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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Mirta Amarilis CO TUPUL,

Petitioner-Plaintiff,

v.

Kristi NOEM, in her official capacity as
Secretary, U.S. Department of Homeland
Security;

Pamela BONDI, in her official capacity as
Attorney General of the United States;

Todd M. LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement;

John CANTU, in his official capacity as Field
Office Director, ICE Phoenix Office of
Detention and Removal; and

Case No. 25-at-99908

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION**

Oral Argument Requested

1 Fred FIGUEROA, in his official capacity as
2 Warden, Eloy Detention Facility,

3 *Respondents-Defendants.*

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5 **NOTICE OF MOTION**

6 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Petitioner-Plaintiff
7 Mirta Amaralis Co Tupul hereby moves the Court for emergency relief in the form of a
8 temporary restraining order and preliminary injunction enjoining Respondents-Defendants
9 from removing Petitioner-Plaintiff from the United States or relocating Petitioner-Plaintiff
10 outside of the District of Arizona pending further Order of the Court, and ordering her
11 release during the pendency of this action.
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14 If the Court deems oral argument necessary, Petitioner-Plaintiff requests to appear
15 by video.

16 Dated: August 2, 2025

Respectfully submitted,

18 */s/ Mindy Butler-Christensen*

Mindy Butler-Christensen

19 Christopher Godshall-Bennett

20 Eric Lee

21 Attorneys for Petitioner-Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION & FACTUAL BACKGROUND

Petitioner-Plaintiff Mirta Amaralis Co Tupul (“Ms. Co Tupul”) is in the custody of Immigration and Customs Enforcement (“ICE”) at the Eloy Detention Center in Eloy, Arizona, pursuant to an Order of Expedited Removal issued following Ms. Co Tupul’s detentive stop by a Customs and Border Patrol (“CBP”) agent.

Ms. Co Tupul is at imminent risk of removal from the United States as a result of being unlawfully arrested on July 22, 2025, and subsequently subjected to an Expedited Removal Order pursuant to 8 U.S.C. § 1225(b)(1).

Ms. Co Tupul was subjected to a detentive stop by a CBP agent without reasonable suspicion, arrested without a warrant or probable cause, and subjected to an Expedited Removal Order. The arrest and resulting Order were unlawful because the CBP agent conducted a detentive stop without reasonable suspicion that Ms. Co Tupul was in the United States unlawfully and effected a warrantless arrest without probable cause and without making an individualized determination as to flight risk. Information obtained as a result of this unlawful detentive stop and subsequent arrest were unlawfully used to make factual determinations on which the Expedited Removal Order is based.

Moreover, after Ms. Co Tupul’s arrest, ICE failed to afford her the opportunity to challenge the applicability and manner in which the Expedited Removal process was used against Ms. Co Tupul within the interior of the United States, ignoring extensive documentation provided by her attorney establishing her presence in the United States for almost thirty years.

1 As such, Ms. Co Tupul's Expedited Removal Order and detention pursuant thereto
2 violate her rights under the Fourth and Fifth Amendments. Moreover, Respondents-
3 Defendants may not subject Ms. Co Tupul to Expedited Removal, and the application of
4 this "process" to her violates the Immigration and Nationality Act ("INA"), the Fifth
5 Amendment, and is *ultra vires*.

7 Ms. Co Tupul therefore seeks a temporary restraining order ("TRO") and
8 preliminary injunction enjoining Respondents-Defendants from removing her from the
9 United States, from relocating her out of the District of Arizona pending this litigation, and
10 ordering her release. A TRO is necessary to avoid irreparable harm to Ms. Co Tupul and
11 to ensure that this Court is not deprived of jurisdiction over her claims should she be
12 removed from the United States or relocated outside of this District.

15 LEGAL STANDARD

16 Ms. Co Tupul is entitled to a temporary restraining order if she establishes that she
17 is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of
18 preliminary relief, that the balance of equities tip in [her] favor, and that an injunction is in
19 the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg*
20 *Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that
21 the preliminary injunction and temporary restraining order standards are "substantially
22 identical"). Even if Ms. Co Tupul does not show a likelihood of success on the merits, the
23 Court may still grant a temporary restraining order if she raises "serious questions" as to
24 the merits of her claims, the balance of hardships tips "sharply" in her favor, and the
25 remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
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1 1127, 1135 (9th Cir. 2011). As set forth in more detail below, Ms. Co Tupul
2 overwhelmingly satisfies both standards.

