UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Jorge Alberto Villatoro,

Petitioner,

-against-

KRISTI NOEM, in her capacity as Secretary for the United States Department of Homeland Security; FRANCIS RUSSO, Acting Field Office Director of New York, Immigration and Customs Enforcement, in his official capacity, PAMELA BONDI, in her official capacity as the Attorney General of the United States,

Respondents.

Case No. 1:25-cv-05306

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

PRELIMINARY STATEMENT

1. Petitioner, Jorge Alberto Villatoro ("Petitioner" or "Mr. Villatoro"), is a native and citizen of El Salvador, who has been living in the United States since May 29, 2005. Petitioner is unlawfully detained under the direction of Respondents. On July 26, 2005, the Immigration Judge ordered him removed in absentia. ***Exhibit A*** He remained inside the United States, along with his wife and two USC children. ***Exhibit B***. He has never been accused of committing a crime. On March 31, 2025, he filed a T visa application with USCIS in effort to normalize his status. ***Exhibit C***. On September 22, 2025 he appeared, at the direction of USCIS to provide biometrics in support of his T visa application and DHS detained him in order to effectuate his order of removal. ***Exhibit E.*** Petitioner is seeking his release from incarceration pursuant to the plain interpretation of the statute and recent Court decisions from this District and other Districts.
2. This Court should release the Petitioner because the removal period ended 90 days after the in absentia order, October 24, 2005 See 8 U.S.C. § 1231(a)(1)(A). Whereas a removal order becomes final "upon expiration of the time allotted for an appeal," a removal order entered *in absentia* becomes final "immediately upon entry of such order." 8 C.F.R. § 1241.1; *Farez–Espinoza v. Chertoff,* 600 F.Supp.2d 488, 499 (S.D.N.Y.2009) (order of removal entered in alien's absence became final immediately). As a result, the 90–day removal period commences immediately upon entry of the *in absentia* order of removal. Section 1231(a)(1)(C) tolls the removal period if an alien "conspires or acts to prevent the alien's removal." 8 U.S.C. § 1231(a)(1)(C).
3. The Petitioner was seeking to normalize his status in the USA and provided an accurate address to USCIS. On or about, September 22, 2025, DHS detained him, more than 20 years

after the IJ issued the in absentia order. During his time in the USA, the Petitioner has been an upstanding member raising his two United States citizen children. His actions are the antithesis of an "affirmative act preventing his detention"*Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 499 (S.D.N.Y. 2009)

4. Mr. Villatoro respectfully requests that this Court grant a Petition for Writ of Habeas Corpus and order his release and order his release.

I. PARTIES

5. Petitioner Jorge AlbertoVillatoro, is a 41 year old man, and New York resident for over twenty years. He is the devoted father of two U.S. citizen children, who deeply value his care, guidance, and support. He has no criminal history and has consistently sought to enhance his family's well-being.
6. Respondent Francis J. Russo is named in his official capacity as Field Office Director New York for the U.S. Immigration and Customs Enforcement. In this capacity, he is responsible for the administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a); routinely transacts business in the Eastern District of New York, and is legally responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Russo's address 26 Federal Plaza, 9th Floor, Suite 9-110, New York, NY 10278.
7. Respondent Kristi Noem is named in her 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 INA, 8 U.S.C. § 1103(a); routinely transacts business in the Eastern District of New York, and is legally

responsible for pursuing Petitioner's detention and removal; and as such is the legal custodian of Petitioner. Respondent Noem's address is U.S. Department of Homeland Security, Washington, District of Columbia 20528.

8. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8 U.S.C. § 1103(g), routinely transacts business in the Eastern District of New York, is legally responsible for administering Petitioner's removal proceedings and the standards used in those proceedings, and as such is the legal custodian of Petitioner. Respondent Bondi's address is U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, District of Columbia 20530.

II. JURISDICTION

9. This Court has subject matter jurisdiction over the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl.2 of the United States Constitution; All Writs Act, 28 USC § 1651; the Administrative Procedure Act, 5 USC § 701; and for injunctive relief the Declaratory Judgment Act, 28 USC § 2201. Petitioner's current detention as enforced by Respondents constitutes a "severe restraint on [Petitioner's] individual liberty," such that Petitioner is "in custody in violation of the...laws...of the United States." See *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973); 28 U.S.C. § 2241.

III. VENUE

10. Venue is proper in the Eastern District of New York under 28 U.S.C. § 1391 and 28 U.S.C. § 2242 because the Respondent is detained in the Eastern District of New York at the USCIS

office located at USCIS Hauppauge 30 Wheeler Road Hauppauge NY 11788. *See generally Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004) ("[T]he proper respondent to a habeas petition is 'the person who has custody over the petitioner.'") (citing 28 U.S.C. § 2242).

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

11. DHS distributed a handout which specifically states, "It is ICE's legal position that the removal period does not begin until the noncitizen is detained in ICE Custody." This ignores the plain interpretation of the statute and recent Court decisions from this District. As such, exhaustion is futile. ***Exhibit D***.

