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**Re: [REDACTED] (A# [REDACTED])
Request for Exercise of Prosecutorial Discretion to Dismiss Proceedings**

Dear ICE Counsel,

The Legal Aid Society represents Respondent [REDACTED] in these removal proceedings.

Respondent respectfully requests that your office move to terminate without prejudice her removal proceedings pursuant to 8 C.F.R. §§ 1239.2(c) and § 239.2(a)(7) in that circumstances have changed to such an extent that continuation is no longer in the best interest of the government. In the alternative, Respondent asks for administrative closure of these proceedings. As clearly demonstrated below, the totality of the circumstances surrounding Ms. [REDACTED] supports a favorable exercise of prosecutorial discretion.

Statement of Facts¹ and Procedural History

[REDACTED] is a forty-three-year-old citizen of the Dominican Republic and lawful permanent resident of the United States who was admitted to the U.S. as a lawful permanent resident on March 4, 1992, at the age of thirteen. She has never returned to the Dominican Republic.

Ms. [REDACTED] has had a painful and traumatic life. In her home country, she was abandoned by her birth mother at age two and suffered multiple instances of childhood sexual, physical, and psychological abuse, including sexual assault by family members. During her first year in New York City, she was shuffled around the homes of four different family members and felt abandoned. When she was fifteen years old, she became involved in an abusive relationship with [REDACTED], a man who was fourteen years her senior. Ms. [REDACTED] became pregnant at sixteen

¹ See Declaration of [REDACTED], dated October 10, 2014, attached as Tab A within Ms. [REDACTED]'s prosecutorial discretion request to OCC dated October 14, 2014 (hereinafter, "2014 PD Request"), attached at Exhibit G.

years old and gave birth to ██████████, assuming the heavy responsibility of motherhood at age seventeen. During her relationship with Mr. ██████████, Ms. ██████████ endured repeated physical, sexual, and psychological abuse from Mr. ██████████, including being hospitalized with a facial fracture below her right eye after he punched her in the face multiple times. Ms. ██████████ needed surgery and a facial implant for her injuries to heal; Mr. ██████████ punched her again in the face while she was still recovering.

When Ms. ██████████ was nineteen years old, she entered an abusive relationship with another older man, ██████████, who became the father of her second child, ██████████. Mr. ██████████ also abused her physically, sexually, and psychologically, including giving her a black eye and raping her. During this time, Ms. ██████████ struggled to raise her two young children with very little means and could not depend for very long on Mr. ██████████, who was forced to return to his native Dominican Republic around 2001 and stopped sending money to Ms. ██████████. After Mr. ██████████ left her, Ms. ██████████ felt extremely lost and alone. Social worker ██████████ notes in her psychological evaluation of Ms. ██████████ that she “continued to be emotionally depend[e]nt upon men without ever having her needs met.”²

In 2003, Ms. ██████████ became involved in the regrettable circumstance that led to her conviction and placement in removal proceedings. At age twenty-four, she started dating ██████████ a co-defendant in the criminal case. She was about to lose her apartment around this time and felt very anxious about not having enough money to support herself and her children. Her friend and former roommate, ██████████, says that Ms. ██████████ “does not know how to say no to anyone . . . [s]he would do anything to keep anyone happy.”³ Ms. ██████████ became friendly with a neighbor named ██████████, another co-defendant in the criminal case. Seeing that Ms. ██████████ was vulnerable, Mr. ██████████ exploited her vulnerability and inability to say “No” to him, persuading her to sign for a mail package at her home that he told her contained car parts. He offered her \$100 to sign for the package. Although Ms. ██████████ suspected that the package contained drugs, she did not want to anger Mr. ██████████ by refusing him and was desperate for the \$100. So she signed for the package, not knowing the type or quantity of drugs it contained. On ██████████, 2003, Ms. ██████████ was arrested with Mr. ██████████ and Mr. ██████████ and on ██████████, 2003, Ms. ██████████ was convicted upon a plea of two counts: 21 USC § 846 - Conspiracy to distribute and possess with intent to distribute heroin, and 21 USC §§ 812, 841(a)(1), 841(b)(1)(A) and 846 - Attempt to distribute and possess with intent to distribute heroin. She was sentenced to time served (a total of seven months in prison), followed by three years of supervised release, which she completed.

