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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Mbah MANKAH MELVIS,

Petitioner,

v.

Chris HOWARD, Acting Warden, Eloy Detention  
Center;

John CANTU, Field Office Director of Phoenix  
Office of Detention and Removal, U.S. Immigrations  
and Customs Enforcement; U.S. Department of  
Homeland Security;

Todd M. LYONS, Acting Director, Immigration and  
Customs Enforcement, U.S. Department of Homeland  
Security;

Kristi NOEM, in her Official Capacity, Secretary,  
U.S. Department of Homeland Security;

Pamela BONDI, in her Official Capacity, Attorney  
General of the United States;

OFFICE OF THE PRINCIPAL LEGAL ADVISOR  
(OPLA);

DEPARTMENT OF HOMELAND SECURITY; and

Michele PETERS, in her Official Capacity, Assistant  
Chief Counsel, Office of the Principal Legal Advisor,  
U.S. Department of Homeland Security.

Respondents.

Case No.



**EMERGENCY  
MOTION FOR  
TEMPORARY  
RESTRAINING  
ORDER AND STAY OF  
REMOVAL**

## I. INTRODUCTION

Petitioner respectfully moves for an Emergency Temporary Restraining Order staying her removal and requiring Respondents to maintain the status quo pending adjudication of her Petition for Writ of Habeas Corpus and Complaint for Mandamus and Injunctive Relief. Without immediate relief, Petitioner faces imminent removal based solely on Respondents' refusal to perform a mandatory procedural act—referral of her case to U.S. Citizenship and Immigration Services (“USCIS”) for adjudication of a terrorist-related inadmissibility exemption over which USCIS has exclusive jurisdiction. Removal before referral would irreparably harm Petitioner and deprive this Court of its ability to grant meaningful relief.

## II. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 1331. Venue lies in this District because Petitioner is detained within the District of Arizona in Eloy, AZ.

## III. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER

A temporary restraining order (“TRO”) should be granted to “preserv[e] the status quo and prevent[] irreparable harm just so long as is necessary to hold a hearing and no longer.” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)). A petitioner must show “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest” to receive a TRO or a preliminary injunction. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). Where removal is imminent and would moot judicial review, courts in the Ninth Circuit routinely grant temporary stays to preserve jurisdiction. *See Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011).

#### IV. ARGUMENT

##### a. The *Winter* factors weigh in favor of Petitioner.

##### i. Likelihood of Success on the Merits.

The first *Winter* factor “is a threshold inquiry and is the most important factor.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (quoting *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020)).

Petitioner’s claims do not ask this Court to adjudicate the merits of any TRIG exemption. They ask only that Respondents perform a nondiscretionary procedural duty: referral of an administratively final case denied solely on TRIG grounds to USCIS, the agency with exclusive authority to adjudicate exemptions under INA § 212(d)(3)(B)(i).

Once the statutory prerequisites are met, ICE and OPLA lack discretion to withhold referral. Respondents’ refusal to transmit the case constitutes agency action unlawfully withheld under the Administrative Procedure Act and supports mandamus relief. See 5 U.S.C. § 706(1); 28 U.S.C. § 1361.

Because Petitioner is detained and subject to imminent removal, continued detention while Respondents block access to the only authorized adjudicatory process is also unlawful under 28 U.S.C. § 2241.

##### ii. Irreparable Harm

A party seeking preliminary relief must also make a “clear showing” of a likelihood of irreparable harm in the absence of the relief requested. *Winter*, 555 U.S. at 22; see also *All For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“ . . . plaintiffs must establish that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction). “[I]t is well established that the deprivation of constitutional rights unquestionably constitutes

irreparable injury.” *Chhoeun v. Marin*, 306 F.Supp.3d 1147, 1162 (C.D. Cal. 2018) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017)). Where, as here, the “alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). Furthermore, “the Ninth Circuit has recognized the ‘irreparable harms imposed on anyone subject to immigration detention’ including ‘subpar medical and psychiatric care in ICE detention facilities’ . . .” *Hoac*, 2025 WL 1993771, at \*6 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (finding irreparable harm where the petitioner was detained far from his family and was at risk of losing his job and housing)).

Removal constitutes irreparable harm as a matter of law. Once removed, Petitioner will lose access to USCIS adjudication, and this Court will lose jurisdiction to provide effective relief. No later remedy can undo removal executed before lawful process occurs.

Additionally, Petitioner remains detained solely because Respondents refuse to initiate the required referral. Continued detention under these circumstances constitutes ongoing irreparable injury

### **iii. Balance of Equities and Public Interest**

Finally, “[t]he balance of the equities and public interest analyses merge when the government is the opposing party, as is the case in this action.” *Hoac*, 2025 WL 1993771, at \*6. “‘Just as the public has an interest in the orderly and efficient administration of this country’s immigration laws, [] the public has a strong interest in upholding procedural protections against unlawful detention.’” *Id.* (quoting *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at \*4 (N.D. Cal. Aug. 23, 2020)). “A plaintiff’s likelihood of success on the merits of a

constitutional claim also tips the merged third and fourth factors decisively in his favor.” *Baird*, 81 F.4th at 1042. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights[,]” *id.* (quoting *Riley’s Am. Heritage Farms v. Elasser*, 32 F.4th 707, 731 (9<sup>th</sup> Cir. 2022)), and “[t]he government [] ‘cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.’” *Id.* (quoting *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983)).

Given Petitioner has demonstrated likelihood of success on the merits as to her constitutional claims, the merged third and fourth factors should be tipped in her favor.

Granting a temporary stay merely preserves the status quo for a brief period and imposes minimal burden on the government. Respondents face no prejudice from maintaining custody or supervision pending referral.

By contrast, denial of relief would permanently extinguish Petitioner’s ability to seek the only relief authorized by statute and policy.

The public has a strong interest in ensuring that federal agencies comply with governing law, respect jurisdictional boundaries, and do not effect removals in violation of required procedures. Preserving access to congressionally authorized adjudicatory processes promotes fairness, regularity, and confidence in the rule of law.

In sum, the Winter Factors weigh heavily in favor of granting the Motion.

## V. CONCLUSION

### Prayer for Relief

For the foregoing reasons, Petitioner respectfully requests that this Court grant his motion for a temporary restraining order and:

1. Issue a Temporary Restraining Order staying Petitioner’s removal;

2. Order Respondents to maintain the status quo pending further order of the Court;
3. Set an expedited briefing schedule on Petitioner's request for preliminary injunctive relief; and
4. Grant such other relief as the Court deems just and proper. Grant such other relief as the Court deems just and proper.

Dated: December 19, 2025

Respectfully submitted,

/s/ Spencer C. Lee  
Spencer C. Lee  
Attorney for Reza Amiri