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Attorney for Petitioner

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of

LUZ ELSA CRUZ, AKA)
EDGAR OMAR CHAVEZ CRUZ)


Petitioner

vs.

CHRISTOPHER G. LAROSE, in his)
official capacity as Warden of CCA)
Detention facility, DANIEL)
BRIGHTMAN, in his official capacity)
as Field Office Director of the)
Immigration & Customs Enforcement)
and Removal Operations San Diego)
Field Office; KRISTI NOEM, in her)
official capacity as Secretary of the)
Department of Homeland Security;)
U.S. DEPARTMENT OF)
HOMELAND SECURITY;)

Respondents,

Case No. '25CV3742 CAB KSC

Agency No. 

**MEMORANDUM OF LAW in support of TEMPORARY RESTRAINING
ORDER (TRO)**

1 **MOTION AND MEMORANDUM FOR TEMPORARY**
2 **RESTRAINING ORDER**

3 Petitioner moves the court for the following relief by way of a
4 temporary restraining order (“TRO”):

- 5 a) Issuance of an immediate order barring the Respondents from
6 removing Petitioner from the Southern District Court’s jurisdiction,
7 should the Petitioner be present in the State of California at the
8 time such order is issued, without notice to the court and approval
9 by the court;
- 10 b) Issuance of an order to show cause why this petition
11 should not be granted within three (3) days.

12 **SUPPORTING MEMORANDUM**

13 **I. LEGAL STANDARD**

14 The standard for a TRO is the same as for preliminary
15 injunction. See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434
16 U.S. 1345, 1347 n.2 (1977). A TRO is “an extraordinary remedy that may
17 only be awarded upon a clear showing that the plaintiff is entitled to such
18 relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

19 For preliminary relief, a party must show (a) likelihood of success
20 on the merits, (b) likely irreparable harm without preliminary relief, (c)
21 the balance of equities tips in party, and (d) an injunction is in the public

22 interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009)
23 (citing *Winter*, 555 U.S. at 20).

24 An alternative test is if “serious questions going to the merits were
25 raised and the balance of the hardships tips sharply in the plaintiff’s
26 favor,” thereby allowing preservation of the status quo when complex
27 legal questions require further inspection or deliberation. *Alliance for the
28 Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134- 35 (9th Cir. 2011).

29 II. ARGUMENT.

30 A. Petitioner will likely suffer irreparable harm.

31 Without a TRO, Petitioner will be transferred out of
32 the jurisdiction of the Southern District of California at the whim
33 of Respondents. This will transfer Petitioner away from her lawyer,
34 her medical doctor, her job and her family, possibly seeking to
35 undermine this court’s jurisdiction.

36 Additionally, Petitioner works full time and assists in
37 supporting her United States Citizen mother, providing emotional
38 and financial support. She works full-time for Catholic Charities,
39 running a residential elder facility in San Diego, California.
40 Moreover, relocating Petitioner would substantially impair
41 her from communicating and assisting counsel. Such constraints
42 would limit counsel’s capacity to represent Petitioner effectively.

43 All of these combined impacts constitute irreparable harm. See
44 e.g., *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011)
45 (describing “separation from family members” and the mental
46 damage concomitant with such separation as irreparable harm) (quotation
47 marks omitted); see also *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th
48 Cir. 2013) (“The right to live with and not be separated from one’s
49 immediate family is ‘a right that ranks high among the interests of the
50 individual’ and that cannot be taken away without procedural due
51 process.”) (quoting *Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982)).

52 **B. Likely to succeed on the merits.**

53 Due process requires government action not be irrational and arbitrary.
54 *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Here, Petitioner
55 was under an Order of Supervision (OSUP) since the Immigration Judge
56 granted Withholding of Removal to her home country of Mexico. The IJ
57 ruled more likely than not she will be persecuted upon return to Mexico as
58 she is a transgender female. The order became final on November 8, 2010.

59 Since her release from custody on November 17, 2010, she regularly
60 checked in while on supervision for fifteen years. She was taken into
61 custody on December 18, 2025, and remains at OMDC to date.