3 ARGUMENT

4 I. Ms. Co Tupul Warrants a Temporary Restraining Order

5 A temporary restraining order should be issued if “immediate and irreparable injury,
6 loss, or irreversible damage will result” to the applicant in absence of an order. Fed. R. Civ.
7 P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before
8 a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. of*
9 *Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974).
10 Ms. Co Tupul is likely to be deported via expedited removal in violation of her due process
11 rights without intervention by this Court. Ms. Co Tupul will suffer irreparable injury if she
12 is removed and continues to be detained without due process
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14 A. Ms. Co Tupul is Likely to Succeed on the Merits

15 1. Ms. Co Tupul’s Expedited Removal Order Resulted from an Egregious 16 Fourth Amendment Violation

17 The Expedited Removal Order issued to Ms. Co Tupul requires several
18 determinations, including a determination of alienage and a determination that there is a
19 factual basis for the Expedited Removal Order. The Court has jurisdiction to review
20 Expedited Removal Orders in regard to the determination of alienage and in regard to
21 whether a petitioner was “in fact” ordered removed. *See* 8 U.S.C. §§ 1252(e)(2)(A) and (B)
22 and 1252(e)(5); *see also DHS v. Thuraissigiam*, 591 U.S. 103, 149 (2020), Thomas, J.,
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1 concurring (A petitioner may seek “[j]udicial review . . . in habeas corpus proceedings’ of
2 ‘whether [he] is an alien’ . . .”).

3 While § 1252(e)(2)(A) is silent on who has the burden of establishing alienage,¹
4 more than fifty years ago the Supreme Court held that “no deportation order may be entered
5 unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as
6 grounds for deportation are true.” *Woodby v. INS*, 385 U.S. 276, 285-86 (1966). The Court
7 further stated that “[t]his standard of proof applies to all deportation cases, regardless of
8 the length of time the [non-citizen] has resided in this country.” *Id.* at 286 n.19. Department
9 of Justice regulations likewise recognize that the burden to establish alienage is on the
10 Department of Homeland Security (“DHS”): “[Non-citizens] present in the United States
11 without being admitted or paroled. In the case of a respondent charged as being in the
12 United States without being admitted or paroled, the Service must first establish the
13 alienage of the respondent. . . .” 8 C.F.R. § 1240.8.

14 Information regarding Ms. Co Tupul’s alleged immigration status was obtained by
15 Immigration and Customs Enforcement (“ICE”) after she was arrested. This information
16 was obtained as a result of an egregious violation of the Fourth Amendment. The Customs
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23 ¹ Unlike § 1252(e)(2)(A), subsection (2)(C) explicitly defines the applicable standard of
24 proof and places the burden on the petitioner if the petitioner challenges an Expedited
25 Removal Order based on have refugee, asylee, or lawful permanent resident status.
26 “[W]here Congress includes particular language in one section of a statute but omits it in
27 another section of the same Act, it is generally presumed that Congress acts intentionally
28 and purposefully in the disparate inclusion or exclusion.” *Russello v. United States*, 464
U.S. 16, 23 (1983). The standard of proof and who has the burden of persuasion
regarding establishing alienage should therefore be interpreted as required by *Woodby v.*
INS.

1 and Border Patrol (“CBP”) agent² who detained and questioned Ms. Co Tupul about her
2 immigration status did so without reasonable suspicion that she was in violation of any
3 immigration laws.

4 CBP does not have authority to indiscriminately stop and detain individuals to
5 determine their immigration status. Such conduct violates the Fourth Amendment. *See U.S.*
6 *v. Brignoni-Ponce*, 422 U.S. 873 (1975) (vehicle stops); *Benitez-Mendez v. INS*, 752 F.2d
7 1309, 1311 (9th Cir. 1983), amended, 760 F.2d 907 (9th Cir. 1983) (all detentive stops).
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10 Additionally, DHS regulations authorize brief detention for questioning only if an
11 officer has reasonable suspicion of an illegal act “against the United States” or is
12 unlawfully present. *See* 8 C.F.R. § 287.8(b)(2). The Ninth Circuit in *Sanchez v. Sessions*
13 held that an egregious violation of a regulation such as § 287.8(b)(2) designed for the
14 benefit or protection of non-citizens may justify termination of a determination regarding
15 removability.
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18 The evidence relied upon by ICE to establish the alienage of Ms. Co Tupul was
19 obtained a result of an egregious violation of the Fourth Amendment and must be excluded.
20 *See Orhorhaghe v. INS*, 38 F.3d 488, 493 (9th Cir. 1994); *INS v. Lopez-Mendoza*, 468 U.S.
21 1032, 1050 (1984) (suppression may be required if there are “egregious violations of
22 Fourth Amendment or other liberties that might transgress notions of fundamental
23 fairness.”).
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28 ² It is not known for certain which law enforcement agency the officer who stopped Ms.
Co Tupul was from, but, upon information and belief, it was CBP.

1 Therefore, Ms. Co Tupul is likely to succeed on her claim that the Expedited
2 Removal Order should be invalidated on this basis.

