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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SANDRA QUISPE,

Petitioner,

v.

LEANNA LUNDY, ET AL.,

Respondents¹.

CASE NO. 1:25-CV-02002-CSK (HC)

OPPOSITION TO PETITIONER'S EMERGENCY
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TO EMERGENCY
PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

This Court should deny Petitioner's request for a temporary restraining order ("TRO") and Petition for a Writ of Habeas Corpus because Petitioner's arguments do not demonstrate a likelihood of success on the merits or an entitlement to the requested relief. Petitioner is lawfully and reasonably detained pursuant to 8 U.S.C. § 1187 because she violated the terms of the Visa Waiver Program ("VWP") and is in asylum-only proceedings.

¹ The government moves to strike and to dismiss all inappropriately named respondents from this case. A petitioner seeking *habeas corpus* relief may only name the officer having custody of her as the respondent. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024); *Riego v. Current or Acting Field Office Director*, Slip Op., 2024 WL 4384220 (E.D. Cal. Oct. 3, 2024) (ordering Section 2241 petitioner, a non-citizen alien, to file a motion to amend his petition to "name a proper respondent" and setting forth that "[f]ailure to amend the petition and state a proper respondent will result in dismissal of the petition for lack of jurisdiction").

II. BACKGROUND

A. Petitioner entered the United States under the Visa Waiver Program.

Petitioner is a national and citizen of Argentina. *See* Declaration of Deportation Officer Cruz (“Cruz Decl.”), ¶ 4.² In July 2001, she entered the United States as a Visitor for Pleasure under the VWP. *Id.* Under the VWP, Petitioner was not to remain in the United States beyond October 12, 2001. *Id.* Petitioner did, however, remain in the United States well beyond October 12, 2001, without authorization. *Id.*

B. Petitioner was arrested for domestic violence in 2025.

On or about September 14, 2025, Petitioner was arrested for Battery/Domestic Violence in Broward County, Florida. *Id.* at ¶ 5. She was subsequently taken into custody by Immigration and Customs Enforcement (“ICE”) as a VWP violator. *Id.*

C. Petitioner is found to be removable but contests that determination and seeks asylum.

On October 3, 2025, Petitioner was found to be removable and was issued a Notice of Intent to Issue a Final Administrative Order of Removal (“Notice of Intent”). *Id.* at ¶ 6. Petitioner contested the allegations in the Notice of Intent and requested asylum and related protections. *Id.* As of the date of this response, ICE is in the process of filing a Form I-863, Notice of Referral to Executive Office for Immigration Review, for asylum only proceedings. *Id.* at ¶ 8.

D. Petitioner filed a Petition for Writ of Habeas Corpus and an Emergency Application for Temporary Restraining Order.

Petitioner was transported to the staging facility in Florence, AZ, to prepare for removal. *Id.* at ¶ 7. After the filing of her TRO Application on December 25, 2025, ICE transferred Petitioner back to California City ICE Processing Center, where she remains detained pursuant to 8 U.S.C. 1187(c)(2)(E). *Id.* at ¶¶ 7, 9.

² Pursuant to this Court’s December 30, 2025, order, Respondents have also filed the following documents from Petitioner’s A-file: Form I-213, Record of Deportable/Inadmissible Alien; Visa Waiver Program Notice of Intent to Issue a Final Administrative Removal Order; and Visa Waiver Program Notice to Alien Ordered Removed/Departure Verification.

III. ARGUMENT

A. The Standard for Temporary Restraining Orders

Temporary restraining orders (“TROs”) are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Preliminary injunctions are “never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a “difficult task” in showing that they are entitled to such an “extraordinary remedy.” *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

“A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in her favor, and (4) an injunction is in the public interest.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show “serious questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the second and third . . . factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017).