12. A district court may waive exhaustion when the pursuit of administrative remedies would either be futile or render the legal issue moot. *See, e.g., Carmona v. United States Bureau of Prisons*, 243 F.3d 629, 634–35 (2d Cir.2001) (procedural default may be excused where prisoner shows further appeals would be futile); *Monestime v. Reilly*, 10 Civ. 1374(WHP), 2010 WL 1427672, at *3 (S.D.N.Y. Apr. 9, 2010) (failure to exhaust excused where "DHS declined to revisit [petitioner's] mandatory detention status"); *Goren v. Apker*, 05 Civ. 9006(PKC), 2006 WL 1062904, at *4 (S.D.N.Y. Apr. 20, 2006).

V. STATEMENT OF FACTS

13. Petitioner is a native of El Salvador, and he first entered without inspection on May 29, 2005. The Petitioner was 21 years old. ***Exhibit A.***

14. He fled extreme poverty and childhood sexual abuse in El Salvador. ***See Exhibit C*** for Petitioner's Statement.

15. On July 26, 2005, the Immigration Judge ordered him removed in absentia.

A. PETITIONER'S 2005 REMOVAL ORDER

16. On July 26, 2005, the Immigration Judge ordered him removed in absentia. He remained in the United States with his wife and two USC children. On March 31, 2025, he filed a T visa application with USCIS in effort to normalize his status. On September 22, 2025, he appeared at the direction of USCIS to provide biometrics in support of his T visa application, and DHS detained him in order to effectuate his order of removal. On November 18, 2016, Petitioner and Yaquelin Beatriz Reyes Diaz got married in Huntington Station, New York. ***Exhibit B.*** On [redacted], he became the father of a U.S. citizen daughter, N[redacted] [redacted] On [redacted] Respondent had another U.S. citizen child, S[redacted] [redacted] ***Exhibit B.***

B. T VISA APPLICATION

17. T visa status is a form of immigration relief for non-citizen victims of human trafficking in the U.S. and provides a pathway to lawful permanent residency. Recognizing that the INA does not prevent a detained victim in removal proceedings with a final order of removal from applying with United States Citizenship and Immigration Services (USCIS), which has sole jurisdiction over such applications. 8 C.F.R. §214.11(d); INA §214.11(9), Congress provided for T visa status precisely to protect individuals in Mr. Villatoro's situation from being deported.[1]

[1] The Trafficking Victims Protection Act (hereinafter 'TVPA") defines human trafficking as the "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or noncitizens eligible for T visa status are in removal proceedings as a part of their trafficking exploitation services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." INA §101(a)(15)(t)(as amended); 8 U.S.C. §101(a)(15)(T).
Moreover, Congress envisioned that non-citizen victims of trafficking would be detained or incarcerated in the most limited of circumstances in light of their exploitation. Congressional testimony specifically states that while nothing can stop DHS from instituting removal proceedings, this should occur for conduct only *after* a victim has been admitted into the U.S. via T visa status or

18. There are four eligibility requirements for T visa status. At issue in this case is the "physical presence requirement." 8 U.S.C. §1101(a)(15)(t) (as amended). The applicant's physical presence in the U.S. must be on account of a severe form of trafficking in persons. DHS has historically interpreted this requirement in the "present tense", **meaning that the victim has not left the U.S. since the trafficking occurred.** 8 CFR §214.11(g)(2002); *see also* "Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status"; www.federalregister.gov/d/2016-29900/p-222. Therefore, an executed order of removal from the U.S. would render a non-citizen survivor of human trafficking ineligible to apply for T Nonimmigrant Status because they are no longer present in the U.S.

19. Immigrants who pursue lawful immigrant status in the United States have rights under the Due Process Clause of the Fifth Amendment. The fundamental requirement of Due Process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Mathews v. Elridge*, 424 U.S. 319, 332 (1976). Procedural due process "imposes constraints on government decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth amendment." *Id.* Once a Plaintiff-Petitioner has identified a protected liberty or property interest, the Court must determine whether constitutionally sufficient process has been provided. *Id.* In making this determination, the Court balances (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures

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for failure to disclose in their initial application. *See* "Trafficking Victims Protection Act of 2000, Protection and Assistance for Victims of Trafficking. (H.R. 8558, H.R.
8879)." Sec. 107(b)(1)(B). Congressional Record (October 5, 2000).

The other remaining requirements are: (1) must be a victim of a severe form of human trafficking, (2) reported their experiences to a law enforcement agency, (3) and will suffer severe
harm upon return to their home country. INA §101(a)(15)(t)(as amended); 8 U.S.C.
§101(a)(15)(T)(ensure cooperation with law enforcement.)

used, and the probable value, if any, of additional or substitute procedural requirement would entail;" (3) "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335. Due process cases recognize a broad liberty interest rooted in both the *fact* of deportation and the *process* of removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom."); *see also Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) (finding a "strong liberty interest" where being deported means being separated from home and family). While this liberty interest typically arises in removal proceedings, courts have found procedural due process violations for persons not in removal proceedings. *See, e.g., Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (forms issued to noncitizens charged with civil document fraud violated due process clause); *Soberano v. Johnson*, 305 F.Supp.3d 1176, 1180 (W.D. Wash. Mar. 29, 2018) (concluding that "Agency Defendants do not provide sufficient notice of the one-year deadline to satisfy the Due Process clause" to asylum-seeker subclasses both in and out of removal proceedings).