62 Petitioner’s prolonged custody or custody-like restrictions exceed the limits

63 set by 8 U.S.C. § 1231(a), which governs post-removal-order detention.
64 Petitioner cannot be removed to Mexico because an IJ found she is likely to
65 suffer persecution there. The scope of her post-order custody is therefore
66 limited by § 1231(a)(6) and implementing regulations, 8 C.F.R. §§ 241-
67 241.5. Because removal to Mexico is barred and no other removal is
68 foreseeable, Petitioner’s continued custody and increased restrictions clearly
69 violate the Due Process Clause (*Zadvydas*, 533 U.S. at 699; *Diouf II*, 634
70 F.3d at 1086–87).

71 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court
72 analyzed the due process rights of noncitizens held during and after a
73 removal period. *Zadvydas* concerned a resident noncitizen who could not be
74 deported because none of the relevant countries would accept him. *Id.* at
75 684. Because indefinite detention without adequate safeguards could violate
76 noncitizens’ due process rights, the Supreme Court established a
77 presumption of six months as a reasonable period of detention while an
78 order of removal is carried out. *Id.* at 701. After that period elapses, a
79 noncitizen who “provides good reason to believe that there is no significant
80 likelihood of removal in the reasonably foreseeable future” must
81 be released, unless the government can “respond with evidence sufficient to
82 rebut that showing.” *Id.*

83 Here Petitioner was detained for approximately seven months in 2010.
84 She was under ‘constructive custody’ of respondent for approximately
85 fifteen years, attending regular ICE check-in appointments. She is now
86 detained in Respondent’s custody from December 18, 2025, to the present.
87 A seven month detention and a fifteen - year Order of Supervision, and her
88 current detention exceeds the lawful scope of §1231(a)(6) and the INA.

89 In the Ninth Circuit, post-order detention may not be prolonged,
90 increased, or reimposed without individualized findings and
91 procedural safeguards (*Diouf II*; *Franco-Gonzalez*, 767 F. Supp. 2d at
92 1054). Respondents have not made any such showing or filed anything to
93 demonstrate removal to another country (or her home country of Mexico).


94 Moreover, a civil detainee's confinement is unconstitutional under the
95 Fifth Amendment if conditions of confinement "amount to
96 punishment." *Bell v. Wolfish*, 441 U.S. 520, 535 (1979); *Jones v. Blanas*,
97 393 F.3d 918, 932 (9th Cir. 2004) (quoting *Bell*, 441 U.S. at 535); accord
98 *Bent v. Barr*, 445 F. Supp. 3d 408, 413-14 (N.D. Cal. 2020). "[P]unitive
99 conditions may be shown (1) where the challenged restrictions are expressly
100 intended to punish, or (2) where the challenged restrictions serve an
101 alternative, non-punitive purpose but are nonetheless excessive in relation to
102 the alternative purpose, . . . or are employed to achieve objectives that could
103 be accomplished in so many alternative and less harsh methods." *Jones*,

104 393 F.3d at 932, *also Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct.
105 373, 9 L.Ed. 2d 285 (1963) (recognizing that restraints on liberty other than
106 physical confinement may constitute custody for habeas purposes.).


107 Respondent's imposition of custody is unwarranted because there has
108 been no change in circumstances. Respondents can try to removal Petitioner
109 to another country, while she is not in custody. She has diligently appeared
110 at all of her OSUP appointments and is unlikely to flee while she is
111 monitored by ISAP. The detention of Petitioner is therefore punitive and
112 excessive in relation to their purpose. There are less harsh methods that
113 were previously in place and that functioned well from her release on or
114 about November 2010, for over fifteen years. There is no reason for more
115 prolonged detention, when there are less punitive means available.

116 **C. Balance of equities and public interest tips sharply in favor**
117 **of a TRO.**

118 The balance of hardships tips substantially in favor of
119 Petitioner. “[I]n addition to the potential hardships facing Plaintiffs in
120 the absence of the injunction, the court ‘may consider . . . the indirect
121 hardship to family members.’” *Hernandez v. Sessions*, 872 F.3d 976,
122 996 (9th Cir. 2017), quoting *Golden Gate Rest. Ass'n v. City & Cty.*
123 *of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008).

