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15 UNITED STATES DISTRICT COURT  
16 DISTRICT OF ARIZONA

17 F.B.,

18 Petitioner,

19 v.

20 Kristi Noem, Secretary, Department of  
21 Homeland Security; Pam Bondi, Attorney  
22 General; Immigration and Customs  
23 Enforcement; Todd Lyons, Acting Director,  
24 Immigration and Customs Enforcement;  
25 Gregory J. Archambeault, Field Office  
Director of the San Diego Field Office of  
U.S. Immigration and Customs Enforcement;  
and David R. Rivas, Warden, San Luis  
Regional Detention Center,

26 Respondents.  
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Case No.

**PETITIONER'S NOTICE OF  
MOTION AND MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

*Oral Argument Requested*

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that, as soon as they may be heard, Petitioner F.B. will and hereby does move, pursuant to L.R. Civ. 65.1 and Fed. R. Civ. P. 65, for a temporary restraining order directing Respondents to immediately release Petitioner from detention pending her asylum application or order Petitioner's release within 7 days unless Respondents schedule a bond hearing before an Immigration Judge within 7 days. This motion is supported by the Petition for Writ of Habeas Corpus filed on this day.

Dated: November 17, 2025

MORRISON & FOERSTER LLP

By: /s/ Laura Lively Babashoff  
Laura Lively Babashoff

*Attorney for Petitioner*  
F.B.

Dated: November 17, 2025

PUBLIC COUNSEL

By: /s/ Jana Whalley  
Jana Whalley

*Attorney for Petitioner*  
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1 **I. INTRODUCTION**

2 Petitioner, F.B., is an asylum seeker who has been detained in immigration custody  
3 and separated from her family, including her four-year-old daughter, for over a year.  
4 (Declaration of Laura Lively Babashoff in Support of Petition for Writ of Habeas Corpus  
5 and Motion for Temporary Restraining Order (“Lively Decl.”) ¶ 3; Declaration of F.B. in  
6 Support of Petition for Writ of Habeas Corpus (“F.B.” Decl.) ¶ 9.) Petitioner was re-  
7 detained after initially being released from custody and paroled into the United States,  
8 without any subsequent change in circumstances or opportunity for a pre-deprivation  
9 hearing. (Lively Decl. ¶ 4.) Respondent Immigration and Customs Enforcement (“ICE”)  
10 has continued to detain Petitioner even after she has *twice* been granted asylum by an  
11 immigration judge. (*Id.* Exs. B, D; F.B. Decl. ¶¶ 13, 24.) Petitioner has not been afforded  
12 a bond hearing since her detention began nearly 400 days ago wherein Respondents have  
13 been required to prove by clear and convincing evidence that she is either a flight risk or a  
14 danger to the community. On Friday, November 14, 2025, Respondent Department of  
15 Homeland Security (“DHS”) filed a notice of appeal of Petitioner’s most recent grant of  
16 asylum—dooming Petitioner to remain in detention indefinitely unless the Court intervenes.  
17 (Lively Decl. ¶ 10.)

18 Petitioner’s continued detention violates the Fifth Amendment to the United States  
19 Constitution, and she risks irreparable harm absent immediate relief. For these reasons,  
20 Petitioner requests the Court grant her request for a temporary restraining order (“TRO”)  
21 directing Respondents to immediately release her from detention or order her release within  
22 7 days unless Respondents schedule a bond hearing before an Immigration Judge that will  
23 occur sooner.

24 **II. STATEMENT OF FACTS**

25 Petitioner, her husband, and their then two-year-old daughter entered the United  
26 States in October 2023 after fleeing Russia in fear of political persecution and violence.  
27 (F.B. Decl. ¶ 2.) The family presented themselves at the United States border with a CBP  
28 One App appointment and were held in custody for two days until CBP decided to release

1 them from custody and parole them into the U.S. for one year pursuant to 8 U.S.C. §  
2 1182(d)(5). (*Id.* ¶¶ 3-4, 6.)