20. Petitioner is entitled to due process because he filed an I-914 Application for T Nonimmigrant Status. Petitioner has a liberty interest and a property interest at stake under the statute; those liberty interests will disappear if he is deported. Interpreted in light of the Constitution, the INA and its applicable regulations do not permit potential deportation while an individual is engaged in the process of attempting to regularize his immigration status through T visa applications. The INA seeks to protect individuals who live in the United States unlawfully, are under final orders and removal, and are victims of human trafficking

and/or the victims of crime.

21. Due process protects a noncitizen's liberty interest in the adjudication of applications for relief and benefits made available under the immigration laws. *See Arevalo* v. *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself"). Mr. Villatoro has a protected due process interest in his ability to have his T visa status adjudicated and to remain in the United States and ultimately receive lawful permanent residence status.

22. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). A court reviewing agency action "must assess . . . whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment"; it must "examin[e] the reasons for agency decisions—or, as the case may be, the absence of such reasons." *Judulang v. Holder*, 565 U.S.42, 53 (2011) (quotations omitted).

23. Moreover, individuals who participate with government investigations are also protected from abrupt deportation. The INA provides that "it shall be unlawful . . . for any alien to depart... from . . . the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe." 8 U.S.C. §1185(a)(1). Pursuant to this statutory provision, the Executive promulgated a series of regulations that bar the departure of immigrants whose departure would be "prejudicial to the United States." *See* 8 C.F.R. §§ 215.2 (citing as authority 6 U.S.C. §§ 202(4), 236; 8 U.S.C. §§ 1101, 1103, 1104, 1184, 1185, 1365a, 1379, 1731-32; and Exec. Order 13323, 69 Fed. Reg. 241, 241 (Jan. 2, 2004)); *see also* Control of Aliens Departing from the United States, 45 Fed. Reg. 65,515, 65,515-16 (Oct. 3, 1980) (promulgating into the immigration

regulations a copy of the State Department's pre-existing list in 22 C.F.R. Part 46). If an immigrant's departure meets this definition, he "shall" not depart the United States, and any departure-control officer "shall temporarily prevent the departure of such alien" until, after certain procedures are followed, the immigrant's departure is determined to no longer be prejudicial to the United States. 8 C.F.R. §215.

24. [redacted] As detailed in the Petitioner's bone chilling claim, he was trapped in forced labor at PG Steakhouse from 2007-2019. ***Exhibit C***. He suffered abuse and exploitative conduct that qualified him for T nonimmigrant status as a victim of a severe form of trafficking pursuant to 8 C.F.R. § 214.11(f). According to the T visa regulations, eligibility for a T visa requires that the applicant (1) has been recruited, harbored, transported, provided, or obtained for labor or services (2) through force, fraud, or coercion (3) for the purposes of subjection to involuntary servitude, peonage, debt bondage or slavery. As discussed in the attached T visa filing, Mr. Villatoro meets each of these criteria. ***Exhibit C***. Mr. Villatoro previously filed a T visa application which has not been adjudicated. ***Exhibit C***

25. Petitioner has a high likelihood of success on the underlying petition. He is entitled to pursue his application for a T visa pursuant to regulations published by USCIS. Without action from this Court he may forever be foreclosed from pursuing this visa.

a. The Bona Fide Determination Process

USCIS determines a principal application is bona fide if:

- The principal applicant properly filed a complete Application for T Nonimmigrant Status (Form I-914); and

- USCIS received and reviewed the results of the principal applicant's initial background checks and determined that the applicant does not present national security concerns.

  (https://www.uscis.gov/policy-manual/volume-3-part-b-chapter-6#footnote-8 last visited December 13, 2024).

26. Once USCIS determines an application is bona fide, USCIS then considers whether the applicant poses a risk to public safety or national security. USCIS makes this determination based on background and security checks results from biometrics, any additional background check information, and review of any other relevant discretionary factors. For individuals who are required to provide biometrics, USCIS does not make this discretionary determination until it has received the results of the biometrics-based background and security checks.

27. USCIS uses the results of the background checks and other information in the record to make the discretionary determination of whether deferred action is warranted. During secondary review, USCIS also uses such information to determine whether an applicant is admissible for the purposes of receiving a grant of T nonimmigrant status or merits a favorable exercise of discretion to waive any grounds of inadmissibility.

28. USCIS may choose not to exercise its discretion to grant deferred action and a BFD EAD where an applicant appears to pose a risk to national security or public safety or presents other negative discretionary factors.

29. Where a principal applicant or eligible family member has been convicted of or arrested for certain acts, USCIS may not issue deferred action and a BFD EAD and instead may proceed to secondary review, which involves a full adjudication of T nonimmigrant eligibility for the principal applicant and any family members.

