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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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11 BRAULIA AZUCENA ALVAREZ
RODRIGUEZ

) Case No.:

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Petitioner,

) **Notice of Motion and Memorandum of Law
in Support of Temporary Restraining Order**

13

vs.

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KRISTI NOEM, Secretary of the U.S. Department
15 of Homeland Security; PAMELA BONDI,
Attorney General of the United States; TODD M.
16 LYONS, Acting Director, U.S. Immigration and
Customs Enforcement; JESUS ROCHA, Acting
17 Field Office Director, San Diego Field Office;
CHRISTOPHER J. LAROSE, Warden, Otay
18 Mesa Detention Center,

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Respondents.

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PETITION FOR WRIT OF HABEAS CORPUS

I. Introduction

Petitioner Braulia Azucena Alvarez Rodriguez faces immediate irreparable harm: (1) revocation of her release on immigration supervision despite ICE’s failure to follow its own revocation procedures, resulting in severe diabetes, anxiety and depression complications; and (2) potential movement from this jurisdiction during the pendency of this petition, including potential movement to a third country.

The requested temporary restraining order (“TRO”) would preserve the status quo while Petitioner litigates these claims by (1) reinstating Ms. Alvarez Rodriguez’ release on supervision, and (2) prohibiting the government from moving her out of this district during the pendency of this litigation, potentially depriving this Court of jurisdiction.

In granting this motion, this Court would not break new ground. Courts in this district and around the Ninth Circuit have granted TROs or preliminary injunctions mandating release for post-final-removal-order immigrants like Petitioner. See, e.g., Sun v. Noem, 2025 WL 2800037, No. 25-cv-2433-CAB (S.D. Cal. Sept. 30, 2025); Van Aghajavadyha v. Noem, 2025 WL 2770623, No. 25-cv-2334-JES, *3 (S.D. Cal. Sept. 29, 2025); Truong v. Noem, No. 25-cv-02597-JES, ECF No. 10 (S.D. Cal. Oct. 10, 2025); Khambounheuang v. Noem, No. 25-cv-02575-JO-SBC, ECF No. 12 (S.D. Cal. Oct. 9, 2025); see also, e.g., Phetsadakone v. Scott, 2025 WL 2579569, at *6 (W.D. Wash. Sept. 5, 2025); Hoac v. Becerra, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July 16, 2025); Phan v. Beccerra, No. 2:25-CV-01757-DC-JDP, 2025 WL1993735, at *7 (E.D. Cal. July 16, 2025); Nguyen v. Scott, No. 2:25-CV-01398, 2025 WL 2419288, at *29 (W.D. Wash. Aug. 21, 2025). These courts have determined that, for these long-term releasees, liberty is the status quo, and only a return to that status quo can avert irreparable harm.

Courts have likewise granted temporary restraining orders preventing third-country removals without due process. See, e.g., Nguyen Tran v. Noem, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); Louangmilith v. Noem, 2025 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025); see also, e.g., J.R. v. Bostock, 25-cv-01161-JNW, 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); Vaskanyan v. Janecka, 25-cv-01475-MRA-AS, 2025 WL 2014208

1 (C.D. Cal. Jun. 25, 2025); Ortega v. Kaiser, 25-cv-05259-JST, 2025 WL 1771438 (N.D. Cal. June
2 26, 2025); Hoac v. Becerra, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7 (E.D. Cal. July
3 16, 2025); Phan, 2025 WL 1993735 at *7.

4 **II. Ms. Alvarez Rodriguez has lived under supervision for over 12 years, is re-detained**
5 **without an individualized reason for detention and without an opportunity to contest her re-**
6 **detention.**

7 Ms. Alvarez Rodriguez came to the United States in 2007. *Exhibit A to Habeas Petition,*
8 *Declaration of Braulia Azucena Alvarez Rodriguez* ¶ 2. ICE detained Ms. Alvarez Rodriguez in
9 September 2011 and released her in February 2012, for health-related reasons. *Id. at* ¶ 2-3. She
10 reported and checked in with ICE every year from 2012 to December 2025, when she was re-
11 detained. *Id. at* ¶ 5.

12 She was granted Withholding of Removal under the Convention Against Torture on
13 February 27, 2014, by the San Diego Immigration Court. *Id. at* ¶ 4 and the *Immigration Court*
14 *Order, Exhibit C.* [REDACTED]

15 [REDACTED] *Id. at* ¶ 2. She is also blind in one eye.

