

**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 DHS;
DAVID D. RIVERA, Director of the New
Orleans Field Office Director; and DAVID
COLE, Warden of the LaSalle Detention Facility,

Respondents.

CIVIL CASE NO.

JUDGE:

MAGISTRATE JUDGE:

PETITIONER’S EMERGENCY MOTION FOR STAY OF REMOVAL

Pursuant to Federal Rule of Civil Procedure 7(b)(1) and Local Rule 7.1, Petitioner Daniela Vargas files this *emergency motion* respectfully requesting that the Court immediately stay her removal from the United States during the pendency of her habeas petition.

Ms. Vargas is 22 years of age. She was born in Argentina and has lived continuously in the United States, primarily in Mississippi, since the age of seven. After the Department of Homeland Security (“DHS”) created the Deferred Action for Childhood Arrivals (“DACA”) program in 2012, Ms. Vargas applied for, and was granted, deferred action—a reprieve from deportation and a work permit—for a renewable period of two years. In 2014, Ms. Vargas applied for and was granted a renewal of her DACA for another two-year period. In February 2017, Ms. Vargas again applied to renew her DACA. On February 10, 2017, U.S. Citizenship and Immigration Services (“USCIS”) issued a receipt notice acknowledging Ms. Vargas’ DACA

renewal application and her concurrently filed application for employment authorization renewal. Her application for DACA renewal is currently pending.

Ms. Vargas was also listed as a derivative child on a petition for a “U” visa in 2014 as a family member of a victim of a serious crime who cooperated with law enforcement in the investigation or prosecution of the criminal activity and who has suffered substantial abuse as a result of the criminal activity. That petition is also pending.

On February 15, 2017, Immigration and Customs Enforcement (“ICE”) officers raided Ms. Vargas’ home. After the ICE agents took away her father and brother, she hid in a closet in her home. Later, the ICE agents returned with a search warrant and forcibly entered the home, breaking down the door. Ms. Vargas remained in the closet out of fear of the agents, one of whom pointed a firearm at the ceiling in her bedroom. Ms. Vargas informed the officers that she had DACA, and before they left her house the ICE officers stated that they were aware that Ms. Vargas’ DACA has lapsed but they were giving her a “hall pass.” The ICE officers did not arrest Ms. Vargas at that time.

Soon after the ICE raid on her home, Ms. Vargas spoke to news media multiple times about the terrifying experience, and her story drew local and national news attention. On March 1, 2017, Ms. Vargas spoke out at a live press conference at Jackson City Hall in Jackson, Mississippi, about the ICE raid of her family home two weeks earlier. Immediately following the press conference, and in retaliation for the exercise of her First Amendment rights, Ms. Vargas was followed, arrested, and detained by several ICE officers. One ICE agent who had been present at the raid of her home said to Ms. Vargas, to the best of her recollection, “Remember me? You know who we are; you know why we’re here,” and “you’re under arrest for being an illegal immigrant.” ICE has and continues to detain Ms. Vargas in Jena, Louisiana at the LaSalle

Detention Facility since March 1, 2017.

Ms. Vargas' attorneys have been informed that she will be imminently removed from the United States without a hearing before an immigration judge pursuant to a "Visa Waiver Program ("VWP") Final Administrative Removal Order," which alleges that Ms. Vargas entered under the VWP and waived her right to contest removal when she was seven years old. DHS has produced no proof that Ms. Vargas did, in fact, personally waive her rights. Even assuming evidence of such a waiver exists, detaining and deporting Ms. Vargas without affording her a hearing would violate her Fifth Amendment due process rights because at age seven, over fifteen years ago, she could not knowingly and voluntarily waive her right to a removal hearing to remain in the U.S. under the VWP.

Although Ms. Vargas' attorneys advised DHS on March 1, 2017 that they represented her, DHS did not provide the attorneys with a copy of the Notice of Intent to Issue a Final Administrative Removal Order or the Final Administrative Removal Order at any point.

On March 3, 2017, Ms. Vargas' attorneys requested that various ICE officials exercise their discretion to release Ms. Vargas from detention and stay her removal. That request remains pending.

Ms. Vargas filed a habeas petition on March 6, 2017, arguing that her continued detention violates her Fifth Amendment procedural and substantive due process rights to a hearing before an immigration judge, as well as her First Amendment right to be free from unconstitutional retaliation for protected speech. Ms. Vargas is at imminent risk of deportation to Argentina—a country she left as a child, that she scarcely knows, and to which she fears returning.

Therefore, Ms. Vargas respectfully moves this Court to immediately grant an immediate stay of her removal during the pendency of her habeas petition for the reasons stated in the

attached Memorandum of Law.

DATED: March 7, 2017

Respectfully submitted,

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†Application to be Admitted Pro Hac Vice to Practice in the United States District Court for the Western District of Louisiana Forthcoming

CERTIFICATE OF SERVICE

I, William Most, hereby certify that on March 7, 2017 the foregoing motion and accompanying exhibits were filed and served through the CM/ECF system. Parties may access the filings through the Court's CM/ECF System.

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