

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Damasina Sabina PEREZ-AYQUIPA

Petitioner

v.

Kristi Noem, et. al

Respondent

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Case Number: 8:25-cv-03982

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

MOTION AND MEMORANDUM OF LAW

Petitioner PEREZ-AYQUIPA 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 PEREZ-AYQUIPA is a sixty-year-old native and citizen of Peru and [REDACTED]
[REDACTED] Petitioner entered the United States on April 21, 2023. She was subsequently granted parole on May 15, 2023. (See Interim Notice Authorizing Parole, which is attached hereto and made a part hereof as Exhibit 1). On April 26, 2024, Petitioner filed her asylum application with the Hyattsville Immigration Court, it is still pending. Moreover, the immigration judge determined that a mental competency hearing should be held, it is scheduled for December 22, 2025. (See a screenshot of the EOIR case portal showing Petitioner's upcoming hearing date, which is attached hereto and made a part hereof as Exhibit 2). Further, Petitioner PEREZ-AYQUIPA has no criminal record, local counsel, and many family and community ties in Maryland.

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, irrespective of any individualized circumstances, including 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 PEREZ-AYQUIPA's background and case posture

Petitioner PEREZ-AYQUIPA is a sixty-year-old female native and citizen of Peru who has resided in the United States since April of 2023. Petitioner lives in Gaithersburg, Maryland.

Petitioner fled Peru and entered the United States in April of 2023, after being subjected to [REDACTED] Petitioner filed her asylum application with the immigration court after her entry and has an upcoming asylum hearing on December 22, 2025. At this hearing, the immigration judge will determine if she is competent to testify. (See Ex. 2).

Throughout her time in the United States, Petitioner has consistently reported to DHS/ICE and has no criminal record. On December 4, 2025, Petitioner reported, as requested, to ICE in Baltimore. Upon her arrival, ICE arrested her without a warrant and detained her. This detention left her separated from her community and the stable life she has worked hard to build in the United States.

During her detention, Petitioner has been held in deplorable conditions. Reports from other detainees housed at the Baltimore Field Office indicate a lack of adequate food, the absence of beds and blankets, and severely limited access to water.

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, where ICE is currently arresting, detaining, and removing people like Petitioner, who have a meritorious asylum claim pending before the immigration court, without an individualized consideration of their cases. Under these new policies, ICE/ERO has detained and is attempting to transfer/remove Petitioner to Peru.

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 is 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 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. By doing so, Petitioner will lose contact with her family and local counsel, and her immigration proceedings will be unnecessarily prolonged.

Respondents' actions already are and will cause irreparable harm to Petitioner, her mother, and her partner by separating them and separating Petitioner from her community in the United States. If Petitioner remains in detention, her siblings in the United States will suffer greatly. 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 family, loved ones, 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 Fourth and Fifth amendment 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 detain and attempt to transfer Petitioner, despite her meritorious asylum claim pending before the immigration court and upcoming asylum court hearing in less than three weeks, is arbitrary and capricious. Despite this, Respondents abruptly detained and will likely attempt to transfer Petitioner without articulating any change in factual circumstances, legal authority, or public-safety justification.

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/ISAP 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 denying Petitioner the opportunity to proceed with her pending asylum application before the court, Respondents have deprived her of liberty without lawful justification. Because there has been no change in her circumstances, the decision to detain and transfer 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 has a pending asylum application with the immigration court and has an upcoming mental competency hearing before the immigration court on December 22, 2025. If Petitioner remains detained while her asylum application is pending, she will be subject to the exact unconstitutional, indefinite detention the U.S. Supreme Court advised against in *Zadvydas*, *supra*.

Furthermore, 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. There are no beds or blankets available. She will not be provided with appropriate and sufficient food or water. These conditions are not only degrading but also pose serious risks to her health and well-being.

Petitioner is also likely to succeed on the merits of her Fourth Amendment claim. The Fourth Amendment protects individuals, including noncitizens, from unreasonable seizures. U.S. Const. amend. IV. Civil immigration arrests must be supported by lawful authority and cannot be arbitrary or unreasonable.

Here, Petitioner was arrested without a warrant when she appeared at ICE with, complied with reporting requirements, has a pending asylum application, and has an upcoming immigration court hearing. Respondents did not possess a judicial warrant and have articulated no exigent circumstances, probable cause, or individualized justification for her arrest.

The warrantless seizure of Petitioner under these circumstances was unreasonable. Petitioner was not fleeing, posed no risk to public safety, and fully complied with all ICE directives. Arresting her *after* she voluntarily reported to ICE and disclosed her protected procedural posture constitutes an arbitrary seizure in violation of the Fourth Amendment.

Further, the continued detention flowing from this unlawful arrest compounds the constitutional violation. A seizure that begins unlawfully cannot be justified retroactively by post-hoc enforcement rationales. Where, as here, Respondents lacked lawful authority to arrest Petitioner in the first instance, her continued detention remains constitutionally infirm.

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 PEREZ-AYQUIPA has established that “the balance of the equities tip in [her] favor and that an injunction is in the public interest” because she has a pending asylum application before the immigration court, 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’s detention and transfer would harm not only her, but also her siblings, who depend on her for care and support. Petitioner lives in Gaithersburg, Maryland and has local

counsel. Without immediate intervention from this Court, Petitioner and her family will suffer severe and irreparable harm. 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 her family resides, she has local counsel 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 for 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 has a pending asylum application before the Hyattsville immigration court, has an upcoming individual asylum hearing, is already complying with ICE/ISAP, and is neither a flight risk nor a danger to the community.

By contrast, any public interest favoring Petitioner's immediate transfer 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 transfer or removal is outweighed by Petitioner's PEREZ-AYQUIPA's exceptional qualities.

IV. CONCLUSION

For the foregoing reasons, Petitioner PEREZ-AYQUIPA 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: December 4, 2025

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