16 As a result, she suffers severe depression and anxiety and then developed diabetes. Later on, she

17 [REDACTED] which exacerbated her depression and anxiety. *Id. at* ¶ 7.

18 Currently, she is not getting her medication as prescribed at the Otay Mesa Detention Center, which
19 is causing her to have repeatedly panic attacks and feeling dizzy. *Id. at* 15.

20 On December 18, 2025, Ms. Alvarez Rodriguez presented herself to her ICE check-in where
21 she was detained. She recalls being told by the ICE officer that she was arrested because she was
22 going to be deported. She signed documents that she did not know what they were. She tried to
23 explain to the Officer that she had a withholding of removal order and deferred action granted by
24 USCIS based on her U visa case. Still, the Officer told her that they were going to deport her
25 anyway. *Id. at* 11. Ms. Alvarez Rodriguez mental and physical health are rapidly deteriorating while
26 detained.

27 Respondents failed to provide Ms. Alvarez Rodriguez with written notice of the reasons for
28 her re-detention. *Exhibit A at* ¶ 11.

1 **III. Argument: Ms. Alvarez Rodriguez meets all Winter factors.**

2 To obtain a TRO, a petitioner “must establish that he is likely to succeed on the merits, that
3 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
4 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def.*
5 *Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d
6 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
7 “substantially identical” analysis). A “variant[] of the same standard” is the “sliding scale”: “if a
8 plaintiff can only show that there are ‘serious questions going to the merits—a lesser showing than
9 likelihood of success on the merits—then a preliminary injunction may still issue if the balance of
10 hardships tips sharply in the plaintiff’s favor, and the other two Winter factors are satisfied.”
11 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation
12 marks omitted). Under this approach, the four Winter elements are “balanced, so that a stronger
13 showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v.*
14 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be granted where there are “‘serious
15 questions going to the merits’ and a hardship balance. . . tips sharply toward the plaintiff.” and so
16 long as the other Winter factors are met. *Id.* at 1132.

17 In this instance, this Court should issue a temporary restraining order because “immediate
18 and irreparable injury . . . or damage” is occurring and will continue in the absence of an order. *Fed.*
19 *R. Civ. P.* 65(b). Not only have Respondents re-detained Ms. Alvarez Rodriguez in violation of her
20 due process, statutory, and regulatory rights. ICE policy also allows them to remove her to a third
21 country in violation of her due process, statutory, and regulatory rights. This Court should order
22 Petitioner’s release and enjoin removal from this Court’s jurisdiction during the pendency of
23 litigation.

24 **A. Ms. Alvarez Rodriguez is likely to succeed on the merits, or at a minimum, raises**
25 **serious merits questions.**

26 As described in detail in Ms. Alvarez Rodriguez’ habeas petition, she is likely to
27 succeed on both of her claims.

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1 First, ICE failed to follow its own regulations requiring changed circumstances before Ms.
2 Alvarez Rodriguez' re-detention, as well as its procedural regulations requiring it to notify her of
3 those circumstances and allow her an opportunity to contest them. This was a violation of both the
4 regulations and due process and requires his release. See, e.g., See *Phan v. Noem*, 2025 WL
5 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025) (explaining this regulatory
6 framework and granting a habeas petition for ICE's failure to follow these regulations for a refugee
7 of Vietnam who entered the United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET,
8 2025 WL 2646165 at *2 (same as to an Iranian national).

9 Second, Respondents cannot remove Ms. Alvarez Rodriguez to a third country without first
10 providing notice and a sufficient opportunity to be heard before an immigration judge. Their current
11 policy allowing third-country removal in the absence of that notice "contravenes Ninth Circuit law."
12 *Nguyen v. Scott*, No. 25-CV-1398, 2025 WL 2419288, *19 (W.D. Wash. Aug. 21, 2025)
13 (explaining how the July 9, 2025 ICE memo contravenes Ninth Circuit law on the process due to
14 noncitizens in detail); see also *Delkash v. Noem*, No. 25-cv-1675- HDV-AGR, 2025 WL 2683988,
15 *1, *6 (C.D. Cal. Aug. 28, 2025) (explaining this point as to an Iranian national); *Rebenok v. Noem*,
16 No. 25-cv-2171-TWR at ECF No. 13; *Van Tran v. Noem*, 2025 WL 2770623 at *3; *Nguyen Tran v.*
17 *Noem*, No. 25-cv-2391-BTM, ECF No. 6 (S.D. Cal. Sept. 18, 2025); *Louangmilith v. Noem*, 2025
18 WL 2881578, No. 25-cv-2502-JES, *4 (S.D. Cal. Oct. 9, 2025) (all either granting temporary
19 restraining orders or habeas petitions ordering the government to not remove petitioners to third
20 countries without notice and an opportunity to be heard).

