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

13 YAMILA MENDINUETA MORALES,

CIVIL CASE NO.: '26CV0051 LL MMP

14
15 Petitioner,

16 v.

17 KRISTI NOEM, Secretary of the
18 Department of Homeland Security,
19 PAMELA JO BONDI, Attorney General,
20 TODD M. LYONS, Acting Director,
21 Immigration and Customs Enforcement,
22 JESUS ROCHA, Acting Field Office
23 Director, San Diego Field Office,
24 CHRISTOPHER LAROSE, Warden at
25 Otay Mesa Detention Center,

26 Respondents.

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28
Notice of Motion
and
Memorandum of Law
in Support of
Temporary Restraining Order

1 INTRODUCTION

2 Ms. Mendinueta Morales (“Petitioner”) has simultaneously filed a petition
3 for writ of habeas corpus under 28 U.S.C. § 2241 (“Habeas Petition”). In the
4 Habeas Petition, Petitioner asserts two claims that her continued detention
5 violates the Fifth Amendment’s Due Process Clause. Specifically, Petitioner
6 alleges that ICE re-detained her after decades of living in the community under an
7 order of supervision without any notice or opportunity to be heard in violation of
8 ICE’s own regulations. She also alleges because more than 6 months have passed
9 since her final order of removal and there is no significant likelihood of removal
10 in the reasonably foreseeable future, her continued detention is a violation her due
11 process rights under *Zadvydas v. Davis*, 533 U.S. 678 (2001).

12 Petitioner is therefore facing both unlawful detention without due process.
13 The requested temporary restraining order (“TRO”) would preserve the status quo
14 while Petitioner litigates these claims by reinstating Petitioner’s release on
15 supervision.

16 Petitioner incorporates by reference the facts and arguments set forth in that
17 Habeas Petition.

18 ARGUMENT

19 To obtain a TRO, a plaintiff “must establish that she is likely to succeed on
20 the merits, that she is likely to suffer irreparable harm in the absence of
21 preliminary relief, that the balance of equities tips in her favor, and that an
22 injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555
23 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d
24 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary injunction
25 involve “substantially identical” analysis). A “variant[] of the same standard” is
26 the “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
27 going to the merits—a lesser showing than likelihood of success on the merits—
28 then a preliminary injunction may still issue if the balance of hardships tips

1 *sharply* in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
2 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
3 (internal quotation marks omitted). Under this approach, the four *Winter* elements
4 are “balanced, so that a stronger showing of one element may offset a weaker
5 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
6 (9th Cir. 2011). A TRO may be granted where there are “serious questions going
7 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
8 long as the other *Winter* factors are met. *Id.* at 1132.

9 The *Winter* factors weigh in favor of granting a TRO as to all claims set out
10 in the Habeas Petition. *See Winter*, 555 U.S. at 20.

11 Here, this Court should issue a temporary restraining order because her
12 unlawful immigration detention has caused, and will continue to cause,
13 “immediate and irreparable injury . . . or damage.” Fed. R. Civ. P. 65(b). This
14 Court should therefore order Petitioner’s release.

15 **I. Petitioner is likely to succeed on the merits.**

16 Petitioner is likely to succeed on the merits as to all claims. The Fifth
17 Amendment’s Due Process Clause forbids the Government to “depriv[e]” any
18 “person ... of ... liberty ... without due process of law.” *Zadvydas*, 533 U.S. at 690.
19 Due process requires that “a person in jeopardy of a serious loss [be given] notice
20 of the case against him and the opportunity to meet it.” *Mathews v. Eldridge*, 424
21 U.S. 319, 348 (1976) (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S.
22 123, 171–72 (Frankfurter, J., concurring)). Petitioner’s detention in immigration
23 custody and removal to a third country violates due process.

24 First, ICE failed to follow its own regulations requiring changed
25 circumstances before Ms. Mendinueta Morales’s re-detention, as well as its
26 procedural regulations requiring it to notify her of those circumstances and allow
27 her an opportunity to contest them. This was a violation of both the regulations
28 and due process and requires her release. *See, e.g., See Phan v. Noem*, 2025 WL

1 2898977, No. 25-CV-2422-RBM-MSB, *3–*5 (S.D. Cal. Oct. 10, 2025)
2 (explaining this regulatory framework and granting a habeas petition for ICE’s
3 failure to follow these regulations for a refugee of Vietnam who entered the
4 United States before 1995); *Rokhfirooz*, No. 25-CV-2053-RSH-VET, 2025 WL
5 2646165 at *2 (same).

6 Second, *Zadvydas v. Davis* holds that immigration statutes do not authorize
7 the government to detain immigrants like Petitioner, for whom there is “no
8 significant likelihood of removal in the reasonably foreseeable future.” 533 U.S.
9 678, 701 (2001); *see, e.g., Alic v. Dep’t of Homeland Sec./Immigr. Customs Enft.*,
10 No. 25-CV-01749-AJB-BLM, 2025 WL 2799679 (S.D. Cal. Sept. 30, 2025);
11 *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288 *17 (W.D. Wash. Aug.
12 21, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771,
13 *5, *7 (E.D. Cal. July 16, 2025) (granting preliminary injunction and temporary
14 restraining order on these same grounds).

15 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

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

24 Here, the potential irreparable harm to Petitioner is even more concrete.
25 Petitioner is concerned about her medical condition as she has been diagnosed
26 with WPW, or Wolff-Parkinson-White syndrome. *See* Declaration, Exhibit A to
27 Habeas Petition at ¶ 8. She also has an eight year old son waiting for her at home
28 in Florida. *Id.* at 9. Furthermore, “[u]nlawful detention” itself “constitutes

1 'extreme or very serious damage, and that damage is not compensable in
2 damages." *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

3 **III. The balance of hardships and the public interest weigh heavily in**
4 **Petitioner's favor.**

5 Third, and finally, when the government is a party, as it is here, "the
6 balance of equities and public interest factors merge." *Pimental-Estrada v. Barr*,
7 464 F. Supp. 3d 1225, 1237 (W.D. Wash 2020) (citing *Drakes Bay Osyter v.*
8 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). The risk of harm to Petitioner far
9 outweighs the government's interest in illegally detaining her, fir it is "always in
10 the public interest to prevent the violation of a party's constitutional rights."
11 *Melendres*, 695 F.3d at 1002.

12 **CONCLUSION**

13 For all these reasons, this Court should grant this motion for a temporary
14 restraining order and order immediate release.

15 Respectfully submitted,

16
17 Dated: January 5, 2026

s/ Zandra L. Lopez

Zandra L. Lopez

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PROOF OF SERVICE

I, the undersigned, will cause the attached motion to be emailed to the U.S. Attorney's Office for the Southern District of California at USACAS.Habeas2241@usdoj.gov when I receive the court-stamped copy.

Dated: January 5, 2026

s/ Zandra L. Lopez
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