3 From the moment she entered the United States, Petitioner has always complied with  
4 this country's immigration laws. (*Id.* ¶ 26.) She has no criminal history of any kind. (*Id.*)  
5 She has attended all court hearings and complied with all monitoring requirements,  
6 including all appointments with ICE. (*Id.* ¶¶ 6, 26.) On October 16, 2024, Petitioner and  
7 her family appeared at an ICE check-in. (*Id.* ¶ 8-9.) ICE separated Petitioner from her  
8 husband and their child. (*Id.* ¶¶ 10-11.) At no time did ICE provide Petitioner with a  
9 warrant or explanation for her arrest. (*Id.*) At the time of her arrest, Petitioner was still in  
10 valid parole status.

11 On March 13, 2025, an immigration judge first granted Petitioner's asylum  
12 application. (Lively Decl. Ex. B; F.B. Decl. ¶ 13.) Respondent DHS appealed that decision  
13 to the Board of Immigration Appeals ("BIA") and continued to detain Petitioner pending  
14 the appeal. (F.B. Decl. ¶ 13.) After remand and further fact finding, on October 20, 2025,  
15 an immigration judge *again* granted Petitioner's application for asylum. (Lively Decl. Ex.  
16 D; F.B. Decl. ¶ 24.) Once more, Respondent DHS reserved its right to appeal and, on  
17 Friday, November 14, 2025, filed a notice of appeal to the BIA. (Lively Decl. ¶ 10; F.B.  
18 Decl. ¶ 24.)

19 Petitioner was initially detained at Otay Mesa Detention Facility in San Diego,  
20 California, and could see her family during weekly visits. (F.B. Decl. ¶ 12.) On May 29,  
21 2025, however, Petitioner was transferred to the San Luis Regional Detention Center in San  
22 Luis, Arizona. (F.B. Decl. ¶ 14.) Because the facility is over 200 miles away from her  
23 home, Petitioner's family has not been able to visit her in-person. (*Id.*) Petitioner has thus  
24 not seen or held her daughter since May 2025. (*Id.*)

25 Since Petitioner's transfer out-of-state, the family's suffering has worsened. In July  
26 2025, ICE arrested Petitioner's husband and separated him from their daughter.<sup>1</sup> (*Id.* ¶ 15.)

27 <sup>1</sup> On July 29, 2025, United States Border Patrol agents arrested Petitioner's husband, and  
28 detained him and his then three-year-old daughter without issuing him a warrant or  
explaining the reason for his arrest. Three days after his detention, and without consent or

1 Petitioner is suffering in detention away from her family, and her emotional and physical  
2 health are severely deteriorating. (*Id.* ¶¶ 20-22.) And Petitioner’s daughter is suffering in  
3 separation from both of her parents. (*Id.* ¶ 21.)

### 4 **III. LEGAL STANDARD**

5 A Temporary Restraining Order (“TRO”) may be issued upon a showing that  
6 “immediate and irreparable injury, loss, or damage will result to the movant before the  
7 adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). A trial court may  
8 grant a TRO or a preliminary injunction to “preserve the status quo and the rights of the  
9 parties” until a decision can be made in the case. *U.S. Philips Corp. v. KBC Bank N.V.*, 590  
10 F.3d 1091, 1094 (9th Cir. 2010). The status quo in this context “refers not simply to any  
11 situation before the filing of a lawsuit, but instead to ‘the last uncontested status which  
12 preceded the pending controversy[.]’” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199,  
13 1210 (9th Cir. 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809  
14 (9th Cir. 1963)).

15 On a motion for a temporary restraining order, Petitioner “must establish that [s]he  
16 is likely to succeed on the merits, that [s]he is likely to suffer irreparable harm in the absence  
17 of preliminary relief, that the balance of equities tips in h[er] favor, and that an injunction  
18 is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
19 *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)  
20 (preliminary injunction and temporary restraining order standards are “substantially  
21 identical”). Where the government is the opposing party and the first two factors are met,  
22 the third and fourth factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). A temporary  
23 restraining order may likewise issue where “serious questions going to the merits [are]  
24 raised and the balance of hardships tips sharply in [Petitioner’s] favor.” *Alliance for the*  
25 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011) (citation omitted).

26  
27 advance notice, ICE separated Petitioner’s husband from their daughter and is currently  
28 detaining him in Adelanto, California. A separate petition for Petitioner’s husband is  
currently pending in the Central District of California, titled *Islam Dhzatdoev v. Noem, et*  
*al.*, Case No. 8:25-CV-01713-SSS-AJR.