In granting Ms. ██████████’s request for a downward departure of her criminal sentence, U.S. District Court Judge ██████████ said during the sentencing hearing: “Amazingly, despite her many shortcomings as a human being, she has been an excellent mother by all accounts . . . From so many angles this defendant is herself a victim of life. She has been battered to the point that she even had to undergo facial surgery. She has been diagnosed as suffering from disorders related to the trauma of her abandonment as a child by her birth mother. She suffered incest as a

² Forensic Social Worker ██████████’s Psychological Evaluation of ██████████ dated February 12, 2004, attached as Tab B in 2014 PD Request.

³ *Id.*

child. . .”⁴ The judge added that he felt “considerable sympathy” for Ms. [REDACTED].⁵ Finally, he stated, “Her role in this offense . . . certainly did not make her one of the great narcotics distributors of our time or anything remotely like that.”⁶

In 2006, Ms. [REDACTED]’s intimate partner, [REDACTED], assaulted her on the street, punching and slapping her face as well as grabbing her hair and tearing her blouse. She reported him to the New York Police Department, who issued her a law enforcement agency certification on Form I-918, Supplement B to support her application for U Nonimmigrant Status. The application, based on Mr. [REDACTED]’s domestic violence, is still pending.⁷

On October 24, 2012, Ms. [REDACTED] was placed in immigration removal proceedings based on this sole conviction, for which she had a minor role at best. Ms. [REDACTED] has never been arrested for or convicted of any other crimes in her more than thirty years in this country. Ms. [REDACTED] deeply regrets her involvement in the circumstances leading to her conviction, which kept her separated from her two minor children. Ms. [REDACTED] explains her reaction to her arrest: “I was flooded with memories of everything I had been through as a child, and felt incredibly guilty for now having inflicted harm and suffering on my own children.”¹¹ She also explained that she learned her lesson while in prison and will “never do anything like that again.”¹² She says that when she was reunited with her children, it “was the happiest day of my life.”¹³

Today, Ms. [REDACTED] has three U.S. citizen children, including a minor son, A [REDACTED] (age eleven), and a U.S. citizen granddaughter, H [REDACTED] (age seven), who is [REDACTED]’s daughter. [REDACTED] is a single mother who suffers from ADHD and depends on her mother, Ms. [REDACTED], to help care for her daughter. Ms. [REDACTED]’s son, [REDACTED], was born with a congenital heart condition and has also been diagnosed with ADHD. Due to the family’s many hardships, Ms. [REDACTED] remains the linchpin keeping them together. Two generations of U.S. citizens would be greatly disadvantaged if she were forcibly removed.

Ms. [REDACTED] suffers from a variety of psychiatric illnesses after experiencing decades of trauma and abuse by strangers, family members, and intimate partners. She has been diagnosed with major depressive disorder, anxiety disorder, and experiences symptoms consistent with post-traumatic stress disorder (PTSD).¹⁴ She is prescribed and is taking Gabapentin to treat her anxiety disorder and has previously been prescribed Lexapro and Seroquel to treat her depression and anxiety disorders.¹⁵ In addition, Ms. [REDACTED] struggles with an intellectual disability. Psychologist [REDACTED] evaluated Ms. [REDACTED] and determined that she scored within the range of mental deficiency on most of the subtests of the Comprehensive Test of Nonverbal

⁴ See Sentencing Minutes from *U.S. v. [REDACTED]*, attached as Tab I in 2014 PD Request.

⁵ *Id.*

⁶ *Id.*

⁷ See USCIS Receipt Notice for Form I-918, attached as Exhibit C.

¹¹ Declaration of Y [REDACTED], Tab A in 2014 PD Request.

¹² *Id.*

¹³ *Id.*

¹⁴ See Medical records from Ms. [REDACTED]’s mental health practitioners at the Jewish Board Counseling Center in Bronx, New York, attached as Exhibit E.

¹⁵ See *id.* and Forensic Social Worker [REDACTED]’s Psychological Evaluation of [REDACTED], Tab B in 2014 PD Request.

