

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

DANIELA VARGAS,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY; JOHN KELLY, Secretary of
Homeland Security; DAVID RIVERA,
Director of the New Orleans Field Office of
U.S. Immigration and Customs Enforcement;
and DAVID COLE, Warden of the LaSalle
Detention Facility,

Respondents.

CASE NO. _____

JUDGE:

MAGISTRATE JUDGE:

Date: March 6, 2017

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner Daniela Vargas is a 22-year old woman who was brought to the United States at the age of seven from Argentina. Ms. Vargas grew up in Morton, Mississippi, where she has lived nearly continuously since 2001. She graduated from Morton High School in 2013 and aspires to finish a degree in math and become a professor or teacher. Ms. Vargas has twice been granted deferred action through the Deferred Action for Childhood Arrivals (“DACA”) program, in 2012 and 2014, and her application for DACA renewal is currently pending. In addition, a petition for a “U” nonimmigrant visa was filed on her behalf in 2014 based on Ms. Vargas’ status as a family member of a victim of a serious crime who has suffered mental or physical abuse and is cooperating with government officials in the investigation or prosecution of criminal activity. That petition is also pending.

On February 15, 2017, Immigration and Customs Enforcement (“ICE”) agents raided Ms. Vargas’ home and arrested her father and brother. Ms. Vargas informed the agents that she had been granted DACA. After the agents led her father and brother away in handcuffs, Ms. Vargas went back into her home, locked the door behind her, and retreated into a closet. Later, the ICE agents returned with a search warrant and entered the home with force, breaking down the door. Ms. Vargas remained in the closet out of fear of the armed ICE agents, one of whom pointed a gun at her when she emerged. Before the agents left her house, they told Ms. Vargas that they knew her DACA had lapsed, but that they were giving her a “hall pass.”

After the raid on her home and the arrest of her father and brother, Ms. Vargas spoke to multiple media outlets about the experience, which terrified her. Her story attracted local and national media attention. On March 1, 2017, Ms. Vargas participated in a live press conference in Jackson, Mississippi that was critical of the ICE raids in Mississippi. She spoke publicly about

from challenging her ongoing detention and removal would result in substantial prejudice and irreparable harm.

For the reasons outlined below, Ms. Vargas' continued detention and inability to contest her detention and removal violate her Fifth and First Amendment rights, as well as the Administrative Procedure Act ("APA"). Petitioner respectfully applies to this Court for a writ of habeas corpus to remedy her unlawful detention by Respondents, and for declaratory and injunctive relief to prevent such harms from recurring.

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution (U.S. Const. art. I, § 9, cl. 2).

2. Venue lies in the Western District of Louisiana, because a substantial part of the events or omissions giving rise to this action occurred in the District. *See* 28 U.S.C. § 1391 and 28 U.S.C. § 2241. Divisional venue is proper in the Alexandria Division. *See* LR77.3.

3. No petition for habeas corpus has previously been filed in any court to review Petitioner's case.

PARTIES

4. Daniela Vargas, named Petitioner, is a 22-year-old citizen of Argentina who has lived continuously in the United States since 2001. Ms. Vargas has been in the custody of Respondents since March 1, 2017.

5. The U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government with the primary mission of securing the United States. ICE is a component agency of DHS, as is the U.S. Citizenship and Immigration Service ("USCIS").

6. Respondent John Kelly is the Secretary of DHS. He is sued in his official capacity.

7. Respondent David Rivera is the Director of the New Orleans Field Office of ICE, which has immediate custody of Petitioner. He is sued in his official capacity.

8. Respondent David Cole is the warden of the LaSalle Detention Center. He is sued in his official capacity.

LEGAL BACKGROUND

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12. Pursuant to the 2012 DACA Memorandum, individuals who came to the United States as children, lack a serious criminal history, attend school, pay a fee, and meet other criteria, may request that the DHS Secretary grant them deferred action, a form of prosecutorial discretion, for a two-year period. Those granted deferred action in this manner are also eligible to obtain employment authorization.

13. The current administration has made clear that the DACA program remains in place at this time. *See* Mem. of John Kelly, Sec’y of Homeland Security, to Department of Homeland Security Officials, Enforcement of the Immigration Laws to Serve the National Interest, February 20, 2017 at 2 (expressly exempting the 2012 DACA Memorandum from policy changes otherwise ordered therein) *available at* https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (attached as Ex. B).

