

No. \_\_\_\_\_

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In the Supreme Court of the United States

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FEI FEI FAN,  
*Petitioner,*

v.  
YAN YAO JIANG & WEI WU,  
*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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PETITION FOR WRIT OF CERTORARI

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**QUESTION PRESENTED**

1. Whether the Ninth Circuit's interpretation of 18 U.S.C. § 1595(c) forecloses equitable tolling and continuing violation principles for trafficking victims whose visa dependency impaired their ability to file timely claims, in contravention of the Thirteenth and Fourteenth Amendments and in conflict with other circuits' equitable doctrines jurisprudence.

## **RELATED PROCEEDINGS**

United States District Court (D. Nev.):

*Fan v. Jiang and Wu*, No. 3:21-cv-00458-RCJ-CLB  
(Sept. 9, 2023) (order dismissing all claims)

United States Court of Appeals (9th Cir.):

*Fan v. Jiang and Wu*, No. 23-16215 (Dec. 5, 2024)  
(unpublished memorandum disposition  
affirming in part, reversing in part, and  
remanding)

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## OPINIONS BELOW

The Ninth Circuit's unpublished memorandum disposition is reprinted at App.1a–5a. The United States District Court for the District of Nevada's unpublished order is reprinted at App.6a–21a.

## JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on December 5, 2024. Pursuant to a granted extension of time to file under Supreme Court Rule 13.5, this petition is timely filed. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. XIII, § 1:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S. Const. amend. XIV, § 1:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## 18 U.S.C. § 1595(c):

No action may be maintained under subsection (a) unless it is commenced not later than the later of—

- (1) 10 years after the cause of action arose; or
- (2) 10 years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.

## INTRODUCTION

This case presents a recurring and nationally significant question concerning the constitutional and statutory protections guaranteed to victims of human trafficking who remain trapped under visa-dependent coercion. Petitioner Fei Fei Fan, a former international scholar, alleges that sustained immigration-based dependency prevented her from timely asserting claims for forced labor under the Trafficking Victims Protection Reauthorization Act (TVPRA), 18 U.S.C. §§ 1589, 1595. The Ninth Circuit's rigid application of the ten-year statute of limitations, without regard to the structural barriers to access faced by visa-dependent victims, extinguishes the very rights Congress sought to protect and undermines the Thirteenth and Fourteenth Amendments.

The courts of appeals are divided over whether equitable tolling and the continuing violation doctrine apply to trafficking victims who experience long-term coercion, including psychological manipulation and immigration threats. Some circuits recognize that sustained coercion necessitates tolling to preserve access to justice; others, like the Ninth Circuit, reject such doctrines, applying a strict limitations period even where coercion persisted. This entrenched conflict has significant implications for the uniform enforcement of federal civil rights statutes designed to eradicate modern slavery.

The question presented is urgent and recurring. Without this Court's intervention, victims of trafficking whose silence was compelled by fear and

dependency will continue to be barred from seeking redress, and the TVPRA's remedial purpose will be compromised. The Court's review is warranted to ensure that the constitutional promises of freedom and due process are not denied by the very coercion they were designed to remedy.

### STATEMENT OF THE CASE

Petitioner Fei Fei Fan, a former international scholar, filed suit under the Trafficking Victims Protection Reauthorization Act (TVPRA), alleging that she was subjected to forced labor through sustained immigration-based coercion. The district court dismissed Petitioner's claims arising from conduct beginning in 2006 as time-barred under 18 U.S.C. § 1595(c), concluding that the alleged coercion did not extend into the limitations period, and dismissed her remaining claims for failure to plead the necessary elements under the TVPRA and state law. The United States Court of Appeals for the Ninth Circuit affirmed in part, reversed in part, and remanded in an unpublished memorandum disposition.

Petitioner alleged that her trafficker exercised de facto control over her visa sponsorship by leveraging his influence within her academic institution, creating an enduring structure of psychological and legal dependency that suppressed her ability to access judicial remedies within the limitations period. Her experience reflects a broader systemic problem. According to the U.S. Department of State's 2023 Trafficking in Persons Report, traffickers frequently exploit visa dependency to isolate victims and sup-

press complaints through threats of deportation and immigration retaliation.<sup>1</sup> Independent data confirm the scale of the issue: thousands of visa-holding labor trafficking victims have been identified through the National Human Trafficking Hotline in recent years, underscoring the systemic risks faced by immigration-dependent workers.<sup>2</sup>

Victims from countries subject to long immigration backlogs face especially prolonged periods of visa dependency, often spanning *a decade or more*. For such individuals, continued compliance with the trafficker's demands may be the only means of maintaining lawful presence in the United States, compounding the structural barriers to timely seeking legal redress.