The following concerns generally overlap with inadmissibility grounds[12] and may include:

- National security concerns;[13] and
- Public safety concerns, which include but are not limited to:
  - Murder, rape, or sexual abuse;
  - Offenses involving firearms, explosive materials, or destructive devices;[14]
  - Offenses relating to peonage, slavery, involuntary servitude, and trafficking in persons;[15]
  - Aggravated assault;
  - An offense relating to child pornography; and
  - Manufacturing, distributing, or selling of drugs or narcotics.[16]

30. "USCIS may determine that other adverse factors beyond those listed above weigh against a favorable exercise of discretion. However, USCIS may also exercise discretion favorably notwithstanding the above concerns if warranted based on the totality of the circumstances."

31. "Recognizing that many factors may influence whether criminal activity is prosecuted and results in a conviction, an arrest for a serious crime may be relevant to whether USCIS should exercise its discretion favorably. Therefore, a determination about whether to favorably exercise discretion when there are any adverse concerns requires a comprehensive review of the available evidence. For example, officers may need to request additional evidence or information in certain cases where security checks indicate that an applicant has an arrest record."

32. "USCIS does not conduct this in-depth, discretionary review during the BFD process. Instead, if USCIS determines that an applicant's case presents relevant adverse factors that would require further review, USCIS proceeds to secondary review, which is a full T nonimmigrant

status eligibility adjudication. During the full adjudication of the Form I-914, applicants have the opportunity to provide USCIS with potentially mitigating information or other evidence pertaining to arrests or convictions."

33. There are no historical processing times for the adjudication of interim benefits. The processing times for a T visa application are listed below:

Processing time for Application for T Nonimmigrant Status (I-914) at Vermont Service Center

https://egov.uscis.gov/processing-times/ (last visited September 9, 2025).

34. USCIS doesn't provide information regarding the processing times of T visa bona fide determinations. USCIS is not, at this time, putting out information concerning the length of time between the determination of a "bona fide application" and final adjudication of the application. USCIS, Questions and Answers: Victims of Human Trafficking, T Nonimmigrant Status (Aug. 21, 2023).

35. Petitioner is left without any knowledge of when USCIS will determine whether her T visa applications are bona fide.

36. Petitioner is left without any knowledge of when USCIS will adjudicate his T visa application.

37. Petitioner will be removed imminently due to USCIS failure to adjudicate the BFD or the underlying T visa application. Continued bureaucratic nonfeasance is arbitrary and unjustified. Mr. Villatoro has a statutory and regulatory right for USCIS to adjudicate his T visa application. *See Arevalo* v. *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself"). *See S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902, (S.D.N.Y. Nov. 26, 2018) (ordering release of Plaintiff-Petitioner detained despite pending T visa); *Bangally Fatty v. Nielsen*, 2018 WL 3491278 (W.D. Wash. July 20, 2018) (ordering a stay of petitioner's removal pending adjudication of a T visa). *See also Byrne v. Noem* , 2025 WL 2414159, at *6 (E.D.Pa., 2025)(The Court found that although the Plaintiff was not detained and DHS could hypothetically detain him, "has shown that he is facing imminent harm").

38. The District Court for the District of New Jersey, Newark previously considered an identical issue and granted a preliminary injunction. Exhibit E. The Court found that:

> Here, a statute, 8 U.S.C. § 1101(a)(15)(t), rather than a regulation sets forth the parameters of Petitioner's eligibility for the T Visa. The pertinent regulation, 8 C.F.R. § 214.11, provides additional definitions and sets forth the application process. As noted, the regulation expressly provides that the Department of Homeland Security ("DHS") may execute a final order of removal even if an applicant has filed for a T Visa.8 8 C.F.R. § 214.11(d)(1)(ii). Yet, the regulation also provides that once an applicant leaves the United States, he is no longer eligible for the visa. Id. at § 214.11(g)(2)...Moreover, if USCIS determines that an applicant is eligible, then the regulation provides that "USCIS will approve the application and grant the T-1 nonimmigrant visa." Id. at § 214.11(d)(2)(9) (emphasis added). Thus, despite Respondents' arguments to the contrary, it does not appear that USCIS has discretion to deny an appropriate application – the regulation uses the mandatory "will" rather than the permissive "may."..... As a result, the Court concludes that Petitioner has demonstrated that he is likely to establish a constitutionally protected interest in applying for a T Visa.
>
> As to the remaining factors, they also favor the granting of

> injunctive relief and in ordering a stay of removal. The imminent, irreparable harm to the Petitioner is clear – he will automatically be ineligible to receive the T Visa. The balance of the hardships also favor the Petitioner as Respondents do not indicate any undue hardship if the Petitioner's removal is stayed. Finally, the public interest also weighs in favor of the Petitioner. The public has a clear interest in protecting persons who have been the victims of unlawful trafficking, as reflected by Congress in the statute; that interest is only furthered by ensuring that applicants have a legitimate opportunity to have their matters considered on the merits by USCIS.

Here, the Plaintiff is in the identical scenario as the Plaintiff, *supra*. *Sergio S.E. v. Rodriguez*, 20 cv 6741 (D.N.J. 2020). Exhibit E.[2]

VI. THE PETITIONER SHOULD BE RELEASED BECAUSE THE REMOVAL PERIOD ENDED ON OCTOBER 24, 2005

39. Statutory Authority to Detain Aliens: Several statutes set forth the Government's authority to detain an alien in removal proceedings. Section 241 of the Immigration and Nationality Act, governing detention, release, and removal of aliens, provides that, "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." 8 U.S.C. § 1231(a)(1)(A). This 90–day period is referred to as the "removal period." *Id.* The removal period begins on the latest of one of the following:

    i. The date the order of removal becomes administratively final.

