

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Genesis Abigail OCHOA FONSECA

Petitioner,

No.8:26-cv-00128

v.

Kristi Noem, et. al

Respondents.

**PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND
MEMORANDUM IN SUPPORT THEREOF**

MOTION AND MEMORANDUM OF LAW

Petitioner OCHOA FONSECA respectfully moves this Honorable Court for an emergency order preventing her continued detention, in violation of, *inter alia*, her constitutional rights.

I. INTRODUCTION

Petitioner OCHOA FONSECA is a 29-year-old native and citizen of Honduras. On or about March 2, 2018, Petitioner was apprehended by CBP at the U.S. Border. CBP subsequently decided to release her and her family members into the United States. They have lived in the United States ever since. Petitioner OCHOA FONSECA currently lives with her five minor children, two of whom are U.S. citizens. She is the sole caregiver for her five minor children, who wholly depend on her for their financial and emotional stability and well-being.

Following the executive orders of President Donald Trump and their implementation by Respondents, Petitioner believes that Respondents have adopted a blanket policy to detain and immediately remove noncitizens, irrespective of any individualized circumstances, including dire circumstances. Respondents have demonstrated that they will apply this policy to him as they have her in physical custody.

Petitioner seeks an emergency order from this Court to halt her continued detention.

II. FACTUAL BACKGROUND

A. Petitioner OCHOA FONSECA's background and case posture

Petitioner OCHOA FONSECA is a twenty-nine-year-old female native and citizen of Honduras who has resided in the United States since 2018. Petitioner lives in Silver Spring, Maryland, with her five minor children, two of whom are U.S. citizens. She is their sole caregiver and provider, as their father is not present.

Petitioner fled Honduras in 2018 and entered the United States shortly thereafter. Petitioner has consistently attended all ICE reporting appointments and her removal proceedings, including her asylum merits hearing on November 20, 2025. Thereafter, Petitioner timely filed an appeal of the immigration judge's removal decision on December 22, 2025. (A screenshot of the EOIR Case Portal showing Petitioner's timely filed appeal is attached hereto and made a part hereof as Exhibit 1). Petitioner's appeal is currently pending before the BIA. Thus, she does not have a final administrative order of removal. Petitioner has no criminal record.

Petitioner was required to report to ICE/ISAP in Baltimore on a monthly basis, and consistently did so. However, on January 13, 2026, when Petitioner arrived at the Baltimore ICE Field Office for her monthly reporting appointment, she was abruptly arrested by ICE officials without a warrant and detained without explanation or just cause. This detention left her separated from her five minor children, two of whom are U.S. citizens, and the stable life she had worked hard to build in the United States. Her children do not currently have anyone to care for them, as their father expressed no interest in caring for the children upon being contacted by Petitioner's family and friends. (Petitioner's U.S. citizen children's birth certificates and letters from her friends are attached hereto and made a part hereof as Exhibits 2 and 3, respectively).

During her detention, Petitioner has been held in deplorable conditions. Reports from other detainees housed at the Baltimore Field Office indicate a lack of adequate food, the absence of beds and blankets, and severely limited access to water.

B. Executive Orders and Respondents' Blanket Policy

On January 20, 2025, President Donald Trump signed several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order ("EO") setting out a series of interior immigration enforcement actions. This EO instructs the DHS

Secretary “to take all appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures “that protect the public safety and national security interests of the American people, including by ensuring the successful enforcement of final orders of removal.”

These actions have resulted in Respondents adopting a blanket policy, where ICE is currently arresting, detaining, and removing people like Petitioner, without an individualized consideration of their cases. Under these new policies, ICE/ERO has detained and is attempting to transfer/remove Petitioner to Guatemala.

C. LEGAL STANDARDS

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The proper legal standard for preliminary injunctive relief requires a party to demonstrate (1) that she is likely to succeed on the merits, (2) that she is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in her favor, and (4) that an injunction is in the public interest. *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011).

As an alternative to this test, a preliminary injunction is appropriate if “serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing preservation of the status quo when complex legal questions require further inspection or deliberation. *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 813 (4th Cir. 1991).

III. ARGUMENT

Petitioner's Motion for a Temporary Restraining Order should be granted because she is likely to suffer irreparable harm in the absence of preliminary relief, she is likely to succeed on the merits, and the balance of the equities and public interest weigh in favor of emergency relief.

A. Petitioner will likely suffer irreparable harm if not granted preliminary relief

If this Court does not grant a temporary restraining order, Petitioner will remain in detention. By doing so, Petitioner's five minor children will no longer have anyone to care for them and may end up in state custody. Additionally, she will be separated from her employment and local counsel.

