

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Joanny NUNEZ-MINCHAN *

Petitioner *

v. *

*

Kristi Noem, et. al *

*

Case Number: 8:25-cv-03676

*

Respondent *


*

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

MOTION AND MEMORANDUM OF LAW

Petitioner NUNEZ-MINCHAN 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 Joanny NUNEZ-MINCHAN fled Peru due to extreme persecution and threats  On March 26, 2025, Petitioner NUNEZ-MINCHAN was granted Withholding of Removal pursuant to the United Nations Convention Against Torture by the Hyattsville Immigration Court. Petitioner NUNEZ-MINCHAN has continuously complied with all orders, instructions, and rules required of her, including timely reporting to ICE/ISAP. Further, Petitioner NUNEZ-MINCHAN has no criminal record. Petitioner NUNEZ-MINCHAN is the mother of two minor children (one of whom is a U.S. citizen and the other of whom was granted Withholding of Removal pursuant to CAT).

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 will 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 NUNEZ-MINCHAN's background and case posture

Petitioner NUNEZ-MINCHAN is a twenty-five-year-old female native and citizen of Peru who has resided in the United States since 2022. Petitioner lives in Silver Spring, Maryland, with her two-year-old U.S. Citizen son, eight-year-old daughter, and husband.

Petitioner fled Peru and entered the United States in 2022, fleeing from [REDACTED]
[REDACTED] Petitioner, her husband, and her minor daughter were subsequently granted withholding of removal pursuant to CAT by the Hyattsville Immigration Court on March 26, 2025. (A copy of the order of the immigration judge 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. Mrs. NUNEZ-MINCHAN was regularly reporting to ICE/ISAP via her phone app. Yesterday, on November 7, 2025, Petitioner received a text message demanding that she report to ICE in Baltimore today, November 8, 2025, which she did. Upon reporting, she was detained by ICE. This detention left her minor children without their mother and primary caregiver, and her husband without his wife. She has also been separated from her community, meaningful employment, and the stable life she has worked hard to build in the United States.

Upon her detention, ICE officers warned Petitioner of her imminent removal to Mexico, El Salvador, or Uganda, even though she has no ties there and those countries are known for being extremely dangerous for women, children, and families. Moreover, her two children (one of whom is a U.S. citizen) would be without their friends, community, and educational structure that is available here in the U.S., and which they depend on. (Petitioner's U.S. Citizen son's U.S. birth certificate is attached hereto and made a part hereof as Exhibit 2).

Further, Petitioner NUNEZ-MINCHAN is being held in deplorable conditions. Although she has only recently arrived, she has already witnessed, and counsel has previously been informed by other similarly-situated clients of, extremely inhumane and degrading treatment at the ICE facility in Baltimore. There are no beds or showers available, and detainees are provided with little to no food during their detention.

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 individualized consideration of their cases. Under these new policies, ICE/ERO has detained and is attempting to transfer/remove Petitioner to Mexico, El Salvador, Uganda, 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 he 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 Motion for a Temporary Restraining Order should be granted because she (and her minor children (one of which is a U.S. citizen and the other whom was granted withholding of removal pursuant to CAT)) 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 transferred out of the state of Maryland and eventually removed to Mexico, El Salvador, Uganda, or some other foreign country. ICE officials have already begun warning her of her likely removal to Mexico or another third country.

Respondents’ actions already are and will cause irreparable harm to Petitioner and her family by separating them and separating Petitioner from her community in the United States, and

forcing her to lose meaningful employment (Petitioner currently works as a caretaker for veterans at Premium Care USA). If forcibly removed to Mexico (or another country), her minor children will either be without their mother and primary 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 children and husband were to go with her to Mexico (or another third country), Petitioner fears that her and her minor children 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, danger, and threats, including the extreme violence and persecution by gang members in Peru. 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 Maryland will deprive her of proximity to her very young children, husband, family, 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.

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, attempt to 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 will likely attempt to transfer 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.

Additionally, Petitioner has been at liberty in the United States for many years and has been protected from removal to her country since March 2025. Respondents have not demonstrated any evidence as to why they are disrupting the status quo. Respondents maintain the burden to show why they are violating Petitioner NUNEZ-MINCHAN's constitutional, inter alia, rights and changing the status quo by detaining her.

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 NUNEZ-MINCHAN 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 that country 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, 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.

Mexico is not a safe third country for Petitioner, her U.S. citizen son, her daughter, or her husband. The country is plagued by rampant violence, widespread impunity, and well-documented human rights abuses, including targeted harm against families and migrants. Petitioner would face grave danger if sent there, and her minor children 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*. The government cannot lawfully detain Petitioner indefinitely while seeking a third country, nor can it remove her to a place where she (and minor children) face certain harm. Such action is arbitrary, capricious, and fundamentally inconsistent with the Fifth Amendment's guarantee of due process.

Finally, this Court "cannot ignore the conditions of confinement." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Petitioner is currently being held at the Baltimore Field Office under inhumane conditions. Detainees report that there are no beds, no showers, and little to no food provided. These conditions are not only degrading but also pose serious risks to her health and well-being.

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

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

Petitioner NUNEZ-MINCHAN 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 NUNEZ-MINCHAN’s detention and removal would harm not only her, but also her U.S. son and minor daughter, who depend on her for care and support, and her employer. Petitioner lives in Silver Spring, Maryland, with her husband and children, and has steady and meaningful employment in the United States. Without immediate intervention from this Court, Petitioner’s very young children will suffer severe and irreparable harm. Since Petitioner’s sudden detention, her children have already expressed serious concern and anxiety regarding their mother. Prolonged separation will likely lead to lasting emotional and developmental harm for the young children. If Petitioner is removed from the United States, her children and husband will be forced to accompany her. Removal would uproot the children 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 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, is already 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 NUNEZ-MINCHAN’s 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 NUNEZ-MINCHAN 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 8, 2025

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