

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Katy Jhoriela PAGOAGA-MURILO *

Petitioner *

v. *

Kristi Noem, et. al *

Respondent *

Case Number: 8:25-cv-03656

**PETITIONER'S AMENDED MOTION FOR A TEMPORARY RESTRAINING ORDER
AND MEMORANDUM IN SUPPORT THEREOF**

MOTION AND MEMORANDUM OF LAW

Petitioner PAGOAGA-MURILLO respectfully moves this Honorable Court for an emergency order preventing her continued detention, transfer, and removal in violation of her Constitutional, *inter alia*, rights.

I. INTRODUCTION

Petitioner Katy Jhoriela PAGOAGA-MURILLO fled Honduras due to domestic abuse and entered the United States without a visa. On July 21, 2025, Petitioner PAGOAGA-MURILLO was granted Withholding of Removal pursuant to the United Nations Convention Against Torture by the Hyattsville Immigration Court. Petitioner PAGOAGA-MURILLO has continuously complied with all orders, instructions, and rules required of her, including timely reporting to ICE. Further, Petitioner PAGOAGA-MURILLO has no criminal record. Petitioner PAGOAGA-MURILLO is the mother of, sole parental caretaker, and of her eight-year-old daughter, who is suffering emotionally without her mother.

Following the executive orders of President Donald Trump and their implementation by Respondents, Petitioner believes that Respondents have adopted a blanket policy to detain and immediately remove noncitizens, even those granted withholding of removal, irrespective of any individualized circumstances, including protected statuses, and dire circumstances. Respondents have demonstrated that they will apply this policy to her as they have her in physical custody, will attempt to transfer her out of this district, and remove her from the United States.

Petitioner seeks an emergency order from this Court to halt her continued detention, transfer out of this district, and removal from the United States.

II. FACTUAL BACKGROUND

A. Petitioner PAGOAGA-MURILLO's background and case posture

Petitioner PAGOAGA-MURILLO is a thirty-two-year-old female native and citizen of Honduras who has resided in the United States since July 18, 2023. Petitioner lives in Gaithersburg, Maryland, with her eight-year-old daughter, Ye [REDACTED]. The daughter's father is not present.

Petitioner fled Honduras and entered the United States in July of 2023, fleeing from [REDACTED]. Petitioner was subsequently granted withholding of removal pursuant to CAT by the Hyattsville Immigration Court on July 21, 2025. (A screenshot of the EOIR Automated Case Information page showing Petitioner's grant of Withholding of Removal pursuant to CAT is attached hereto and made a part hereof as Exhibit 1).

Throughout her time in the United States, Petitioner has consistently reported to DHS/ICE and has no criminal record. On October 4, 2025, Petitioner reported to ICE in Baltimore. Upon reporting, she was immediately detained. This detention left her minor daughter without her mother and sole caregiver. She has also been separated from her community, employment, and the stable life she has worked hard to build in the United States. (Letters from Petitioner's family, friends, and employer are attached hereto and made a part hereof as Exhibit 2).

Upon her detention, ICE officers warned Petitioner of her imminent removal to Mexico, even though she has no ties there, and she and her daughter would [REDACTED]

[REDACTED] As females without any male to protect them, they would be especially vulnerable in Mexico. Moreover, her

minor daughter would be without her friends, community, and educational structure that is available here in the U.S., and that she depends on.

B. Executive Orders and Respondents' Blanket Policy

On January 20, 2025, President Donald Trump signed several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order ("EO") setting out a series of interior immigration enforcement actions. This EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures "that protect the public safety and national security interests of the American people, including by ensuring the successful enforcement of final orders of removal."

These actions have resulted in Respondents adopting a blanket policy under which refugees, such as Petitioner, are no longer protected by a grant of withholding of removal pursuant to CAT. Instead, ICE is currently arresting, detaining, and removing people like Petitioner, who have been granted withholding of removal, without an individualized consideration of their cases. Under these new policies, ICE/ERO has detained and is attempting to transfer/remove Petitioner to Mexico, or possibly some other country.

C. LEGAL STANDARDS

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The proper legal standard for preliminary injunctive relief requires a party to demonstrate (1) that she is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence

of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011).

As an alternative to this test, a preliminary injunction is appropriate if “serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing preservation of the status quo when complex legal questions require further inspection or deliberation. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 813 (4th Cir. 1991).

