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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Juan Sanchez-Hernandez

12 Petitioner,

13 v.

14 Fred Figueroa, et al.,

15 Respondents.

No. 2:25-cv-02351-PHX- DWL-MTM

**REPLY TO RESPONSE IN  
OPPOSITION TO EX PARTE  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
MOTION FOR PRELIMINARY  
INJUNCTION**

Challenge to Unlawful Incarceration; Request  
for Declaratory and Injunctive Relief

## **INTRODUCTION**

In her request for a preliminary injunction, Petitioner Juan Sanchez-Hernandez (“Ms. Sanchez” or “Petitioner”) set forth the legal and factual reasons to compel this Court to enjoin Respondents from removing, refouling, or sending her to any country. Moreover, Petitioner asked the Court to direct Respondents to release her from unlawful custody arising from the re-arrest and re-detention that they effectuated without legal justification on June 19, 2025.

In response, the Government argues against this action, but does not provide legal or factual reasons to refute the irreparable harm arising from unlawful removal and refolement and from a continuing unlawful custody. Moreover, the Government does not provide any factual or legal reason to keep Petitioner detained under a legitimate basis.

## **ARGUMENT**

### **I. Petitioner Will Likely Prevail on Her Claim That Her Re-Detention Is Unlawful**

In her ex parte application for injunctive relief, Petitioner argued that the DHS has to give legitimate reasons related to the fact that she is a danger to the community or a flight risk before re-detaining her. Instead, the Respondents allege only that she was re-detained because the government determined it was “significantly likely” to be able to effectuate her removal to Mexico in the “reasonably foreseeable future.” Doc 14 at 12. And yet the government has offered no assurances regarding this “significant” likelihood, or no timeframe for removal in the “reasonably foreseeable future.”

1           Instead, the government alleges that after ICE “received a lead for enforcement  
2           action” on June 13, they detained her 6 days later. Doc 14-1 at 4-5. Only after she was  
3           detained did the government even begin the process of seeking a third country of  
4           removal, which had previously been attempted, without success, after Petitioner was  
5           granted CAT deferral in 2022. *Id.* According to Respondents, “On June 27, 2025, ICE  
6           officers sent Form I-241 to Mexico, Panama and Belize.” *Id.* Respondents provide no  
7           evidence that any of these countries responded favorably or indicated an agreement to  
8           accept the Petitioner.  
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11           If Petitioner experienced confusion about the basis of her detention, it is only  
12           because ICE told her nothing at the time it detained her. Instead, on June 27, 2025—  
13           eight days after she was detained—she was served with a warning for a failure to  
14           depart, and an instruction sheet to assist in her own removal, both documents she had  
15           previously received upon winning CAT deferral in 2022. *Ex. 1.*  
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17           Only after filing the instant habeas action was the Petitioner then served with  
18           an additional Notice of Revocation of her Release on July 11, 2025. *Ex. 2.* The notice  
19           advises Ms. Sanchez “will promptly be afforded an informal interview at which you  
20           will be given an opportunity to respond to the reasons for the revocation.” Ms.  
21           Sanchez was, in fact, also served “Alien Informal Interview Upon Revocation of  
22           Order of Supervision Under 8 CFR § 241.4(l); 8 CFR § 241.13(i).” *Id.* Furthermore,  
23           she was offered an interview that day, to which she responded asking to speak to her  
24           attorney. *Id.* In short, no such interview has taken place.  
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27           Ms. Sanchez remains in the dark regarding the possibility of a removal “in the  
28           reasonably foreseeable future.” She was asked if she agreed to removal to Mexico and

1 indicated her fear of Mexico; she is now awaiting a reasonable fear interview. Doc.  
2 14-1 at 5.

3 The reality is, the Respondent, as a transgender woman, is afraid to be removed  
4 to most countries in the world, particularly given that she only has lawful status in a  
5 single country, Honduras, from which she has been granted protection. This is  
6 particularly true of Mexico, where transgender women are routinely targeted. *Ex. 3.*

7 Not only does she fear harm based on her transgender identity in most  
8 countries, but she also fears that she would run a high risk of refoulement to  
9 Honduras, given her lack of status elsewhere. Mexico in particular poses a risk of  
10 refoulement. O.C.G., a class member in the *DVD v. DHS* litigation, was recently  
11 removed to Mexico after an Immigration Court in Arizona granted him protection  
12 from Guatemala, only to be sent by Mexico to Guatemala days later. *D.V.D. v. DHS*, -  
13 -- F. Supp. 3d ---, 2025 WL 1142968 (D. Mass.), at \*9.

14 Nor is there proof Mexico has even accepted Petitioner. If the government is  
15 permitted to select countries at random and detain Petitioner indefinitely to determine  
16 both whether the country will accept her, and whether she merits protection, she could  
17 theoretically spend the rest of her life in immigration detention, asserting her fears and  
18 considering removal to every country. At a minimum, the government should be  
19 required to show that a country has accepted the Petitioner in order to justify her  
20 detention.