1 Under either approach, Petitioner's request should be granted because she can  
2 demonstrate that she is likely to succeed on the merits, likely to suffer irreparable injury if  
3 relief is not granted, and the balance of equities and public interest weigh heavily in her  
4 favor.

5 **IV. ARGUMENT**

6 Petitioner's TRO should be granted because she is likely to succeed on the merits of  
7 her claims, she will suffer irreparable harm if emergency relief is not granted, and the public  
8 interest and balance of equities heavily weigh in favor of her release.

9 **A. Petitioner Is Likely to Succeed on the Merits**

10 Petitioner is likely to succeed on the merits of her claims under the Fifth Amendment  
11 the United States Constitution.

12 **1. Petitioner was detained without regard to her due process rights.**

13 Respondents have deprived Petitioner of her liberty without any legitimate purpose  
14 in violation of her substantive due process rights under the Fifth Amendment.

15 Like any civil detention, immigration detention violates the Due Process  
16 Clause if it is not reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 690  
17 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); see also *Demore v. Kim*, 538 U.S.  
18 510, 527 (2003) (immigration detention must "bear[] a reasonable relation to the purpose  
19 for which the individual was committed") (quoting *Zadvydas*, 533 U.S. at 690). "[A]n  
20 individual already enjoying certain forms of conditional release has a protected liberty  
21 interest in retaining them." *Borchers v. Belcher*, No. CV 11-1018-PHX-DGC, 2012 WL  
22 1231742, at \*5 (D. Ariz. Mar. 9, 2012) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482  
23 (1972)); see also *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263, at  
24 \*6 (N.D. Cal. Aug. 21, 2025) (collecting cases). "[E]ven when an initial decision to detain  
25 or release an individual is discretionary, the government's subsequent release of the  
26 individual from custody creates 'an implicit promise' that the individual's liberty will be  
27 revoked only if they fail to abide by the conditions of their release. *Calderon v. Kaiser*, No.  
28 25-CV-06695-AMO, 2025 WL 2430609, at \*2 (N.D. Cal. Aug. 22, 2025) (quoting *Morrissey*,

1 408 U.S. at 482) (“The parolee has relied on at least an implicit promise that parole will be  
2 revoked only if [s]he fails to live up to the parole condition.”)

3 Petitioner has abided by the conditions of her release continuously since her parole  
4 into the United States. She has complied with all monitoring and reporting requirements  
5 and attended all immigration court hearings. (F.B. Decl. ¶ 26.) Respondents’ decision to  
6 re-detain Petitioner, without demonstrating any change in circumstances or failure by  
7 Petitioner to abide by the conditions of her release, is not reasonably related to a statutory  
8 purpose. Respondents’ re-detention of Petitioner thus breaks the “implicit promise” made  
9 to her and deprives Petitioner of her liberty in violation of her rights under the Fifth  
10 Amendment.

11 **2. Petitioner’s prolonged detention violates her due process rights.**

12 Petitioner’s prolonged detention without any procedural protections violates  
13 principles of due process.

14 “Freedom from imprisonment—from government custody, detention or other forms  
15 of physical restraint—lies at the heart of liberty” that the Due Process Clause protects.  
16 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). This applies to everyone, including  
17 removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“[B]oth  
18 removable and inadmissible aliens are entitled to be free from detention that is arbitrary or  
19 capricious.”).

20 Petitioner has been detained for nearly 400 days, without any individualized  
21 determination that she presents a flight risk or danger to the community. (*See* Lively Decl.  
22 Ex. A (Order Denying Bond) (denying bond based only on lack of jurisdiction, without an  
23 evaluation of danger or flight risk).) This is presumptively unconstitutional. *See Demore*,  
24 538 U.S. at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to [a  
25 person’s] risk of flight and dangerousness” may be warranted “if the continued detention  
26 became unreasonable or unjustified”); *Zadvydas*, 533 U.S. at 701 (“Congress previously  
27 doubted the constitutionality of detention for more than six months”); *cf. Hutto v. Finney*,  
28 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth Amendment context, “the length

1 of confinement cannot be ignored in deciding whether [a] confinement meets constitutional  
2 standards”). And Respondents cannot conceivably contend that Petitioner is a flight risk or  
3 a danger to the community. Respondents paroled her into the United States upon a  
4 determination that she poses no flight risk or danger. Nothing has changed since they made  
5 that determination except that an immigration judge has twice granted Petitioner asylum  
6 after evaluating her case, only further illustrating that she is not a flight risk or danger to  
7 society. Respondents’ decision to re-detain Petitioner without any individualized  
8 determination violates the Due Process Clause of the Fifth Amendment.