III. ARGUMENT

Petitioner’s Amended Motion for a Temporary Restraining Order should be granted because she (and her minor daughter) are likely to suffer irreparable harm in the absence of preliminary relief, she is likely to succeed on the merits, and the balance of the equities and public interest weigh in favor of emergency relief.

A. Petitioner (and her minor daughter) will likely suffer irreparable harm if not granted preliminary relief

If this Court does not grant a temporary restraining order, Petitioner will imminently be removed to Mexico, or some other foreign country. ICE officials have already issued Petitioner a Notice of Intent to Remove her to Mexico.

Respondents’ actions already are and will cause irreparable harm to Petitioner and her daughter by separating them and separating Petitioner from her community in the United States, and forcing her to lose meaningful employment. If forcibly removed to Mexico, her minor child will either be without her mother and sole caretaker or will face uncertainty regarding food, housing, clothes, education, and the individualized resources that America offers, and most other countries lack.

Moreover, if her daughter were to go with her to Mexico, Petitioner fears that her and her minor daughter will fall victim to the violent and powerful gangs and cartels and unstable conditions. This is especially true because Petitioner has already suffered much harm, torture, danger, and threats, including the physical and psychological violence by her ex-partner and family members. These circumstances constitute irreparable harm. *See e.g., Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 320 (4th Cir. 2018), *vacated on other grounds*, 138 S. Ct. 2710, 201 L. Ed. 2d 1094 (2018) (stating that "[p]rolonged and indefinite separation of parents, children, siblings, and partners create not only temporary feelings of anxiety but also lasting strains on the most basic human relationships" and therefore constitutes irreparable harm); *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (stating that "separation from family members, medical needs, and potential economic hardship" are important factors when assessing irreparable harm).

Additionally, transferring Petitioner out of the United States will deprive her of proximity to her daughter, loved ones, employment, community support, distance her from access to her local counsel, and impede her ability to engage in these immediate judicial proceedings. *See Arroyo v. United States Dep't of Homeland Sec.*, 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019) (observing that ("a significant burden on the attorney-client relationship, without a showing of underlying prejudice to the removal proceedings, may be sufficient to establish a legal injury sufficient to justify injunctive relief"), citing *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir.), amended on other grounds, 807 F.2d 769 (9th Cir. 1986); *see also Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir.), amended on other grounds, 213 F.3d 1221 (9th Cir. 2000) ("Deprivation of the statutory right to counsel deprives [a noncitizen] asylum-seeker of the one hope she has to thread a labyrinth almost as impenetrable as the Internal Revenue Code.")).

As alleged in Petitioner's habeas petition, Respondents' actions will also violate her constitutional right to due process. It is well established "that a deprivation of a constitutional right, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022), quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976).

B. Petitioner is likely to succeed on the merits of her habeas petition

Petitioner requests habeas relief from this Court on the grounds that Respondents' decision to continue to detain, transfer, and remove her under a blanket enforcement policy is (1) arbitrary and capricious and in violation of Respondents' own governing regulations and policies, (2) a violation of her due process rights, and (3) her detention conditions constitute cruel and unusual punishment.

Further, Petitioner is likely to succeed on the merits of her claim under the Administrative Procedure Act ("APA"). Under the APA, a court shall "hold unlawful and set aside agency action" that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Here, ICE's decision to continue to detain, transfer, and remove Petitioner, despite her valid grant of Withholding of Removal pursuant to CAT, is arbitrary and capricious. Withholding of Removal is a form of mandatory protection that prohibits the U.S. government from removing a noncitizen to a country where her life or freedom would be threatened. *See* 8 C.F.R. § 1208.16.

Despite this, Respondents abruptly detained and transferred Petitioner for purposes of removal without articulating any change in factual circumstances, legal authority, or public-safety

justification. This action represents a sharp departure from the U.S. government's prior determination that Petitioner merited protection from removal, and it is unsupported by any "satisfactory explanation" or "rational connection between the facts found and the choice made." *DOC v. New York*, 588 U.S. 752, 752 (2019).