21 Nor do the regulations allow for indefinite detention in this way. The  
22 regulations lay out various means by which an individual granted release under  
23 supervision can have their release revoked. *See* 8 CFR § 241.13. Under 8 CFR §  
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1 241.13(i)(2), the Service may revoke an alien's release "if, on account of changed  
2 circumstances, the Service determines that there is a significant likelihood that the  
3 alien may be removed in the reasonably foreseeable future." Petitioners argue that the  
4 Government is not, in fact, required to show such changed circumstances under this  
5 section. *Doc.* 14 at 12. However, the plain language of the regulations require such a  
6 showing.  
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8 Furthermore, the regulations specify that an individual whose release has been  
9 revoked will be provided an initial informal interview "promptly after his or her  
10 return to Service custody." 8 C.F.R. § 241.13(i)(3). The post-revocation analysis  
11 should include "an evaluation of any contested facts relevant to the revocation." *Id.*  
12 This interview was not conducted for nearly a month after the Petitioner's revocation  
13 occurred, and even at that time, did not include any such analysis. *Ex. 2.* Other than a  
14 cursory statement in the instant proceedings, there has been no evidence offered to  
15 Petitioner that Mexico would accept her, let alone provide her any assurance that she  
16 would not be instantly refouled to her country of citizenship, where she has already  
17 been determined to face a high risk of torture.  
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21 Under *Zadvydas*, after an initial period of six months post-removal, the burden  
22 shifts to the government to show a significant likelihood of removal to justify ongoing  
23 detention. *See Tadros v. Noem*, No. 25CV4108 (EP), 2025 WL 1678501, at \*3 (D.N.J.  
24 June 13, 2025) (*quoting* *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001)). In *Tadros*, a  
25 District Court found that ICE's statements that it was "making efforts to facilitate  
26 Petitioner's removal" to a third country, years after the Petitioner was granted CAT,  
27 was insufficient to justify ongoing detention. *Id.* The *Tadros* court asserted that the  
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Petitioner's release after deferral of his removal in 2009:

suggests he was determined not to present a flight risk, and that the Government was unlikely to find a third country to accept him in the reasonably foreseeable future. Furthermore, Tadros has demonstrated there is no significant likelihood of his removal in the reasonably foreseeable future because fifteen years have gone by without the Government securing a third country for his removal.

*Id.* The *Tadros* Court granted the Petitioner's TRO and ordered his release after the re-detention of an individual who had won CAT years after the removal period had passed where the government made no showing of changed circumstances or evidence that the Petitioner's removal order could be effectuated to a third country. Here too no such showing has been made to show the Petitioner could be removed to Mexico, let alone that such removal is "likely" or "reasonably foreseeable."

## **II. Balance of Equities and the Public Interest**

The balance of equities and the public interest tip sharply in Ms. Sanchez's favor. These factors "merge where, as is the case here, the government is the opposing party." *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). In *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at \*3 (N.D. Cal. June 14, 2025), the court granted a temporary restraining order preventing detention for someone who had been out of ICE custody for five years and feared detention at an upcoming ICE checkin based on similar detentions in his community. The *Diaz* court concluded:

The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering. . . . Without the requested injunctive relief, Petitioner-Plaintiff might be abruptly taken into ICE custody, subjecting both him and his family to significant hardship. Yet the comparative harm potentially imposed on Respondents-Defendants is minimal—a mere short delay

in detaining Petitioner-Plaintiff, should the government ultimately show that detention is intended and warranted.

*Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at \*3 (N.D. Cal. June 14, 2025) (citation modified). “Moreover, the [Government] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).

Ms. Sanchez, in turn, is likely to suffer irreparable harm in the absence of a temporary restraining order. “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 247, 272 (1976)). Moreover, “[t]he Ninth Circuit has recognized ‘irreparable harms imposed on anyone subject to immigration detention’ including ‘the economic burdens imposed on detainees and their families as a result of detention. *Diaz v. Kaiser*, No. 3:25- cv-05071, 2025 WL 1676854, at \*3 (N.D. Cal. June 14, 2025) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017)). Ms. Sanchez has made a compelling case that her detention imposes a severe burden, including losing access to her hormones for weeks upon detention, being a transgender woman housed with male detainees, and being separated from her job, her partner and her community.

### **III. Petitioner’s Membership in the D.V.D. v. DHS certified class does not preclude injunctive relief in the instant case**

Respondents correctly allege that the Petitioner is a member of the class in *D.V.D. v. DHS*, due to her final order of removal issued in 238(b) proceedings. *D.V.D. v. DHS*, --- F. Supp. 3d ---, 2025 WL 1142968, at \*11 (D. Mass. Apr. 18,



2025). In a now-vacated injunction in that case, DHS had been enjoined from removals to third countries without first providing written notice of removal to that country.

Petitioner's claim for relief extends beyond the relief identified in the complaint in *DVD v. DHS*, principally, due to her challenge of the specific circumstances of her re-detention in violation of both the regulations and of her constitutional rights. And the underlying relief, protection from removal to Honduras, where she will be tortured, and to any other country where she may similarly fear torture or refoulement to Honduras, is intricately tied to relief that is unique to this action. Ms. Sanchez's liberty interest is particularly dependent on ICE's compliance with U.S. treaty obligations under the Convention Against Torture and its implementing regulations since she may be in the position of seeking protection under this treaty body for months or years. Whether she remains detained throughout such process, and whether the government has met its burden of showing that removal is in fact foreseeable to any country such that revocation of her release is justified, is a unique issue not at play in the *D.V.D.* case that merits Petitioner's individual habeas and the relief sought in the instant TRO.

#### IV. CONCLUSION

For good cause, Petitioner requests that the Court direct Respondents to (1) enjoin Respondents from removing, refouling, or transferring Petitioner to any country outside the United States; and (2) release Respondent from her current custody, arising from her re-arrest and re-detention on June 19, 2025.



Dated: July 14, 2025

Respectfully Submitted

/s/ Gregory Fay  
Gregory Fay  
Attorney for Ms. Sanchez

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