Congressional findings supporting the TVPRA recognized that fear of deportation creates a structural barrier to justice, and emphasized the need to protect individuals subjected to immigration-based coercion.<sup>3</sup>

Nevertheless, the lower courts applied a rigid, incident-based interpretation of § 1595(c), disregarding the cumulative effects of sustained coercion. They refused to consider equitable tolling

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<sup>1</sup> U.S. Department of State, Trafficking in Persons Report (2023), <https://www.state.gov/reports/2023-trafficking-in-persons-report/>.

<sup>2</sup> See Polaris Project, U.S. National Human Trafficking Hotline Data, <https://polarisproject.org/resources/us-national-human-trafficking-hotline-statistics/>.

<sup>3</sup> See H.R. Rep. No. 106-939, (2000), <https://www.govinfo.gov/content/pkg/CRPT-106hrpt939/pdf/CRPT-106hrpt939.pdf>.

or the continuing violation doctrine despite unrebutted allegations that coercion persisted well into the limitations window. That interpretation not only undermines Congress's remedial purpose to protect victims of modern slavery but also exacerbates a conflict among the circuits concerning the availability of equitable doctrines for trafficking victims. The constitutional stakes under the Thirteenth and Fourteenth Amendments, and the systemic threat to the enforcement of anti-trafficking laws, warrant this Court's review.

## **REASONS FOR GRANTING THE PETITION**

### **I. The Circuits Are Divided Over the Application of Equitable Doctrines to Trafficking Victims**

The courts of appeals are divided over the extent to which equitable doctrines—including equitable tolling and the continuing violation doctrine—apply to trafficking victims subjected to long-term immigration-based coercion. This entrenched conflict is outcome-determinative and warrants this Court's review.

The Ninth Circuit applies the TVPA's temporal protections narrowly. In *Ditullio v. Boehm*, 662 F.3d 1091, 1098–1102 (9th Cir. 2011), the court declined to allow a continuing violation theory where the principal trafficking acts predated the TVPA's civil remedy provision, emphasizing that sustained coercion cannot revive claims absent new post-enactment violations.<sup>4</sup>

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<sup>4</sup> §1595(c) extended limitations period under later TVPRA amendments is not at issue in *Ditullio*.

This strict approach contrasts with more flexible interpretations adopted by other circuits under 18 U.S.C. § 1595(c), particularly where equitable tolling or continuous coercion is alleged to impair timely filing.

The Fourth Circuit in *Cruz v. Maypa*, 773 F.3d 138 (4th Cir. 2014), applied a broader reading of the TVPRA's temporal protections. The court held that equitable tolling may be appropriate where fear, isolation, and intimidation by traffickers prevent victims from seeking legal redress within the statutory period. *Cruz* emphasized that the remedial purpose of the TVPRA supports a more flexible approach to timeliness where coercion impairs access to the courts.

Similarly, in the context of torture claims under the Torture Victim Protection Act (TVPA), the Eleventh Circuit in *Arce v. García*, 434 F.3d 1254, 1263–64 (11th Cir. 2006), held that equitable tolling was appropriate where victims delayed filing due to an ongoing fear of retaliation while the perpetrators' regime remained in power. The court recognized that when coercive political circumstances, even after defendants' relocation to the United States, continue to impede victims' access to justice, the limitations period may be tolled to preserve meritorious claims.

These divergent approaches expose trafficking survivors to unequal treatment based solely on geography. In circuits like the Fourth, visa-dependent survivors may seek redress despite prolonged coercion. But in circuits like the Ninth, a stricter continuity requirement and rigid limitations rule may bar claims even when coercion persists. This en-

trenched split frustrates Congress’s remedial purpose in enacting the TVPRA and threatens the uniform enforcement of federal anti-trafficking protections. Review is warranted to restore doctrinal consistency and to ensure that equitable principles are not denied to the most vulnerable. Without this Court’s intervention, trafficking victims’ access to justice will continue to hinge not on the severity of their coercion, but on arbitrary jurisdictional lines—an outcome the Constitution and Congress alike sought to prevent.