Moreover, ICE's conduct contravenes its own detention and supervision framework under 8 C.F.R. §§ 241.4–241.5, which require individualized custody determinations and consideration of factors such as danger to the community and flight risk before taking a noncitizen into custody. Petitioner has no criminal record, poses no threat to public safety, and has been in compliance with ICE reporting obligations. The failure to consider these mandatory factors renders Respondents' actions arbitrary and capricious under, *inter alia*, *State Farm*, 463 U.S. at 43.

Petitioner is also likely to succeed on her due process claim. The Fifth Amendment's Due Process Clause protects noncitizens from arbitrary government action. *See Romero v. Bondi*, 150 F.4th 332, 340 (4th Cir. 2025). Due process requires that detention and removal decisions be rational, individualized, and consistent with the law. By detaining and threatening to remove Petitioner to Mexico, who is under a final order granting her Withholding of Removal, Respondents have deprived her of liberty without lawful justification. Because there has been no change in her circumstances, and because she is categorically protected from removal to her country of persecution, the decision to detain and remove her now is irrational and arbitrary, violating her right to due process.

Furthermore, a statute or policy permitting indefinite detention or removal to a country where a person faces grave danger raises serious constitutional concerns. As the Supreme Court has made clear, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas*

v. Davis, 533 U.S. 678, 690 (2001). The Fifth Amendment, therefore, prohibits the government from depriving an individual of liberty through indefinite detention.

Here, Petitioner PAGOAGA-MURILLO has been granted Withholding of Removal pursuant to the United Nations Convention Against Torture, a form of mandatory protection that expressly prohibits the U.S. government from returning her to Honduras because it has been determined that her life or freedom would be threatened there. *See* 8 C.F.R. § 1208.16(f). Moreover, without a safe third country to send Petitioner to, she will be subject to the exact unconstitutional and indefinite detention the U.S. Supreme Court advised against in *Zadvydas*, *supra*.

Respondents allegedly now seek to remove Petitioner to Mexico (or another “third country”) despite the fact that no such country has agreed to accept her, and despite clear evidence that Mexico is a **very dangerous** country full of gang and cartel violence, where Petitioner would be most vulnerable, especially as a woman.

Mexico is not a safe third country for Petitioner or her daughter. The country is plagued by rampant violence, widespread impunity, and well-documented human rights abuses, including targeted harm against females and migrants. (The Department of State 2023 Country Report on Mexico is attached hereto and made a part hereof as Exhibit 3). Petitioner would face grave danger if sent there, and her minor daughter would be deprived of basic human needs and resources. Forcing Petitioner’s removal to Mexico or to any other country would effectively amount to refoulement, contravening both domestic and international law.

Detaining or removing Petitioner under these circumstances serves no legitimate government purpose and directly contradicts the constitutional principles articulated in, *inter alia*, *Zadvydas*, *supra*. The government cannot lawfully detain Petitioner indefinitely while seeking a third country, nor can it remove her to a place where she (and her daughter) face certain harm. Such action is

arbitrary, capricious, and fundamentally inconsistent with the Fifth Amendment's guarantee of due process.

Respondents' actions also independently violate the due process protections and third-country removal requirements. Petitioner was granted withholding of removal pursuant to the Convention Against Torture ("CAT") with respect to Honduras. Despite this protected status, Respondents detained her for the purpose of facilitating her removal to Mexico and issued a Notice of Intent to Remove to Mexico without reopening her proceedings or providing the required opportunity to be heard. Federal law and the Fifth Amendment require such notice and opportunity. Under 8 U.S.C. § 1231(b), DHS may remove a noncitizen to a third country **only after** determining that removal to the original designated country is "impracticable, inadvisable, or impossible," and the statutory framework presumes written notice of the intended removal destination and an opportunity to contest that removal. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025)(Sotomayor, J., dissenting). Likewise, 8 U.S.C. § 1231(b)(3), FARRA, and Article 3 of CAT prohibit removal to any country where the individual is likely to face harm and require DHS to make a renewed CAT determination before executing removal to any new country. A prior CAT grant cannot lawfully be bypassed by unilaterally naming Mexico as a new removal destination.

