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**UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF ARIZONA**

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Fany Yadira Montes Cueva,

Petitioner,

v.

Officer in Charge, Arizona Removal  
Operations Coordination Center; Field  
Office Director, Phoenix Field Office,  
U.S. Immigration and Customs  
Enforcement, Enforcement and Removal  
Operations; Todd Lyons, Acting  
Directo, U.S. Immigration and Customs  
Enforcement; Pamela Bondi, Attorney  
General of the United States; Kristi  
Noem, Secretary of Homeland Security,  
in their official capacities,

Respondents.

Case No.:

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**PETITIONER’S EMERGENCY MOTION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Petitioner respectfully moves this Court for an Emergency Temporary Restraining Order and/or Preliminary Injunction under Federal Rule of Civil Procedure 65 to enjoin Respondents from removing Petitioner from this District and from the United States. Petitioner is at risk of imminent removal to Honduras- a country from which she is seeking asylum. Her removal is predicated on a 2002 order of removal entered *in absentia* she only learned of at the time of her detention on December 3, 2025. Petitioner therefore seeks the entry of an emergency temporary restraining order to prevent irreparable harm.

**CERTIFICATION OF COMPLIANCE WITH RULE 65(b)**

Under Federal Rule of Civil Procedure 65(b), a Court may issue the Temporary Restraining Order without written or oral notice to the adverse party when:

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
- (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

1 Here, both requirements are satisfied. As set forth above, the verified habeas petition  
2 establishes that irreparable harm will result to Petitioner if emergency relief is not  
3 granted **today**—a timeframe which does not provide sufficient opportunity for  
4 Respondents to submit an opposition to this TRO request.  
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6 **FACTUAL BACKGROUND**<sup>1</sup>  
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8 Petitioner is a Honduran national with three United States citizen children.  
9 Since entering the United States, Petitioner has been a law-abiding, contributing  
10 member of society. Petitioner has resided in the United States for over twenty-three  
11 years. She is the primary breadwinner and caregiver for her family, and is a pillar of  
12 her community.  
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15 Petitioner was detained on December 3, 2025, while attending an asylum  
16 interview. She was informed that she was ordered removed *in absentia* by an  
17 immigration judge in 2002. She had no knowledge of the removal order.  
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19 Petitioner has continuously made efforts to comply with immigration laws.  
20 She has a pending application for asylum based on her fear of persecution in  
21 Honduras due to rampant crime and violence, which has already cost her father his  
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26 <sup>1</sup> The Factual background is drawn from the verified petition for writ of habeas  
27 corpus.  
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1 life. A motion to reopen to rescind her *in absentia* order of removal will be filed as  
2 soon as possible.

3 Petitioner was not provided with notice or opportunity to contest her  
4 detention. Based on information and belief, Petitioner is at the Arizona Removal  
5 Operations Coordination Center, or AROCC for short, an ICE staging facility  
6 located at the Phoenix-Mesa Gateway Airport. Ms. Montes is likely to be removed  
7 at any moment without the Court's intervention.

### 10 ARGUMENT

11 To obtain a Temporary Restraining Order, Petitioner must demonstrate that  
12 she is (1) likely to succeed on the merits, (2) likely to suffer irreparable harm in the  
13 absence of a TRO, (3) the balance of the equities tips in her favor, and (4) an  
14 injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555  
15 U.S. 7, 20 (2008). Petitioner meets these factors, and therefore a TRO should issue.

#### 19 **I. Petitioner is likely to succeed on the merits of her claims.**

20 Under the substantive due process doctrine, a restraint on liberty is only  
21 permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*,  
22 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate  
23 objectives of immigration detention: preventing danger to the community or  
24 preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92  
25 (discussing constitutional limitations on civil detention). The government can make  
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1 no showing that ICE has detained Petitioner due to her danger to the community or  
2 flight risk. Petitioner's removal is based on an *in absentia* order of removal from  
3 2002 that she was unaware of until the date of her detention on December 3, 2025.  
4 She is actively seeking relief in the form of asylum and will be challenging the  
5 removal order that is the basis of the government's efforts to remove her.  
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8 Indeed, the *in absentia* removal order entered against Ms. Montes was the  
9 result of Ms. Montes not receiving Notice of her hearing, and was predicated on a  
10 defective Notice to Appear. *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (a notice to  
11 appear is defective if it does not include the time and place of the initial hearing).  
12

13 Any removal without the opportunity to contest a removal order she was only  
14 aware of days ago that was predicated on a deficient process constitutes a violation  
15 of Petitioner's substantive and procedural due process rights, and demonstrates  
16 Petitioner is likely to prevail on the merits of her claims.  
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19 **II. Petitioner will suffer irreparable harm absent an injunction.**

20 To obtain a TRO, Petitioner must also show she is "likely to suffer irreparable  
21 harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20.  
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23 The irreparable-harm requirement is easily satisfied here. Petitioner has lived  
24 in the United States for twenty-three years, and has three United States citizen  
25 children (9, 17, and 21 years of age) to whom she is the primary breadwinner and  
26 caregiver. Without her, her children will suffer great hardship, particularly in  
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1 addressing their ongoing health issues. Petitioner has a viable asylum claim based  
2 on crime and violence in Honduras that has already cost her the life of her father.  
3 And, if removed, she will be deprived of her opportunity to challenge the removal  
4 order that was predicated on a legally deficient process. Thus, causing Petitioner  
5 irreparable harm.  
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8 **III. The balance of hardships and public interest weigh heavily in**  
9 **Petitioner's.**

10 The final two factors for a preliminary injunction also demonstrate that such  
11 relief is appropriate. “These factors merge when the Government is the opposing  
12 party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).  
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14 “[T]he public is better served by the faithful execution of immigration laws.”  
15 *Zamora Mejia v. Noem*, No. 2:25-CV-981-SPC-NPM, 2025 WL 3078656, at \*3  
16 (M.D. Fla. Nov. 4, 2025) (citing *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th  
17 Cir. 2013)) (finding the government “cannot suffer harm from an injunction that  
18 merely ends an unlawful practice or reads a statute as required to avoid constitutional  
19 concerns.”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the  
20 public interest in Government observance of the Constitution and laws”). Here,  
21 Petitioner is detained and subject to removal despite being a contributing member of  
22 society without any criminal history. Further, Petitioner’s removal to Honduras, will  
23 put her at risk of crime and violence in Honduras. And, her removal based on a  
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1 deficient process does not serve the public interest. Thus, the public interest strongly  
2 favors Petitioner.

3 **IV. The Court Should Not Require Plaintiffs to Provide Security Prior to**  
4 **the Temporary Restraining Order.**

5 Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a  
6 preliminary injunction or a temporary restraining order only if the movant gives  
7 security in an amount that the court considers proper to pay the costs and damage  
8 sustained by any party found to have been wrongfully enjoined or restrained.”  
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10 Decisions regarding security are at the discretion of the district courts and can  
11 exercise this discretion to require no security in cases brought by indigent, detained,  
12 and/or incarcerated people, those seeking to exercise their constitutional rights, and  
13 in cases that benefit the public interest.  
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17 **CONCLUSION**

18 For the foregoing reasons, the Court should issue a TRO enjoining the  
19 Government from removing Petitioner from this District and from removing her  
20 from the United States pending further order from this Court.  
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24 Dated: December 7, 2025

Respectfully submitted,

25 s/ Helena Teltzeli  
26 Helena Teltzeli  
27 (seeking admission pro hac vice)  
28 Florida Bar No. 0759820

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