B. Petitioner is unlikely to succeed on the merits.

1. Petitioner is lawfully detained pursuant to 8 U.S.C. § 1187(c)(2)(E).

Petitioner is lawfully detained pursuant to 8 U.S.C. § 1187 because she is a VWP violator and in asylum-only proceedings. The VWP allows citizens of certain countries to enter and remain in the United States for up to 90 days as tourists without visas. *See* 8 U.S.C. § 1187; *see also Patel v. Garland*, No. 21-17024, 2024 WL 722575, at *1 (9th Cir. Feb. 22, 2024). As part of the program, VWP visitors voluntarily waive any right to contest any action for removal, other than on the basis of an asylum application. *See* 8 U.S.C. § 1187(b); *see Shehu v. Att’y Gen.*, 482 F.3d 652, 655 (3d Cir. 2007).

Petitioner violated the VWP by not departing the United States by October 12, 2001. Besides her asylum claim, she has no basis for contesting removal from the United States. VWP participants who apply for asylum are granted “asylum-only” hearings. *See* 8 C.F.R. § 208.2(c)(iv); *Shehu*, 482 F.3d at 655.

VWP violators are subject to detention pursuant to 8 U.S.C. § 1187(c)(2)(E), as opposed to 8 U.S.C. §§ 1225 or 1226. *See Matter of A.W.*, 25 I&N Dec. 45 (BIA 2009). In *A.W.*, the Board of Immigration

1 Appeals (“BIA”) specifically noted that 8 U.S.C § 1187(c)(2)(E) is the statutory authority for detention
2 for a VWP alien who is in asylum-only proceedings. *Id.* at 47. Asylum-only proceedings apply to certain
3 aliens who are not entitled to full asylum proceedings under the INA, including VWP aliens. 8 C.F.R. §
4 1208.2(c)(1)(iii); *see also Bao Tai Nian v. Holder*, 683 F.3d 1227, 1228 (9th Cir. 2012). Asylum-only
5 proceedings are limited proceedings in which the immigration judge considers only applications for
6 asylum, withholding of removal, and protection under the Convention Against Torture. 8 C.F.R. §
7 1208.2(c)(3)(i); 8 C.F.R. § 1240.1(a)(1)(iii); *Bao Tai Nian*, 683 F.3d at 1228. “If the petitioner is not
8 entitled to any of the limited relief specified, [s]he is removable and there is no bar to h[er] removal.” *Bao*
9 *Tai Nian*, 683 F.3d at 1228.

10 Petitioner is a VWP violator in asylum-only proceedings. She is lawfully detained pursuant to 8
11 U.S.C § 1187(c)(2)(E).

12 **2. Petitioner’s detention has not been unconstitutionally prolonged.**

13 In cursory terms, Petitioner argues that her detention violates *Zadvydas v. Davis* and its prohibition
14 on indefinite civil detention without a removal likelihood. *Zadvydas v. Davis*, 533 U.S. 678 (2001). In
15 *Zadvydas*, the Supreme Court held that ICE could not indefinitely hold aliens who had been ordered
16 removed but where the actual removal was not reasonably foreseeable. 533 U.S. at 699. The time period
17 for post-removal detention must be “reasonable.” *Id.* at 690. The Supreme Court held that after a
18 presumptively reasonable six-month period of detention following the removal order, a noncitizen must
19 be released if she demonstrates “good reason to believe that there is no significant likelihood of removal
20 in the reasonably foreseeable future.” *Id.* at 701.

21 Petitioner cannot make such a showing. She has been detained since September 14, 2025, a period
22 just over three months. Her detention is presumptively reasonable. Further, her removal is likely in the
23 reasonably foreseeable future because she has violated the terms of the VWP by overstaying her
24 authorized visit by decades and she has not demonstrated any facts to suggest her asylum-only petition is
25 likely to be successful. Accordingly, Petitioner’s argument is insufficient to meet the requisite showing
26 under *Zadvydas*.