Courts have applied these protections in materially similar cases. In *Tanha v. Warden, Balt. Det. Facility*, No. 1:25-cv-02121-JRR, 2025 LX 230558 (D. Md. July 22, 2025), this Court recognized that individuals with final removal orders who face removal to a new, third country fall within the nationwide D.V.D. class. The D.V.D. preliminary injunction requires DHS to provide written notice to the noncitizen and counsel and a meaningful opportunity, at least ten days, to raise a CAT-based fear claim prior to any third-country removal. *Id.* at 9-10 (*D.V.D. v. United States Dep't of Homeland Sec.*, 778 F. Supp. 3d 355 (D. Mass. 2025)). Although the Court in *Tanha*

denied habeas relief, the court reaffirmed that “Petitioner is unequivocally entitled to due process of law in the context of his detention and removal proceedings.” *Id.* at 19-20. Here, Petitioner presents the precise due process violation identified in *D.V.D.* and acknowledged in *Tanha*: DHS’s effort to remove her to Mexico without any individualized notice, opportunity to contest the proposed removal country, or opportunity to raise a CAT claim violates federal law, CAT, and the Constitution. Accordingly, Respondents must be restrained from executing any third-country removal without first providing Petitioner the process required by statute, regulation, and binding federal precedent.

For the above-noted reasons, Petitioner is likely to succeed on the merits of her habeas corpus petition and/or TRO.

C. The balance of the equities and public interest factors tip sharply in favor of preliminary relief.

Petitioner PAGOAGA-MURILLO has established that “the balance of the equities tip in [her] favor and that an injunction is in the public interest” because she has been granted withholding of removal pursuant to CAT, she is not a flight risk, and she is not a danger to the community. *See Winter*, 555 U.S. at 20. When the federal government is a party, the balance of the equities and public interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

The balance of hardships tips substantially in favor of Petitioner. “[I]n addition to the potential hardships facing [Petitioner] in the absence of the injunction, the court ‘may consider . . . the indirect hardship to their friends and family members.’” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017), quoting *Golden Gate Rest. Ass’n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008).

Petitioner PAGOAGA-MURILLO’s detention and removal would harm not only her, but also her minor daughter, who depends on her for care and support, and her U.S. employer.

Petitioner lives in Gaithersburg, Maryland, with her daughter, and has steady and meaningful employment in the United States. Without immediate intervention from this Court, Petitioner's minor daughter will suffer severe and irreparable harm. Since Petitioner's sudden detention, her daughter has already expressed serious concern and anxiety regarding her mother. Prolonged separation will likely lead to lasting emotional and developmental harm for the young daughter. If Petitioner is removed from the United States, her daughter will be forced to accompany her, as there is no other caregiver capable of meeting her needs. Removal would uproot the child from her routine and community. These circumstances constitute the very definition of irreparable injury warranting this Court's immediate intervention.

There is also a strong public interest in maintaining Petitioner's presence in her local community, where she maintains steady employment and is a compassionate and caring member of her community.

The merits of the due process violations that Petitioner has raised in her habeas petition and/or TRO motion further weigh the public interest toward emergency relief. Moreover, "it is well-established that the public interest favors protecting constitutional rights." *Leaders of a Beautiful Struggle v. Balt. Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021). In addition, "the public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions." *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

Even when considered from a fiscal perspective, the public interest in the efficient allocation of the government's fiscal resources weighs in favor of emergency relief here. As the Ninth Circuit has explained, "The costs to the public of immigration detention are "staggering": \$158 each day per detainee, amounting to a total daily cost of \$6.5 million. Supervised release

programs cost much less by comparison: between 17 cents and 17 dollars each day per person.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). The interests of the general public will not be served by Petitioner’s continued detention, where she was granted withholding of removal pursuant to the United Nations Convention Against Torture, was complying with ICE’s supervised release, and is neither a flight risk nor a danger to the community.

By contrast, any public interest favoring Petitioner’s immediate removal is weak or non-existent. Respondents do not appear to have any legitimate reason to suspect that the public safety or national security may somehow be at risk if the motion for a temporary restraining order is granted. Any interest in effectuating Petitioner’s removal is outweighed by Petitioner’s PAGOAGA-MURILLO exceptional qualities and a grant of Withholding of Removal pursuant to CAT, which indicate an independent basis for her to remain lawfully in the United States.

IV. CONCLUSION

For the foregoing reasons, Petitioner PAGOAGA-MURILLO respectfully requests that this Honorable Court grant her motion for a temporary restraining order to release her from detention, block her transfer outside the district of Maryland, and stay her removal from the United States.

Dated: November 13, 2025

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