[2] But *see Vieira v. McAleenan*, 2019 WL 4303417, at *4 (D.Ariz., 2019)(Holding that the Petitioner who was a derivative to his wife's T visa application would not make a colorable claim for relief before the District Court because he could still receive derivative status if he was deported.) *See Doe v. Mayorkas*, 2021 WL 2336596, at *5 (E.D.Va., 2021) (Petitioner's T visa application was adjudicated by USCIS, thus his federal claims are moot.") *See also Suarez-Reyes v. Williams*, 2020 WL 3414781, at *2 (D.Ariz., 2020) (While Petitioner alleges that his removal, prior to his T visa being adjudicated would, "violate due process and 'the spirit of the law,' he does not identify any specific legal authority, policy, or practice which he challenges as unconstitutional" and thus his claim must be denied.) *See also Doe v. U.S. Department of Homeland Security*, 2024 WL 5680828, at *3 (C.D.Cal., 2024) (Plaintiff filed a claim related to his T visa and then did not oppose the Defendants motion to dismiss.)

ii. If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
iii. If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

40. 8 U.S.C. § 1231(a)(1)(B) (emphasis added).During the 90–day removal period, detention of the alien is mandatory. 8 U.S.C. § 1231(a)(2). An alien not removed within the initial 90–day removal period may be detained beyond that period, 8 U.S.C. § 1231(a)(6), subject to a custody review by ICE. 8 C.F.R. § 241.4(k) (1)(i).

41. Whereas a removal order becomes final "upon expiration of the time allotted for an appeal," a removal order entered *in absentia* becomes final "immediately upon entry of such order." 8 C.F.R. § 1241.1; *Farez–Espinoza v. Chertoff,* 600 F.Supp.2d 488, 499 (S.D.N.Y.2009) (order of removal entered in alien's absence became final immediately). As a result, the 90–day removal period commences immediately upon entry of the *in absentia* order of removal. Section 1231(a)(1)(C) tolls the removal period if an alien "conspires or acts to prevent the alien's removal." 8 U.S.C. § 1231(a)(1)(C).

42. The overwhelming weight of authority applying section 1231(a)(1) (C) indicates that the removal period is subject to tolling where the alien acts to prevent his or her removal through judicial action, or by "demonstrat[ing] some sort of bad faith failure to cooperate." *Rajigah v. Conway,* 268 F.Supp.2d 159, 165 (E.D.N.Y.2003); *Ulysse v. Dep't of Homeland Security,* 291 F.Supp.2d 1318, 1324 n. 11 (M.D.Fla.2003) ("[T]he removal period can be extended beyond 90 days, if the alien thwarts or hinders the removal process"). *See generally Farez–Espinoza,* 600 F.Supp.2d at 501 (collecting cases).

43. In *Farez–Espinoza,* a factually analogous case, the petitioner was apprehended and detained by ICE 15 months *after* the immigration court entered the order of removal. 600 F.Supp.2d at 498–99. In challenging her detention, the petitioner argued that she had not been told by her

attorney to appear for a subsequent hearing in Immigration Court, nor was she aware prior to being taken into custody that an order of removal had been entered. *Id.* at 491, 502. The Court held that the removal order became final when issued, and not 15 months later when petitioner was taken into custody. *Id.* at 499. In so holding, Judge Baer reasoned that petitioner's "address and whereabouts" were on file with DHS during the entire 15–month period, and that the Government should not benefit from its failure to "pursue removal ... until more than 15 months after her order of removal was entered." *Id.* at 500. Judge Baer rejected the Government's contention that the removal period was extended until the date petitioner was detained, finding that she had committed no "affirmative misleading act that prevented her return, nor did she refuse to cooperate with the removal order" prior to her apprehension. *Id.* at 502. Significant to the Court's holding was that a petitioner's failure to appear at a removal hearing, alone, is insufficient to trigger the tolling provision. *Id.* at 501.

44. Here, the determinative facts are similar. On March 31, 2025, the Petitioner filed a T visa application with USCIS in effort to normalize his status. On September 22, 2025 he appeared, at the direction of USCIS to provide biometrics in support of his T visa application and DHS detained him in order to effectuate his order of removal. He provided his current address to USCIS. The Petitioner did not attempt to hoodwink DHS. *Farez-Espinoza v. Chertoff*, 600 F. Supp. 2d 488, 499 (S.D.N.Y. 2009) . As a result, this Court should reach the same conclusion as *Farez–Espinoza, Supra.*

45. The District Court in *Ulysse v. The Dep't of Homeland Security Court* considered an identical issue and found that the DHS had her address on file for four years and detained the Petitioner 17 months after the order of removal was issued. The court held that, "because the Government provided no explanation for its 17–month delay, the removal period commenced when the

order was issued and, therefore, the Government had no statutory authority to detain her." 291 F.Supp.2d at 1321 1326. Here, the Court should demand DHS provide an identical explanation because the Petitioner provided his address to DHS and he was not detained for 20 years. Thus, DHS has no statutory authority to detain the Petitioner because the removal period has expired.