## **II. The Question Presented Involves Constitutional Rights and Threatens the TVPRA’s Core Purpose**

The rigid limitations rule endorsed by the Ninth Circuit threatens core constitutional guarantees secured by the Thirteenth and Fourteenth Amendments. The Thirteenth Amendment ensures freedom not only from chattel slavery but from all modern forms of coerced labor enabled through psychological and immigration-based control. Congress enacted the TVPRA under its Thirteenth Amendment authority to dismantle such systems and to provide victims with meaningful access to justice. See H.R. Rep. No. 106-487, pt. 1, at 3 (2000).

The Ninth Circuit’s interpretation of § 1595(c) subverts this guarantee. By disregarding the continuing effects of coercion—including, in many cases, immigration-based threats that induce prolonged silence—the decision below perpetuates the very structural conditions the Constitution and TVPRA were enacted to dismantle. It perversely incentivizes traffickers to prolong their coercive control, knowing that greater delay may extinguish

their victims' legal remedies.

This rigid approach systematically excludes a class of victims Congress specifically sought to protect. By equating visa-dependent survivors with ordinary litigants, and by ignoring the structural barriers inherent in immigration dependency, the Ninth Circuit's rule institutionalizes a form of legal erasure. Victims most deeply trapped are denied access to justice precisely because of their prolonged subjugation—a result fundamentally incompatible with constitutional promises of freedom and due process.

The Fourteenth Amendment compounds the harm. Statutes of limitations cannot be applied in ways that systematically deny vulnerable groups a meaningful opportunity to be heard. Visa-dependent trafficking survivors, particularly foreign scholars and workers, remain legally tethered to their sponsors, with termination of employment or education triggering near-immediate loss of lawful status under federal immigration regulations. Even without explicit threats, the structure itself operates coercively, disabling survivors' legal agency and compounding the barriers to seeking judicial relief that Congress intended to dismantle through the TVPRA. The lower courts' refusal to recognize these structural barriers effectively nullifies the procedural protections guaranteed by due process.

Congress's findings supporting the TVPRA explicitly recognized that fear of deportation erects a systemic obstacle to justice. See H.R. Rep. No. 106-939, at 56, 112 (2000). Ignoring that legislative purpose undermines not only Congress's remedial

framework but also the constitutional mandates it was intended to vindicate.

Given the systemic stakes and the fundamental rights at issue, this Court’s intervention is urgently necessary to ensure that traffickers’ coercive success does not extinguish survivors’ access to justice.

### **III. This Case Presents a Clean Vehicle to Resolve an Entrenched and Recurring Conflict**

This case presents an ideal vehicle for resolving the entrenched conflict concerning equitable protections for trafficking victims. There are no disputed material facts, no jurisdictional defects, and no alternative holdings that could complicate review. The legal question is clean and dispositive: whether courts must consider the cumulative effects of sustained coercion when applying § 1595(c)’s limitations provision.

The record below squarely presents the issue. Petitioner alleged ongoing visa-dependent coercion suppressing her ability to seek redress, invoked both equitable tolling and the continuing violation doctrine, and faced dismissal solely on limitations grounds without substantive adjudication of these doctrines. The Ninth Circuit affirmed without resolving the acknowledged circuit divergence.

No further factual development is necessary. This Court can resolve, as a pure question of law, whether victims under sustained coercion are categorically barred from relief even when control persists into the limitations period.

Moreover, the stakes are substantial and recurring. Visa-dependent trafficking victims repre-

sent a significant subset of the national survivor population. Polaris Project data confirm that thousands of victims holding temporary visas have been identified in recent years. Yet access to remedies today turns not on the persistence of coercion, but on the fortuity of forum. That inconsistency in the application of civil rights protections urgently demands correction.

This Court should grant the petition to ensure that federal anti-trafficking protections and constitutional guarantees operate uniformly and effectively nationwide.

## CONCLUSION

The entrenched conflict among the courts of appeals over the application of equitable doctrines to trafficking victims, the grave constitutional implications under the Thirteenth and Fourteenth Amendments, and the systemic threat to the TVPRA's remedial purpose warrant this Court's review. This case presents a clean vehicle to resolve a recurring and nationally significant question concerning access to justice for survivors of modern slavery.

The petition for a writ of certiorari should be granted.

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April 29, 2025

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