124 Removal from this jurisdiction would separate Petitioner from her
125 home, her job and her family. Separation from the San Diego area,
126 where she has lived since she was thirteen-years old, would cause
127 immediate emotional distress. The loss of the emotional support of her
128 mother, combined with the loss of financial security, would
129 expose Petitioner to anxiety, fear and possible regression in her health
130 and/or mental condition. Ms. Cruz is currently under hormonal
131 treatment anticipating an operation in April of 2026. 

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133 The merits of the petition weigh the public interest toward a
134 TRO. “Generally, public interest concerns are implicated when a
135 constitutional right has been violated, because all citizens have a stake
136 in upholding the Constitution.” *Preminger v. Principi*, 422 F.3d 815,
137 826 (9th Cir. 2005); see also *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727
138 (9th Cir. 1983) (“INS cannot reasonably assert that it is harmed in any
139 legally cognizable sense by being enjoined from
140 constitutional violations”). “The public interest also benefits from a
141 preliminary injunction that ensures that federal statutes are construed
142 and implemented in a manner that avoids serious constitutional
143 questions.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir.
144 2013).

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III. CONCLUSION

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For the above reasons, a TRO should be granted.

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Respectfully submitted,

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Date: December 23, 2025 /s/ Karla L. Kraus

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Attorney for Petitioner

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Respondents,

Case No. '25CV3742 CAB KSC

Agency No




**DECLARATION IN SUPPORT TEMPORARY RESTRAINING ORDER
(TRO)**

1 **DECLARATION IN SUPPORT OF MOTION**
2
3 **FOR TEMPORARY RESTRAINING ORDER**

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5
6 Under penalty of perjury, the undersigned does solemnly declare that I
7 am a member of the California State Bar and admitted to practice before
8 this court.

9 If called upon to testify in this matter, I would be able to give the
10 following evidence:

11 1. On November 8, 2010, Petitioner, Ms. Luz Elsa Cruz was granted
12 Withholding of Removal in San Diego, California. 



14 2. Ms. Cruz is a transgender female who legally changed her name from
15 Edgar Omar Chavez Cruz to Luz Elsa Cruz in the Superior Court of
16 California on January 19, 2011. She is detained at the OMDC under
17 the name of Omar Cruz.

18 3. Since her release from custody on or about November 17, 2010, she
19 has complied with regular check-in appointments with Respondent's
20 (ICE) under an order of supervision.

21 4. In 2011, she pleaded guilty to an offense of driving under the
22 influence in San Diego, California. This did not affect her custody
23 status with ICE at the time as she has checked in multiple times after

24 her conviction. Furthermore, a conviction for driving under the
25 influence of alcohol does not compromise her grant of Withholding of
26 Removal.

27 5. On December 18, 2025, Petitioner was arrested at the Office of ISAP
28 during a check-in appointment. She was taken into custody at the
29 OMDC in Otay Mesa, California.

30 6. The only communication Ms. Cruz has had with Respondents is that
31 they were going to remove her to Mexico. This counsel has had no
32 communication with respondents, even though a G-28 has been filed
33 with OMDC.

34 7. Ms. Cruz was in custody from approximately April of 2010 through
35 November of 2010. She has been under constructive custody, under
36 OSUP control, from November of 2010 through December of 2010.
37 She has been in physical custody at OMDC since December 18, 2025.

38 8. Respondents have not provided Ms. Cruz with any formal notice she
39 is being removed to another country, or to Mexico. Nor have
40 respondents contacted this attorney to provide notice of removal to
41 another country.

42 9. I have conducted an appropriate inquiry into the circumstances of this
43 case, and I believe that all factual allegations contained in the petition
44 for habeas corpus are true.

45 10. Based on news reports and information shared by other immigration
46 practitioners, there is a significant risk that Respondents will transfer
47 Petitioner from the Southern District of California. Doing so
48 would greatly hinder, if not effectively prevent, Petitioner from
49 pursuing a habeas corpus challenge to the legality of her detention.

50 11. Respondents may also attempt to effectuate Petitioner's immediate
51 removal from the United States, potentially illegally to Mexico or to
52 another country where she holds no citizenship or nationality.

53 12. Petitioner must remain in San Diego, California and needs to be
54 released from custody to allow her to be reunited with her family and
55 continue working at her job at Catholic Charities.

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57 Date: December 23, 2025

58 Respectfully submitted,

59 /s/ Karla L. Kraus

60 *Attorney for Petitioner*

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