46. In *Guan Zhao Lin v. Holder*, DHS detained the Petitioner nearly 16 years later after the order of removal became final, which raised "serious constitutional concerns." *Guan Zhao Lin v. Holder*, No. 10 Civ. 4316 (RMB)(JLC), 2010 WL 2836144 (S.D.N.Y. July 2, 2010). Most significantly, the Court held that the Petitioner's "failure to appear at [his] Immigration Court hearing [alone] does not rise to the level of 'bad faith failure to cooperate' necessary to trigger the tolling provision of section" 1231(a)(1)(C). Here, the Court should reach the same conclusion. The *Lin, infra* Court determined that the removal period would only be tolled if the "Petitioner affirmatively acted to avoid his removal." Similar to *Lin*, the Petitioner provided his address to DHS which prevents a finding that "he acted in bad faith to avoid his removal."

47. In *Diaz-Ortega*, DHS detained the Petitioner 12 years after the order of removal became final. *Diaz-Ortega v. Lund*, 2019 WL 6003485, *7 (W.D. La. Oct.15, 2019). The Government took the position that the removal period under 1231(a) "restarted" upon her arrest by DHS. *Id.* The court held "there was no recurrence of a 'triggering event' under 8 U.S.C. § 1231(a)(1)(B).—which would, by definition, begin "the" removal period - § 1231(a)(1)(B) dictates that the removal period necessarily begins when a removal order becomes final, and necessarily ends 90 days later." *Id.* Here, the Court should reach the identical conclusion, that the removal period began and ended 90 days after the in absentia order, October 24, 2005 . As a result, the Petitioner must be released.

48. In *Leslie v. Herron*, the Court determined that Petitioner's detention is governed by 8 U.S.C. § 1231 because he is subject to a final removal order issued on July 23, 2007. The court noted that the removal period began on July 23, 2007, unless tolled by subsequent events, and that any presumptively reasonable six-month detention period has long since expired. *Leslie v. Herron*, No. 10-CV-00515(A)(M), 2010 U.S. Dist. LEXIS 113679, at *1 (W.D.N.Y. Oct. 26, 2010). Here, the Court should make the same finding.

IX. THIS COURT SHOULD HOLD THE BOND HEARING OR ORDER RELEASE

49. Petitioner should be released or be afforded a bond hearing immediately because his detention is governed by 8 USC 1226(a).

50. This Court should maintain jurisdiction over the individualized bond hearing. As supported by existing case law, this Court is authorized to maintain jurisdiction in bond proceedings. In *Leslie v. Holder*, the District Court states "...we are empowered to conduct bail proceedings in habeas corpus proceedings brought by immigration detainees." 3:11-CV-249 * 10 (M.D. PA 2012). Similar to the facts in the instant case, the Petitioner in *Leslie* was detained for a prolonged period of time, and filed a petition for habeas corpus. The District Court ultimately conducted a bail hearing. (In citing *Leslie v. Attorney General*, 2012 WL 898614 the District Court states "Here, the law of the case, as defined by the mandate of the court of appeals is clear: 'Leslie's appeal will be remanded to the District Court with instructions to conduct an individualized bond hearing as required by Diop within ten days of the date when this opinion and order are filed....") *Id.* at 12. Similarly, the Third Circuit Court of Appeals in *Chavez Alvarez v v. Warden York County Prison*, "remanded with instruction to enter an order granting the writ of habeas corpus and ensure that Chavez-Alvarez is afforded, within ten days of the

entry of this order, a hearing to determine whether, on evidence particular to Chavez-Alvarez, it is necessary to continue to detain him to achieve the goals of the statute") *Chavez Alvarez v. Warden York County Prison,* 14-1402 * 21 (3rd Cir. 2015).

51. Furthermore, the Court in *Flores-Powell v. Chadbourne*, granted the Petitioner's Habeas Petition, and went on to hold that "the court will conduct a hearing to determine whether Flores is dangerous to the community or a flight risk" 677 F.Supp 2d 455 (2010). In deciding to conduct the bond hearing, the Court in *Flores-Powell* relied on the reasoning in *Alli v. Decker*, 644 F. Supp. 2d 535 (M.D. Pa. 2009); citing to *Alli's* decision:

> "Supervision of the reasonableness of detention through the habeas process also provides justified protection of the alien's liberty interest and conserves judicial resources. If the remedy for unreasonable detention were an order directing a bond hearing under § 1226(a), an alien who has already demonstrated that his detention is no longer reasonable would remain detained pending an initial custody determination by the DHS district director, 8 C.F.R. § 236.1(d)(1), a hearing before an immigration judge, *id.*, the IJ's decision, and a potential appeal to the BIA, *id.* § 236.1(d)(3). In addition, ... the only recourse for an alien dissatisfied with the outcome of his bond hearing would be to return to court again and file another habeas action. *Cf. Ly,* 351 F.3d at 272. A bond hearing before the habeas court avoids this circuitous and potentially lengthy process. The habeas court's determining whether a petitioner is entitled to release also serves the "'historic purpose of the writ,' namely, 'to relieve detention by executive authorities without judicial trial.'" *Zadvydas,* 533 U.S. at 699, 121 S.Ct. 2491. See, *Flores-Powell,* 677 F.Supp 2d 455 (2010).