Respondents' actions already are and will cause irreparable harm to Petitioner and separate Petitioner from her community in the United States. Her five minor children (two of whom are U.S. citizens) will be left without their sole caregiver. They currently do not have anyone to care for them, as their father expressed that he does not want to be involved. These circumstances constitute irreparable harm. *See e.g., Int'l Refugee Assistance Project v. Trump*, 883 F.3d 233, 320 (4th Cir. 2018), *vacated on other grounds*, 138 S. Ct. 2710, 201 L. Ed. 2d 1094 (2018) (stating that "[p]rolonged and indefinite separation of parents, children, siblings, and partners create not only temporary feelings of anxiety but also lasting strains on the most basic human relationships" and therefore constitutes irreparable harm); *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (stating that "separation from family members, medical needs, and potential economic hardship" are important factors when assessing irreparable harm).

Additionally, in keeping Petitioner detained, she will be deprived of proximity to her five minor children, friends, community support, distance her from access to her local counsel, and impede her ability to engage in these immediate judicial proceedings. *See Arroyo v. United States Dep't of Homeland Sec.*, 2019 WL 2912848, at *17 (C.D. Cal. June 20, 2019) (observing that "a

significant burden on the attorney-client relationship, without a showing of underlying prejudice to the removal proceedings, may be sufficient to establish a legal injury sufficient to justify injunctive relief”), citing *Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439 (9th Cir.), amended on other grounds, 807 F.2d 769 (9th Cir. 1986); see also *Escobar-Grijalva v. I.N.S.*, 206 F.3d 1331, 1335 (9th Cir.), amended on other grounds, 213 F.3d 1221 (9th Cir. 2000) (“Deprivation of the statutory right to counsel deprives [a noncitizen] asylum-seeker of the one hope she has to thread a labyrinth almost as impenetrable as the Internal Revenue Code.”).

As alleged in Petitioner’s habeas petition, Respondents’ actions will also violate her constitutional right to due process. It is well established “that a deprivation of a constitutional right, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022), quoting *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976).

B. Petitioner is likely to succeed on the merits of her habeas petition

Petitioner requests habeas relief from this Court on the grounds that Respondents’ decision to continue to detain her under a blanket enforcement policy is (1) arbitrary and capricious and in violation of Respondents’ own governing regulations and policies and (2) a violation of her Fourth and Fifth Amendment rights.

First, Petitioner is likely to succeed on her due process claim. The Fifth Amendment’s Due Process Clause protects noncitizens from arbitrary government action. See *Romero v. Bondi*, 150 F.4th 332, 340 (4th Cir. 2025). Due process requires that detention and removal decisions be rational, individualized, and consistent with the law. By detaining Petitioner, Respondents have deprived her of liberty without lawful justification. Because there has been no articulated real change in her circumstances, the decision to detain her now is irrational and arbitrary, violating her right to due process.

Moreover, before depriving Petitioner of her liberty interest, she should at least be afforded an opportunity to be heard. Procedural due process requires, at a minimum, an opportunity to be heard “at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Applying the Mathews factors, courts consistently find that: (a) the private interest in freedom from physical restraint is “the most elemental of liberty interests”; (b) the risk of erroneous deprivation is high where detention occurs without a hearing; and (c) the government’s interest in immediate detention without process is minimal. *See P.T. v. Hermosillo*, No. 2:2025cv02259 (W.D.W.A) (applying Mathews and finding detention unconstitutional where ICE failed to provide pre-deprivation process); *see also Ngha v. Noem*, No. 8:25-C-V-04055-BAH, 2025 (D. Md. Dec. 11, 2025). Applying the facts of Petitioner’s case, the *Mathews, supra*, factors weigh heavily in her favor, particularly where her liberty interest was abridged without adequate procedural protections, the risk of erroneous deprivation of her liberty interest is high, as the government has articulated no change in circumstances to justify detention, and the government’s interest in her detention without process is minimal. *See See Artiga v. Genalo*, No. 25-CV-5208, Mem. & Order at 19 (E.D.N.Y. Oct. 5, 2025). Due to Petitioner’s unique circumstances, including her five minor children, for which she is the sole caregiver and provider, no criminal record, and an appeal pending before the BIA, Petitioner should at least be provided an opportunity to be heard before she is deprived of her fundamental liberty interest.

Furthermore, a statute or policy permitting indefinite detention or removal to a country where a person faces grave danger raises serious constitutional concerns. As the Supreme Court has made clear, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Fifth Amendment, therefore, prohibits the government

from depriving an individual of liberty through indefinite detention. Furthermore, detention where removal cannot occur within the reasonably foreseeable future is unconstitutional. *Id.* Here, Petitioner's detention is unconstitutional, as her removal is not reasonably foreseeable. Petitioner timely filed an appeal of the immigration judge's decision with the Board of Immigration Appeals. Thus, there is no final administrative order of removal. BIA appeals routinely last three to five years, making removal during the pendency of the appeal neither imminent nor reasonably foreseeable. Therefore, her detention violates due process protections. *See id.*

Additionally, this Court "cannot ignore the conditions of confinement." *Chavez-Alvarez v. Warden York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). Petitioner is currently being held at the Baltimore Field Office under inhumane conditions. There are no beds or blankets available. She will not be provided with appropriate and sufficient food or water. These conditions are not only degrading but also pose serious risks to her health and well-being.