Intelligence-2nd Edition.¹⁶ Her test scores indicate that she has significant intellectual limitation and impairments, ranging from 1% to 25% compared to the general population. Dr. ██████ concludes that Ms. ██████’s “intellectual disability and emotional problems are significant factors to consider,” and urges the government to understand that she would face severe problems if she were deported, especially without her children.¹⁷

On October 14, 2014, our office filed a request for the exercise of prosecutorial discretion to ICE Counsel to dismiss Ms. ██████’s removal proceedings. On August 5, 2016, Immigration Judge ██████ granted administrative closure of Ms. ██████’s removal proceedings without any opposition from ICE. However, on or about July 12, 2018, citing no new negative factors about her case, ICE filed a one-sentence motion to recalendar Ms. ██████’s proceedings. ICE provided no information except that the motion to recalendar was “in accordance with *Matter of Castro-Tum*,” a case which was improperly decided, and which has since been overruled by *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021). Ms. ██████ is scheduled for an individual hearing on her pending filing for relief under the Convention Against Torture (“CAT”) on ██████, 2022 at 10:30 a.m., at 26 Federal Plaza, before Immigration Judge ██████

Summary of Argument for Dismissal or Administrative Closure

These proceedings should be terminated pursuant to 8 C.F.R. § 1239.2(c) because circumstances have changed to such an extent from the inception of these proceedings that continuation is no longer in the best interest of the government. For all of the following reasons, these removal proceedings should be terminated or, in the alternative, administratively closed.

Ms. ██████ merits a favorable exercise of prosecutorial discretion for the following reasons:

- Ms. ██████ has been a lawful permanent resident of the United States since 1992, for over thirty years;
- Ms. ██████ has only a single non-violent drug conviction, for which she has already served her time and expressed remorse and regret;
- Ms. ██████ has explained the circumstances that led to this conviction, including that her co-defendants manipulated and exploited her into playing a very minor role in their scheme;
- Ms. ██████ is a victim of multiple forms of abuse and domestic violence, both as a child and as an adult, which created the vulnerable circumstances that lead to her conviction and placement in removal proceedings;
- Ms. ██████ has struggled with mental illness – she has been diagnosed with major depressive disorder, anxiety disorder, and has symptoms consistent with PTSD - but she has been compliant with her prescribed medical regimen for her mental illness, continues to see a mental health practitioner regularly, and takes Gabapentin to treat her anxiety;

¹⁶ See ██████’ Psychological Report and Evaluation of ██████, dated October 14, 2014, attached as Tab C in 2014 PD Request.

¹⁷ *Id.*

- Ms. ██████ has an intellectual disability, which limits her ability to work and survive on her own;
- Ms. ██████ suffers from additional physical health problems, including a clavicle fracture in March 2022 that necessitated surgery and physical therapy;¹⁸
- Ms. ██████ has strong familial ties, including her three U.S. citizen children, as well as a U.S. citizen granddaughter who she helps care for;
- Ms. ██████'s youngest child is only eleven years old and she is his primary caretaker;
- Ms. ██████'s entire family still depends on her significantly for emotional support and childcare;
- If deported, Ms. ██████ would be forced to return to the Dominican Republic, a country where she was first abused as a child, thereby compounding her trauma. While there, her mental health would undoubtedly deteriorate significantly because she would not have access to the medical care and medications that she needs to manage her mental illness and her physical health, which she currently has access to and which has helped her achieve some stability.

As detailed below and in the supporting documentation, Ms. ██████ merits an exercise of prosecutorial discretion in her favor and her removal proceedings should be terminated or, in the alternative, administratively closed.

ARGUMENT

1. The Circumstances Have Significantly Changed

Circumstances have changed to such an extent from the inception of these proceedings that continuation is no longer in the best interest of the government. For all of the following reasons, these removal proceedings should be terminated or, in the alternative, administratively closed.

It has been over eighteen years since Ms. ██████'s only removeable offense in 2003, a non-violent offense in which she was manipulated and exploited into playing a very minor role. Besides this single conviction, Ms. ██████ has never been arrested and convicted of any other charges. Although Ms. ██████ struggles every day to survive due to her past trauma and abuse, she is a wonderful mother and primary support for her three U.S. citizen children and U.S. citizen granddaughter. The family depends on her and no doubt would suffer tremendously without her presence and contributions.

On August 5, 2016, Immigration Judge ██████ granted administrative closure of Ms. ██████'s removal proceedings without any opposition from ICE. However, out of nowhere and with no new negative factors in her case, ICE recalendared Ms. ██████'s removal proceedings in 2018. In light of Ms. ██████'s past trauma, her and her family's precarious situation while she remains in removal proceedings, and the fact that the government previously acquiesced to Immigration Judge ██████ administratively closing her case, it simply does not make any sense at this time for the government to continue to try to deport her.

¹⁸ Medical records from Ms. ██████'s doctors at Jacobi Medical Center in Bronx, New York, attached as Exhibit F.