52. Therefore, as is clear from existing case law, this Court is well within its jurisdiction to conduct a bond hearing, and it would be in the interest of judicial economy.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

THE PETITIONER SHOULD BE RELEASED BECAUSE THE REMOVAL PERIOD ENDED ON OCTOBER 24, 2005

53. 8 U.S.C. § 1231(a)(1)(B) (emphasis added).During the 90–day removal period, detention of the alien is mandatory. 8 U.S.C. § 1231(a)(2). An alien not removed within the initial 90–day removal period may be detained beyond that period, 8 U.S.C. § 1231(a)(6), subject to a custody review by ICE. 8 C.F.R. § 241.4(k) (1)(i).

54. Whereas a removal order becomes final "upon expiration of the time allotted for an appeal," a removal order entered *in absentia* becomes final "immediately upon entry of such order." 8 C.F.R. § 1241.1; *Farez–Espinoza v. Chertoff*, 600 F.Supp.2d 488, 499 (S.D.N.Y.2009) (order of removal entered in alien's absence became final immediately). As a result, the 90–day removal period commences immediately upon entry of the *in absentia* order of removal. Section 1231(a)(1)(C) tolls the removal period if an alien "conspires or acts to prevent the alien's removal." 8 U.S.C. § 1231(a)(1)(C).

55. Here, the Petitioner has not acted in bad faith. In fact, he applied with DHS to normalize his status. As a result, the removal period has concluded.

SECOND CAUSE OF ACTION

A STAY OF REMOVAL IS WARRANTED TO PROTECT MR. VILLATORO'S RIGHTS UNDER THE INA AND THE APA TO HAVE HIS IMMIGRATION RELIEF ADJUDICATED

56. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

57. Mr. Villatoro has a statutory and regulatory right for USCIS to adjudicate his T visa application. *See Arevalo* v. *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the "right to seek relief" even when there is no "right to the relief itself"). *See S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL 6175902, (S.D.N.Y. Nov. 26, 2018) (ordering release of Plaintiff-Petitioner detained despite pending T visa); *Bangally Fatty v. Nielsen*, 2018 WL 3491278 (W.D. Wash. July 20, 2018) (ordering a stay of petitioner's removal pending adjudication of a T visa). *See also Byrne v. Noem* , 2025 WL 2414159, at *6 (E.D.Pa., 2025)(The Court found that although the Plaintiff was not detained and DHS could hypothetically detain him, "has shown that he is facing imminent harm").

58. The District Court for the District of New Jersey, Newark previously considered an identical issue and granted a preliminary injunction. Exhibit E. The Court found that:

> Here, a statute, 8 U.S.C. § 1101(a)(15)(t), rather than a regulation sets forth the parameters of Petitioner's eligibility for the T Visa. The pertinent regulation, 8 C.F.R. § 214.11, provides additional definitions and sets forth the application process. As noted, the regulation expressly provides that the Department of Homeland Security ("DHS") may execute a final order of removal even if an applicant has filed for a T Visa.8 8 C.F.R. § 214.11(d)(1)(ii). Yet, the regulation also provides that once an applicant leaves the United States, he is no longer eligible for the visa. Id. at § 214.11(g)(2)...Moreover, if USCIS determines that an applicant is eligible, then the regulation provides that "USCIS will approve the application and grant the T-1 nonimmigrant visa." Id. at § 214.11(d)(2)(9) (emphasis added). Thus, despite Respondents' arguments to the contrary, it does not appear that USCIS has discretion to deny an appropriate application – the regulation uses the mandatory "will" rather than the permissive "may."..... As a result, the Court concludes that Petitioner has demonstrated that he is likely to establish a constitutionally protected interest in applying for a T Visa.
>
> As to the remaining factors, they also favor the granting of injunctive relief and in ordering a stay of removal. The imminent, irreparable harm to the Petitioner is clear – he will automatically be ineligible to receive the T Visa. The balance of the hardships also favor the Petitioner as Respondents do not indicate any undue

> hardship if the Petitioner's removal is stayed. Finally, the public interest also weighs in favor of the Petitioner. The public has a clear interest in protecting persons who have been the victims of unlawful trafficking, as reflected by Congress in the statute; that interest is only furthered by ensuring that applicants have a legitimate opportunity to have their matters considered on the merits by USCIS.

Here, the Plaintiff is in the identical scenario as the Plaintiff, *supra. Sergio S.E. v. Rodriguez*, 20 cv 6741 (D.N.J. 2020). Exhibit E.[3]

59. Additionally, under the Administrative Procedures Act, "final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. §704. The reviewing court "shall … hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. §706(2)(A), (E).

60. The Government is immediately attempting to deport him before USCIS decides his claim for relief and permanently deprives him of his T visa claim.