14. The “U” nonimmigrant visa category was established by Congress to provide immigration relief to a noncitizen who: (1) “has suffered substantial physical or mental abuse as a result of having been a victim of [certain qualifying] criminal activity;” (2) “possesses information concerning [the] criminal activity;” and (3) “has been helpful, is being helpful, or is likely to be helpful” to law enforcement authorities, where the crime occurred in the United States. 8 U.S.C. § 1101(a)(15)(U)(i)-(iv).

15. The children of a U visa petitioner are eligible to obtain “derivative” U nonimmigrant status if they are under the age of 21 at the time the petition is filed. 8 U.S.C. § 1184(p)(7)(A).

16. Individuals obtaining visas under the U nonimmigrant category (including derivatives of the primary U visa petitioner) may apply to adjust their status to obtain lawful permanent residence after a period of three years. 8 U.S.C. § 245(m).

STATEMENT OF FACTS

17. Daniela Vargas is a 22-year old who has lived in the United States continuously since her arrival in 2001 at age seven. She has resided in Morton, Mississippi, for the majority of that time. She is a citizen of Argentina.

18. Ms. Vargas entered the United States from Argentina in 2001.

19. DHS has alleged that Ms. Vargas ente

24. Ms. Vargas' most recently granted period of deferred action expired in November

conference was covered by multiple print and television news outlets. Ms. Vargas gave a statement at the press conference noting the contributions of DACA recipients, describing the sacrifices of her parents, and expressing the need for a path to citizenship for undocumented immigrants. She also described how she felt that the United States was her home, noting that “my father and brother await deportation while I continue to fight this battle as a dreamer to help contribute to this country which I feel is very much my country.”

30. When the py country.”

35. The VWP “Notice of Intent to Issue a Final Administrative Removal Order” (ICE Form 71-058) containing DHS’ allegations against Ms. Vargas notes “If you wish to contest any of the above factual allegations or your removability, you will be granted 48 hours from the time of service of this notice to do so.”

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physical abuse and is cooperating with law enforcement in the prosecution of that crime. That petition is pending with USCIS.

48. In light of these pending applications for immigration relief, as well as any other relief to which she could be eligible, the violation of Ms. Vargas' Due Process rights results in substantial prejudice to her.

49. Respondents' actions in detaining Ms. Vargas without any procedure to contest her ongoing unlawful detention violate the Fifth Amendment.

COUNT TWO
FIFTH AMENDMENT – DUE PROCESS
DENIAL OF OPPORTUNITY TO CONTEST SUMMARY REMOVAL

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

51. Respondents' actions in denying Ms. Vargas an opportunity to contest her summary removal from the United States deny her rights to Due Process.

52. As set forth in Count One, DHS has presented no evidence that Ms. Vargas did, in fact, waive her right to contest her removal.

53. As set forth in Count One, Ms. Vargas did not—and could not—knowingly and voluntarily waive her right to a hearing to contest her deportation when she entered this country through the VWP at age seven.

54. Ms. Vargas has submitted an application for renewal of her DACA status, which is pending with USCIS. She previously obtained deferred action under the DACA program two times, in 2012 and upon renewal in 2014, following the rigorous screening process established by DHS.

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applying for DACA and in a subsequent renewal. Accordingly, Respondents cannot show any valid justification—let alone a “sufficiently strong special justification”—for depriving Ms. Vargas of her fundamental rights.

63. The Due Process Clause prohibits the government from punishing people for engaging in conduct that the government itself has encouraged. *See, e.g., Cox v. State of La.*, 379 U.S. 559, 571 (1965) (holding that the government could not punish protestors for demonstrating in a location where state officials had said the protest was allowed);

freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which

72. The arrest, detention, and im

79. In targeting, arresting, and detaining Ms. Vargas and seeking to remove her to Argentina, Respondent DHS relied on impermissible factors and failed to consider many relevant factors, including her constitutional rights, her long-standing ties to the United States, her pending DACA renewal application, her pending petition for a U nonimmigrant visa, her fear of return to her country, and current agency policies and guidance.

80. Respondent DHS' actions in targeting, arresting, detaining, and seeking to remove Ms. Vargas were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A)-(D).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- (1) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner;
- (2) Issue an injunction ordering Respondents to provide full and complete records necessary for Petitioner to challenge her removal in court;
- (3) Issue an injunction ordering Respondents to rescind the Final Administrative Removal Order;
- (4) Enter a judgment declaring that Respondents' detention of Respondent is in violation of her First and Fifth Amendment rights as well as the Administrative Procedure Act;
- (5) Award Petitioner reasonable costs and attorney's fees; and
- (6) Grant any other and further relief that this Court may deem fit and proper.

DATED: March 6, 2017

Respectfully submitted,

/s/ William Most

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† *Pro Hac Vice application forthcoming*