Ms. [REDACTED] has a pending application for relief under the Convention Against Torture (“CAT”) as well as a pending U Nonimmigrant Status application based on domestic violence from a former intimate partner. She is eligible for both forms of relief. *See* copy of Ms. [REDACTED]’s CAT filing on Form I-589, attached as Exhibit D. *See also* receipt notices for Form I-918 and Form I-192, and copy of Form I-918, Supplement B signed by the NYPD, attached as Exhibit C.

2. Recent Injunctions on the Mayorkas Memo Does Not Limit DHS’s Ability to Exercise Prosecutorial Discretion; DHS May Still Rely on the Factors Set Forth in the Doyle Memo; Pursuant to ICE’s Directive Regarding Using a Victim-Centered Approach, Prosecutorial Discretion Should be Exercised in this Case.

Recent injunctions on the Mayorkas Memo¹⁹ do not limit DHS’s ability to exercise its prosecutorial discretion in this case. On June 10, 2022, Judge Andrew Tipton of the U.S. District Court for the Southern District of Texas, in *Texas v. United States*, 2022 WL 2109204, enjoined the Mayorkas Memo as of June 24, 2022. Crucially, the sole effect of this decision was to vacate the categorical priorities established in the Mayorkas Memo, but nothing in that decision precludes DHS from exercising prosecutorial discretion on an individual or case-by-case basis. Moreover, Judge Tipton’s decision does not enjoin the Doyle Memo²⁰ and, in fact, does not mention the Doyle Memo. Therefore, the Respondent requests that DHS consider this case on its individual, unique merits and in accordance with the Doyle Memo.

The Doyle Memo says OPLA attorneys must exercise discretion by considering a noncitizen’s compelling factors, which include, but are not limited to following : 1) lengthy presence in the United States; 2) a mental condition that may have contributed to the criminal conduct; 3) a physical or mental condition requiring care or treatment; 4) status as the victim of a crime or victim, witness, or party in legal proceedings; 5) whether the noncitizen may be eligible for humanitarian protection or other immigration relief.

Ms. [REDACTED] satisfies all of the compelling mitigating factors listed above. She came to the U.S. in 1992, when she was thirteen years old, as a lawful permanent resident. She is now forty-three years old. She has spent more than two-thirds of her life in the U.S. and has three U.S. citizen-born children in the U.S. Her children, one of whom is a minor, would suffer extreme hardship if she were deported to the Dominican Republic.

Ms. [REDACTED] has a history of intellectual disability and mental illness. Her test scores on an intelligence test indicate that she has significant intellectual limitation and impairments, ranging from 1% to 25% compared to the general population. She has been diagnosed with major depressive disorder, anxiety disorder, and symptoms consistent with PTSD. The tragic abuse and neglect she experienced as a child and young woman made her particularly susceptible to the circumstance that resulted in her conviction, detention, and placement in removal proceedings.

¹⁹ Alejandro Mayorkas, *Guidelines for the Enforcement of Civil Immigration Law*, DHS Memorandum, September 30, 2021 (hereinafter “Mayorkas Memo”).

²⁰ Kerry E. Doyle, Principal Legal Advisor, ICE, Office of the Principal Legal Advisor (OPLA), to ALL OPLA Attorneys, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion*, April 3, 2022 (hereinafter “Doyle Memo”).

Ms. █████ continues to experience symptoms stemming from her mental illness. She has sought medical treatment and counseling for her illnesses and has been adherent to her medical regimen.

Ms. █████ was a victim of crime countless times in the Dominican Republic and in the U.S. She has been the victim of childhood incest and sexual abuse, as well as physical, sexual, and psychological abuse by the fathers of her first two children, █████ and █████. Ms. █████ also suffered physical abuse from an intimate partner, █████, which is the basis of her pending U Nonimmigrant Status application. Ms. █████ cooperated with the police in reporting Mr. █████’s assault against her and the New York Police Department issued a Supplement B Certification in support of her U Nonimmigrant Status application.²¹ Ms. █████ is also eligible for relief under CAT based on her mental illnesses and the lack of appropriate treatment and services for mental health in the Dominican Republic.²²

