customs Enforcement*,
26 Federal Plaza #500,
New York, NY 10278

Pamela Bondi, *Attorney General*,
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dated: January 29, 2026

Respectfully submitted,

Sheharyar Ali, Esq.
Counsel for Petitioner