27 **3. Petitioner is not entitled to release on parole.**

28 Petitioner cites to no authority that would permit her release on parole, as sought in the TRO. More

1 broadly, in *A.W.*, the BIA considered whether aliens admitted to the United States based on the VWP are
 2 entitled to a bond hearing and whether immigration judges have the authority to redetermine a VWP
 3 alien's custody conditions. *Id.* at 46-47. The BIA held that an immigration judge does not have the
 4 authority to conduct a bond hearing, because the authority to conduct such a hearing has not been delegated
 5 to immigration judges. *Id.* at 48. Nothing in the applicable statutes or regulations otherwise provide for
 6 any release on parole. *See generally* 8 U.S.C. § 1187; 8 C.F.R. § 208.2.

7 **4. Petitioner fails to establish any other basis for release.**

8 Petitioner further argues that ICE intentionally interfered with her right to counsel, used excessive
 9 force, was deliberately indifferent to her serious medical needs, and evaded judicial review by “secretly”
 10 transferring her. None of the cases cited in support of these claims provide for the relief she seeks, i.e.,
 11 release from detention. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990); *Kingsley v.*
 12 *Hendrickson*, 576 U.S. 389 (2015); *Gordon v. Cnty. of Orange*, 888 F.3d 1118 (9th Cir. 2018);
 13 *Boumediene v. Bush*, 553 U.S. 723 (2008)³.

14 Accordingly, Petitioner is unlikely to succeed on the merits of her claims.

15 **C. Petitioner Is Not Likely to Suffer Irreparable Harm.**

16 While the Ninth Circuit has recognized that “[a]n alleged constitutional infringement will often
 17 alone constitute irreparable harm,” *Goldie’s Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th
 18 Cir. 1984), the Court should not apply the presumption where, as here, a plaintiff fails to demonstrate “a
 19 sufficient likelihood of success on the merits of its constitutional claims to warrant the grant of a
 20 preliminary injunction.” *Assoc’d Gen. Contractors of Cal., Inc. v. Coal for Econ. Equity*, 950 F.2d 1401,
 21 1412 (9th Cir.1991)). Here, as demonstrated above and as in *Goldie’s Bookstore*, Petitioner’s purported
 22 constitutional claim is “too tenuous” to support an injunction. *Goldie’s Bookstore*, 739 F.2d at 472.

23 **D. The Balance of Equities and the Public Interest.**

24 The balance of the equities and public interest do not automatically tip toward Petitioner simply
 25 because she has alleged a due process violation. Even where constitutional rights are implicated, where a
 26 petitioner has not shown a likelihood of success on the merits of a claim, a court should not grant a

27 ³ With the exception of *Orantes-Hernandez*, none of these cases even deal with immigration
 28 detention.

preliminary injunction. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). The Executive also has an important interest in exercising its enforcement authority. “The government has a strong interest in enforcing immigration laws.” *Abdul-Samed v. Warden*, 2025 WL 2099343, at *8 (E.D. Cal. July 25, 2025) (concluding, however, that the government interest in detention “without a bond hearing” was outweighed by petitioner’s liberty interest). This is particularly so in the case of Petitioner, who has unlawfully stayed in the United States since October of 2001. Given Petitioner’s lawful detention pursuant to 8 U.S.C. § 1187, she cannot establish a likelihood of success on the merits, and the Court should deny her request for a TRO and her Petition.

IV. WAIVER OF FURTHER BRIEFING ON PRELIMINARY INJUNCTION

While the United States asserts the same arguments for why the Court should not grant a preliminary injunction, it does not request further briefing. All arguments in opposition to a preliminary injunction have been included in this briefing. The United States does not oppose the court ruling on both the motion for a TRO and for a preliminary injunction jointly, in the interests of judicial economy.

V. CONCLUSION

Petitioner is lawfully detained, and the facts of this case present no due process concerns. Respondents respectfully request that the Court deny Petitioner’s request for a TRO and her Petition.

Dated: December 30, 2025

ERIC GRANT
United States Attorney

By: /s/ DHRUV M. SHARMA
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