3 2. The Application of the Expedited Removal Process to Ms. Co Tupul Violates
4 the Fifth Amendment and is Ultra Vires

5 As noted in Part I.A.1, the Expedited Removal Order issued to Ms. Co Tupul also
6 requires a determination that there is a factual basis for the Expedited Removal Order. In
7 situations where ICE seeks to impose an Expedited Removal Order on individuals arrested
8 *within the interior* of the United States, as was the case with Ms. Co Tupul, there must be
9 a factual basis for ICE's determination that the individual has been physically present for
10 less than two years. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II).
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12 Ms. Co Tupul has been physically present in the United States for almost thirty years
13 and, as such, ICE's determination that she has been physically present for less than two
14 years lacked any factual basis required to issue the Expedited Removal Order. Moreover,
15 Ms. Co Tupul's attorney, Ms. Butler-Christensen, provided extensive documentation of
16 Ms. Co Tupul's long-term presence, but ICE officials utterly disregarded it. *See* ECF No.
17 1 ¶¶ 23-29.
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21 Individuals who are present within the interior of the United States, especially those
22 with substantial connections therein, are unquestionably protected by the Due Process
23 Clause of the Fifth Amendment. "[T]he Due Process Clause applies to all 'persons' within
24 the United States, including [non-citizens], whether their presence here is lawful, unlawful,
25 temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). These due process
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1 protections apply to the Expedited Removal process for individuals encountered within the
2 United States.

3 ICE denied Ms. Co Tupul an adequate and meaningful process to defend herself
4 against the issuance of the Expedited Removal Order by (1) issuing it before providing her
5 any opportunity to establish her long-term presence and (2) ignoring extensive
6 documentation of her long-term presence provided to ICE after the Order's issuance.
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8 Not only do the issues with the process by which Ms. Co Tupul's Expedited
9 Removal Order was issued invalidate it, it is unquestionable that Expedited Removal
10 simply does not apply to her because she has been physically present in the United States
11 for almost thirty years. As such, no process can establish the factual basis necessary to
12 support the Expedited Removal Order—it simply does not exist.
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15 Therefore, Ms. Co Tupul is likely to succeed on her claim that the Expedited
16 Removal Order should be invalidated because there is an inadequate factual basis on which
17 it is based. Indeed, the necessary factual basis for an Expedited Removal Order against Ms.
18 Co Tupul does not exist at all. Moreover, Ms. Co Tupul is likely to succeed on her claim
19 that she was denied her rights to an adequate and meaningful process to challenge the
20 Expedited Removal Order, as well as her claim that any policy to issue Expedited Removal
21 Orders regardless of long-term physical presence clearly lacks any lawful authority and is
22 *ultra vires*.
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25 *B. Ms. Co Tupul Will Suffer Irreparable Harm in the Absence of a Temporary*
26 *Restraining Order*
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1 In the absence of a TRO, Ms. Co Tupul is at imminent risk of being removed from
2 the United States without an opportunity for her claims to be considered by the Court.
3 Indeed, ICE claims that it intends to remove her in as few as three weeks from July 22,
4 2025. If she is removed, she will lose her ability to challenge the removal process to which
5 she has been subjected.
6

7 Ms. Co Tupul's situation is significantly different from the situation faced by a
8 petitioner who is seeking review of a removal order entered at the conclusion of "regular"
9 8 U.S.C. § 1229a removal proceedings. The Supreme Court has noted that while "removal
10 is a serious burden for many [non-citizens], it is not categorically irreparable" when a
11 removed non-citizen can "continue to pursue their petitions for review, and those who
12 prevail can be afforded effective relief by facilitation of their return, along with restoration
13 of the immigration status they had upon removal." *Nken v. Holder*, 566 U.S. 418, 435
14 (2009). Unlikely § 1229a removal proceedings, no such right to continue to pursue a
15 challenge to an Expedited Removal Order after removal from the United States exists for
16 Ms. Co Tupul.
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20 *C. The Balance of Equities Weighs Heavily in Ms. Co Tupul's Favor and a TRO is*
21 *in the Public Interest*

22 Because the government is a party, these two factors are considered together. *Nken*,
23 556 U.S. at 435. Ms. Co Tupul has established that the public interest factor weighs in her
24 favor because her claims assert that the government has violated federal law in several
25 respects. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). The Ninth
26 Circuit has also stated that "[a] plaintiff's likelihood of success on the merits of a
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1 constitutional claim also tips the merged third and fourth factors decisively in his favor.”
2 *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

3
4 **CONCLUSION**

5 For the foregoing reasons, the Court should grant Petitioner-Plaintiff’s motion for a
6 temporary restraining order and a preliminary injunction ordering that Respondents-
7 Defendants (1) refrain from removing her from the United States, (2) refrain from
8 removing her from the District of Arizona, and (3) release her from her unlawful custody.
9

10
11 Dated: August 2, 2025

Respectfully Submitted,

12 /s/ **Mindy Butler-Christensen**
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/s/ **Christopher Godshall-Bennett**
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18 *Pro Hac Vice forthcoming
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CERTIFICATE OF COUNSEL

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, I hereby certify that on August 2, 2025, I provided a copy of this Motion for a Temporary Restraining Order and Preliminary Injunction and Memorandum of Points and Authorities, the Petition for Writ of Habeas Corpus and Complaint, and supporting exhibits to Interim U.S. Attorney Timothy Courchaine and AUSA Denise Faulk by emailing copies to timothy.courchaine@usdoj.gov and denise.faulk@usdoj.gov.

Dated: August 2, 2025

Respectfully Submitted,

/s/ Christopher Godshall-Bennett
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Attorney for Petitioner-Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2025, I served a copy of this Motion for a Temporary Restraining Order and Preliminary Injunction by email to the following individuals:

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