Further, Petitioner is also likely to succeed on the merits of her Fourth Amendment claim. The Fourth Amendment protects individuals, including noncitizens, from unreasonable seizures. U.S. Const. amend. IV. Civil immigration arrests must be supported by lawful authority and cannot be arbitrary or unreasonable.

Here, Petitioner was arrested without a warrant when she arrived at her routine ICE check-in appointment. Respondents did not possess a judicial warrant and have articulated no exigent circumstances, probable cause, or individualized justification for their arrest.

The warrantless seizure of Petitioner under these circumstances was unreasonable. Petitioner was not fleeing and posed no risk to public safety. Arresting her while she was presenting herself to ICE, without articulation of probable cause or individualized circumstances, constitutes an arbitrary seizure in violation of the Fourth Amendment.

Further, the continued detention flowing from this unlawful arrest compounds the constitutional violation. A seizure that begins unlawfully cannot be justified retroactively by post-hoc enforcement rationales. Where, as here, Respondents lacked lawful authority to arrest Petitioner in the first instance, her continued detention remains constitutionally infirm.

Finally, Petitioner is likely to succeed on the merits of her claim under the Administrative Procedure Act (“APA”). Under the APA, a court shall “hold unlawful and set aside agency action” that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An agency action is arbitrary and capricious if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Here, ICE’s decision to detain Petitioner, who has a pending appeal before the BIA, is the sole provider and caregiver for five minor children, has no criminal record, and has strong family and community ties in Maryland, is arbitrary and capricious. Despite this, Respondents abruptly detained Petitioner without articulating any change in factual circumstances, legal authority, or public-safety justification.

Moreover, ICE’s conduct contravenes its own detention and supervision framework under 8 C.F.R. §§ 241.4–241.5, which require individualized custody determinations and consideration of factors such as danger to the community and flight risk before taking a noncitizen into custody. Petitioner has no criminal record and poses no threat to public safety. The failure to consider these mandatory factors renders Respondents’ actions arbitrary and capricious under, *inter alia*, *State Farm*, 463 U.S. at 43.

For the above-noted reasons, Petitioner is likely to succeed on the merits of her habeas corpus petition and/or TRO.

C. The balance of the equities and public interest factors tip sharply in favor of preliminary relief.

Petitioner OCHOA FONSECA has established that “the balance of the equities tip in [her] favor and that an injunction is in the public interest” because she has no final order of removal, she is not a flight risk, and she is not a danger to the community. *See Winter*, 555 U.S. at 20. When the federal government is a party, the balance of the equities and public interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

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

Petitioner’s detention and transfer would harm not only her, but also her five minor children (two of whom are U.S. citizens), who wholly depend on her for support and community. Petitioner lives in Silver Spring, Maryland, has stable employment, and has local counsel. Without immediate intervention from this Court, Petitioner will suffer severe and irreparable harm. These circumstances constitute the very definition of irreparable injury warranting this Court’s immediate intervention.

There is also a strong public interest in maintaining Petitioner’s presence in her local community, where she resides with her five minor children, where her local counsel is, and where she is known as a compassionate and caring member of the community.

The merits of the due process violations that Petitioner has raised in her habeas petition

further weigh for the public interest toward emergency relief. Moreover, “it is well-established that the public interest favors protecting constitutional rights.” *Leaders of a Beautiful Struggle v. Balt. Police Dep’t*, 2 F.4th 330, 346 (4th Cir. 2021). In addition, “the public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

Even when considered from a fiscal perspective, the public interest in the efficient allocation of the government’s fiscal resources weighs in favor of emergency relief here. As the Ninth Circuit has explained, “The costs to the public of immigration detention are “staggering”: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). The interests of the general public will not be served by Petitioner’s continued detention, where he has no criminal record, is eligible for relief, and is neither a flight risk nor a danger to the community.

By contrast, any public interest favoring Petitioner’s detention is weak or non-existent. Respondents do not appear to have any legitimate reason to suspect that the public safety or national security may somehow be at risk if the motion for a temporary restraining order is granted. Any interest in effectuating Petitioner’s transfer or removal is outweighed by Petitioner’s OCHOA FONSECA’s exceptional qualities.

IV. CONCLUSION

For the foregoing reasons, Petitioner OCHOA FONSECA respectfully requests that this Honorable Court grant her motion for a temporary restraining order to release Petitioner from detention.

Dated: January 14, 2026

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ORDER

Upon consideration of Petitioner's Motion for a Temporary Restraining Order and Memorandum in support thereof, it is on this ____ day of January 2026, by the United States District Court for the District of Maryland:

ORDERED that Petitioner's Motion for a Temporary Restraining Order BE and HEREBY IS GRANTED; and it is further

ORDERED that Respondents must immediately release Petitioner and/or refrain from transferring Petitioner from the state of Maryland, or removing Petitioner from the United States.

United States District Judge