According to ICE’s *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs*, issued June 17, 2011, “ICE officers, special agents, and attorneys should exercise all appropriate prosecutorial discretion to minimize any effect that immigration enforcement may have on the willingness and ability of victims, witnesses, and plaintiffs to call police and pursue justice . . . Absent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.”²³ ICE emphasizes that, “Particular attention should be paid to: victims of domestic violence . . . ICE officers, agents, and attorneys are reminded of the existing provisions of the Trafficking Victims Protection Act (TVPA) . . . and the Violence Against Women Act (VAWA). These provide several protections for victims of domestic violence . . .”²⁴

According to ICE’s *Using a Victim-Centered Approach with Noncitizen Crime Victims*, issued August 10, 2021, “ICE will exercise prosecutorial discretion in appropriate circumstances to facilitate access to justice and victim-based immigration benefits by noncitizen crime victims.”²⁵ Further:

ICE officers and agents may encounter noncitizen victims of crime who are not the beneficiary of victim-based immigration benefits and do not have pending applications for such benefits. Accordingly, in the course of their duties, ICE officers and agents must look for indicia or evidence that suggests a noncitizen is the victim of crime . . . The fact that someone is a victim of crime and, where applicable, may be eligible for victim-based benefits for which they have not yet applied, is a discretionary factor that must be considered in deciding whether to take civil immigration enforcement action against the noncitizen or to exercise discretion . . .²⁶

²¹ See Exhibit C.

²² See Exhibit D.

²³ See Exhibit A.

²⁴ *Id.*

²⁵ See Exhibit B.

²⁶ *Id.*

Thus, based on ICE's directives regarding protecting victims of domestic violence and using a victim-centered approach, prosecutorial discretion should be exercised in this case.

- 3. Ms. [REDACTED] has a history of intellectual disability and mental illness. If she were deported to the Dominican Republic, she would undoubtedly become homeless and denied access to appropriate medical treatment and necessary medications. It would be inhumane to send Ms. [REDACTED] back to the Dominican Republic. Ms. [REDACTED] is eligible for relief under the Convention Against Torture ("CAT") based on her mental health and lack of appropriate treatment and services for mental health in the Dominican Republic.**

Ms. [REDACTED] has a long history of physical, sexual, and psychological abuse, starting from childhood, that has had a devastating impact on her entire life. She continues to suffer from symptoms relating to PTSD and has been diagnosed with major depression disorder and anxiety disorder. She is participating in behavioral and mental health services and treatment through the Jewish Board Counseling Center.²⁷


It would be cruel to uproot Ms. [REDACTED] from her home of more than thirty years and deport her to the country where she first suffered abuse and trauma, where she has not been in over three decades, where she has no support system, and where she would have no access to the medical services and treatment that she needs to manage her mental health illnesses and continue healing from the past. If she were deported to the Dominican Republic, she would be deprived of the necessary and life-saving treatment that she is currently receiving in the U.S. Based on these circumstances, Ms. [REDACTED] is eligible for protections under the Convention Against Torture.

4. Conclusion

As described herein, Respondent Ms. [REDACTED] respectfully requests the favorable exercise of prosecutorial discretion in the form of dismissal of these removal proceedings or, in the alternative, administrative closure, due to the many humanitarian considerations of her case.

Thank you for your kind consideration of this request. Should you have any questions, please do not hesitate to contact me by phone at [REDACTED], by email at [REDACTED], or by mail at 260 East 161st Street, 8th Floor, Bronx, NY 10451. I am happy to provide any further information or evidence necessary to support dismissal of this case.

Sincerely,



[REDACTED]
Staff Attorney, DV/Immigration Project
CC: Immigration Judge [REDACTED]

²⁷ See Exhibit E.

REQUEST FOR EXERCISE OF PROSECUTORIAL DISCRETION TO DISMISS PROCEEDINGS

INDEX OF EXHIBITS

EXHIBIT	DOCUMENTS
A	ICE Memorandum: <i>Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs</i> , issued June 17, 2011
B	ICE Directive 11005.3: <i>Using a Victim-Centered Approach with Noncitizen Crime Victims</i> , issued August 10, 2021
C	USCIS Receipt Notices for Respondent's U Nonimmigrant Status Applications on Form I-918 and Form I-192, and Copy of Form I-918 Supplement B, issued by the NYPD
D	Copy of Respondent's CAT Filing on Form I-589
E	Medical Records from Respondent's Mental Health Practitioners at the Jewish Board Counseling Center in Bronx, New York
F	Medical Records from Respondent's Doctors at Jacobi Medical Center in Bronx, New York
G	Copy of Respondent's Prosecutorial Discretion Request to OCC, dated October 14, 2014