9 **B. Petitioner is Suffering Irreparable Harm Each Moment that Passes**

10 Emergency relief is warranted because Petitioner will suffer irreparable harm in its  
11 absence.

12 Petitioner has been separated from her family for over a year, and she has not seen  
13 or held her daughter in months. Petitioner’s mental and emotional health deteriorate every  
14 day that she is separated from her child, which constitutes irreparable harm. (F.B. Decl.  
15 ¶¶ 20-22; see, e.g., *Garcia v. Andrews*, No. 1:25-cv-01006 JLT SAB, 2025 WL 2420068,  
16 at \*10 (E.D. Cal. Aug. 21, 2025) (significant emotional distress constitutes irreparable  
17 harm).) Petitioner’s daughter also is suffering every day that she is separated from her  
18 mother. (F.B. Decl. ¶ 21.) “[T]here is ample evidence that separating children from their  
19 mothers or fathers leads to serious, negative consequences to children’s health and  
20 development” and “puts children at increased risk for both physical and mental illness.” See  
21 *Ms. L. v. U.S. Immigr. & Customs Enf’t*, 310 F. Supp. 3d 1133, 1146–47 (S.D. Cal. 2018)  
22 (citation omitted), modified by 330 F.R.D. 284 (S.D. Cal. 2019) (concluding based on  
23 review of scientific evidence that family separation is a “highly destabilizing, traumatic  
24 experience that has long term consequences on child wellbeing, safety, and development”)  
25 (citation omitted). Petitioner’s daughter’s emotional distress has had a profoundly negative  
26 impact on Petitioner, who is powerless to fix it in light of her detention. See *J.S.R. ex rel.*  
27 *J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 742 (D. Conn. 2018) (“[T]he harm that the  
28 Government caused to the children [by family separation] is connected with the harm that

1 the Government caused to the parents. . . .”). Moreover, Respondent DHS’s recent decision  
2 to again appeal Petitioner’s now second grant of asylum means that Petitioner is likely to  
3 remain in detention indefinitely absent intervention by this Court. (Lively Decl. ¶ 10.)

4 Because Petitioner faces continued mental and emotional damage from the  
5 deprivation of her liberty and her separation from her family, Petitioner has established  
6 irreparable harm.

7 **C. The Equities and the Public Interest Weigh in Favor of Granting**  
8 **Petitioner’s Request for a TRO**

9 Respondents’ interest in continuing to detain Petitioner is slight given that she has  
10 been granted asylum twice, she presents no risk of flight or danger to the community, and  
11 there are less restrictive means of monitoring Petitioner. The specific interest at stake here  
12 is not the government’s ability to continue to detain Petitioner, but rather the government’s  
13 ability to continue to detain her indefinitely, for months on end, without any individualized  
14 review. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019);  
15 *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at \*5 (N.D. Cal. June  
16 14, 2022). On the other hand, having Petitioner reunited with her daughter and having her  
17 daughter cared for by her mother is plainly in the best interests of the mother and child.  
18 “When dealing with minors, the best interests of the minor are of paramount importance.”  
19 *C.M. v. United States*, 672 F. Supp. 3d 288, 327 (W.D. Tex. 2023). Thus, the balance of  
20 equities weigh heavily in favor of Petitioner.

21 **V. CONCLUSION**

22 Petitioner requests the Court grant her request for a TRO directing Respondents to  
23 immediately release her from detention or alternatively order her release within 7 days  
24 unless Respondents schedule a bond hearing before an Immigration Judge earlier than 7  
25 days.  
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1 Dated: November 17, 2025

MORRISON & FOERSTER LLP

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By: /s/ Laura Lively Babashoff  
Laura Lively Babashoff

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*Attorney for Petitioner*  
F.B.

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Dated: November 17, 2025

PUBLIC COUNSEL

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By: /s/ Jana Whalley  
Jana Whalley

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*Attorney for Petitioner*  
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