61. But if Mr. Villatoro is removed, he will be unable to pursue his rights under the statute.

[3] But *see Vieira v. McAleenan*, 2019 WL 4303417, at *4 (D.Ariz., 2019)(Holding that the Petitioner who was a derivative to his wife's T visa application would not make a colorable claim for relief before the District Court because he could still receive derivative status if he was deported.) *See Doe v. Mayorkas*, 2021 WL 2336596, at *5 (E.D.Va., 2021) (Petitioner's T visa application was adjudicated by USCIS, thus his federal claims are moot.") *See also Suarez-Reyes v. Williams*, 2020 WL 3414781, at *2 (D.Ariz., 2020) (While Petitioner alleges that his removal, prior to his T visa being adjudicated would, "violate due process and 'the spirit of the law,' he does not identify any specific legal authority, policy, or practice which he challenges as unconstitutional" and thus his claim must be denied.) *See also Doe v. U.S. Department of Homeland Security*, 2024 WL 5680828, at *3 (C.D.Cal., 2024) (Plaintiff filed a claim related to his T visa and then did not oppose the Defendants motion to dismiss.)

THIRD CAUSE OF ACTION

A STAY OF REMOVAL IS WARRANTED TO PROTECT MR. VILLATORO'S DUE PROCESS RIGHTS UNDER THE CONSTITUTION TO HAVE HIS IMMIGRATION RELIEF ADJUDICATED

62. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

63. Denial of the opportunity to have his T visa application and subsequent appeals adjudicated violates Mr. Villatoro' Due Process Rights under the Fifth Amendment. Due process challenges are evaluated under the *Mathews v. Eldridge* balancing test. 424 U.S. 319, 335 (1976).

64. Mr. Villatoro has a liberty interest in litigating his T visa application. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945), *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001).

65. Mr. Villatoro additionally has a property interest in availing himself of the statutory process of his T visa application. *See Calderon v. Sessions*, 330 F. Supp. 32 at 958 (recognizing a "right to try" to obtain immigration relief); *De Jesus Martinez v. Neilson*, 341 F.Supp.3d 400 at 407 (D.N.J. Sept. 14, 2018), appeal docketed, No. 18-3478 (3d Cir. Nov. 09, 2018) (granting a stay of removal because petitioner "has the right to complete the process created for individuals in his position, and because the government's attempt to frustrate that process violates his rights"); *Devitri v. Cronen*, 289 F. Supp. 3d 287, 295 (D. Mass. 2018) ("Here, there is a statutory right to move to reopen and an entitlement to not be deported to a country where persecution would occur...Thus, Petitioners do have a significant interest in the right to file a motion to reopen and the opportunity to have their fears of persecution and torture adjudicated before removal."); *see also United States v. Copeland*, 376 F.3d 61, 71 (2d Cir. 2004) (discussing the right to have relief adjudicated as distinct from the right to relief itself).

66. Mr. Villatoro's liberty and property interests outweigh any government interest in his deportation. Mr. Villatoro is a long-time U.S. resident. *See Chhoeun v. Marin*, 2018 WL 566821, at *9 (C.D. Cal., Jan. 25, 2018) ("Petitioners clearly have a strong liberty interest in remaining in this country" where "being deported to Cambodia means starting their lives over in a foreign country and apart from their loved ones."). It is in the public interest to allow him to avail himself of legal processes to avoid removal. The risk of erroneous deprivation is very high – if the Petitioner is removed, he will forever be prevented from applying for a T visa and assisting the U.S. government in bringing to justice his persecutors. Therefore, the due process balancing test is in favor of staying the Petitioner's removal.

67. If Mr. Villatoro is removed, he will lose eligibility for his T visa. The District Court for the District of New Jersey, Newark explained before staying a detained immigrant's order of removal prior to deportation: "If Petitioner cannot raise his claim concerning the T Visa at this point, and Petitioner is removed (which is reportedly imminent), then Petitioner will never be able to raise his T Visa arguments. This is because the regulation, as noted, provides that if Petitioner is removed, then he is no longer eligible for the T Visa. Petitioner's claims are now or never." *Sergio S.E. v. Rodriguez*, 20 cv 6741 (D.N.J. 2020). Exhibit E.

WHEREFORE, Petitioner respectfully requests this Court to:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from removing Petitioner from the United States pending the resolution of this case;

3. Declare that the process as applied to Petitioner by Respondents violates the Due Process Clause of the Fifth Amendment, the INA, the APA, and federal regulations;

4. Issue a writ of habeas corpus directing Respondents to pursue a constitutionally adequate process to justify adverse immigration actions against Petitioner;

5. Stay Petitioner's removal from the United States and the Eastern District of New York until he exhausts the process, successfully or otherwise, of pursuing relief from removal;

6. Enter an Order staying Petitioner's removal until after USCIS adjudicates his T visa application;

7. Order Respondents' provide Petitioner a pre-deprivation hearing with 48-hours advanced notice before any attempt is made to remove Petitioner from the United States;

8. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. §2412, or other statutes;

9. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

By: /s/ Paul Grotas
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COUNSEL FOR PETITIONER

Dated: New York, New York
September 22, 2025

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

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

Dated: New York, NY
September 22, 2025

By: /s/ Paul Grotas
Paul B. Grotas, Esq
COUNSEL FOR PETITIONER