21 **B. Ms. Alvarez Rodriguez will suffer irreparable harm absent injunctive relief.**

22 Ms. Alvarez Rodriguez also meets the second factor, irreparable harm. "It is well established
23 that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'"
24 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,
25 373 (1976)). Where the "alleged deprivation of a constitutional right is involved, most courts hold
26 that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989,
27 1001-02 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and Procedure*, §
28 2948.1 (2d ed. 2004)).

1 The Ninth Circuit has specifically recognized the “irreparable harm” created by the
2 likelihood of being “unconstitutionally detained for an indeterminate period of time” in immigration
3 detention. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

4 Further, Ms. Alvarez Rodriguez continued detention creates significant medical burdens. As
5 the Ninth Circuit has recognized, immigration detainees face “subpar medical . . . care in ICE
6 detention facilities.” *Hernandez*, 872 F.3d at 995.

7 Ms. Alvarez Rodriguez mental and physical health have been extremely frail from the time

8 [REDACTED]
9 [REDACTED] All of these tragic events have taken a
10 substantial toll on Ms. Alvarez Rodriguez’ health. In addition, she is diabetic. Yet the lack of access
11 to her medication is subjecting her to irreparable harm at Otay Mesa Detention Center. Exhibit A at
12 ¶13, 15-16.

13 Finally, “[i]t is beyond dispute that Petitioner would face irreparable harm from removal to a
14 third country.” *Nguyen*, 2025 WL 2419288, at *26. Recent third-country deportees have been held,
15 indefinitely and without charge, in hazardous foreign prisons. See Edward Wong et al, Inside the
16 Global Deal-Making Behind Trump’s Mass Deportations. N.Y. Times, June 25, 2025. They have
17 been subjected to solitary confinement. Gerald Imray, 3 Deported by US held in African Prison
18 Despite Completing Sentences, Lawyers Say, PBS (Sept. 2, 2025). They have been removed to
19 countries so unstable that the U.S. government recommends making a will and appointing a hostage
20 negotiator before traveling to them. See Wong, *supra*. They have been “promptly deported . . . to the
21 very countries to which the United States had withheld removal due to the risk of persecution,
22 torture, or death.” *Santamaria Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2841886, *12 (D.
23 Md. Oct.7, 2025).

1 **IV. The balance of hardships and the public interest weigh heavily in Ms. Alvarez Rodriguez'**
2 **favor.**

3 The final two factors for a TRO—the balance of hardships and public interest—“merge
4 when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). That
5 balance tips decidedly in Ms. Alvarez Rodriguez’ favor.

6 On the one hand, the government “cannot reasonably assert that it is harmed in any legally
7 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th
8 Cir. 1983). It is always in the public interest to prevent violations of the U.S. Constitution and
9 ensure the rule of law. See *Nken*, 556 U.S. at 436 (describing public interest in preventing
10 noncitizens “from being wrongfully removed, particularly to countries where they are likely to face
11 substantial harm”); *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019)
12 (when government’s treatment “is inconsistent with federal law, . . . the balance of hardships and
13 public interest factors weigh in favor of a preliminary injunction.”).

14 On the other hand, Ms. Alvarez Rodriguez faces weighty hardships: unlawful,
15 indefinite detention, subpar medical care, and possible movement out of this district and out of the
16 Court’s jurisdiction. The balance of equities thus favors preventing the violation of “requirements of
17 federal law,” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting
18 temporary emergency relief to protect against unlawful detention and loss of this Court’s
19 jurisdiction.

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21 **V. Ms. Alvarez Rodriguez will give the government notice of this TRO motion immediately,**
22 **and the TRO should remain in place throughout habeas litigation.**

23 Respondent will give the United States Attorney’s Office notice of this motion.
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1 Additionally, Ms. Alvarez Rodriguez requests that this TRO remain in place until the habeas
2 petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because the same considerations
3 will continue to warrant injunctive relief throughout this litigation, and habeas petitions must be
4 adjudicated promptly. See *In re Habeas Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003).

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Respectfully Submitted,



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