

UNITED STATE DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

FILED

JAN 12 2026

ALTYNAI ASHYRAPOVA, in her own capacity and on  
behalf of her minor son, [REDACTED]

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY CLERK

Petitioner(s),

-against-

TODD M. LYONS, Acting Director, U.S. Immigration  
and Customs Enforcement (ICE); MARCOS  
CHARLES, in his official capacity as Acting Executive  
Associate Director, Enforcement and Removal  
Operations, U.S. Immigration and Customs  
Enforcement; ALEJANDRO N. MAYORKAS,  
Secretary, U.S. Department of Homeland Security;  
KRISTI NOEM, in her official capacity as Secretary of  
the U.S. Department of Homeland Security; and PAM  
BONDI, in her official capacity as Attorney General of  
the United States, and WARDEN of DILLEY  
IMMIGRATION PROCESSING CENTER, in their  
official capacity as custodian of petitioner, THE  
WARDEN OF THE FACILITY WHERE PETITIONER  
IS CURRENTLY DETAINED, in his or her official  
capacity as custodian of Petitioner

Case No.:

SA 26CA0214

FB

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF THE ORDER TO SHOW  
CAUSE SEEKING TEMPORARY RESTRAINING ORDER

[Signature]

Diana Rubin, Esq.  
NYS BAR No. 520-2627  
3 Main St.,  
Port Washington, NY 11050

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Petitioner ALTYNAI ASHYRAPOVA ("Petitioner") respectfully submits this Memorandum of Law seeking a temporary restraining order and preliminary injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining all Respondents from transferring Petitioner to any detention facility outside this judicial district or outside the United States, including effectuating her removal, and directing that Petitioner remain in her current place of detention pending this Court's determination of the Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241.

#### **PRELIMINARY STATEMENT/STATEMENT OF FACTS**

All relevant facts and procedural history concerning Petitioner's detention, medical condition, credible fear interview, and related events are set forth in detail in the Petition for Writ of Habeas Corpus filed concurrently herewith. For the sake of brevity and to avoid unnecessary repetition, those facts are incorporated by reference and not restated in full herein.

#### **LEGAL STANDARD/ARGUMENT**

As a threshold matter, a party seeking a temporary restraining order must establish the following elements: To obtain a temporary restraining order, the moving party must establish that "(1) there is a substantial likelihood that the movant will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury outweighs the threatened harm to the defendant; and (4) the granting of [injunctive relief] will not disserve the public interest." Clark v. Prichard, 812 F.2d 991, 993 (5th Cir. 1987); see also Anderson v. Jackson, 556 F.3d 351, 360 (5th Cir. 2009).. "Where [\*4] the Government is the opposing party, the final two factors in the temporary restraining order

analysis - the balance of the equities and the public interest - merge.” Hernandez Aguilar v. Decker, 482 F. Supp. 3d 139, 150 (S.D.N.Y. 2020). It is respectfully submitted that each of these factors/prongs weigh decisively in favor of granting temporary injunctive relief, as will be discussed further below.

**A. Likelihood of Success on the Merits.**

Petitioner is likely to succeed on the merits of her habeas corpus claim because the record demonstrates that her continued detention and the negative credible fear determination were the result of a constitutionally defective process in violation of the Fifth Amendment. As is further detailed in the accompanying Petition for Writ of Habeas Corpus, Petitioner underwent a credible fear interview on September 3, 2025, while still recovering from a severe traumatic brain injury sustained less than two months prior. At the time, she was experiencing ongoing post-concussive symptoms, including memory lapses, confusion, and cognitive impairment, and was taking concussion-related medication. These conditions materially impaired her ability to recall events consistently, communicate coherently, and participate meaningfully in the interview. USCIS conducted a credible fear interview without a representative or family member being present despite Petitioner’s expressed request for one, and ultimately deemed Petitioner’s testimony mostly inconsistent. The medical literature/articles, incorporated by reference in the Petition (**Exhibits C–D**), confirms that individuals recovering from traumatic brain injuries often display inconsistencies or confabulated details in recounting events, i.e. symptoms of the injury itself rather than intentional deception.

Accordingly, the resulting negative credible fear determination were procedurally defective. Further, the Immigration Judge affirmed the negative credible fear determination

without ever assessing Petitioner's competency or implementing procedural safeguards required under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), despite clear indicia of mental incompetency. The Immigration Judge failed to consider the nature or severity of Petitioner's impairments, review her medical records, or otherwise ensure that the proceedings were fundamentally fair, in direct violation of the Fifth Amendment's Due Process Clause.

As such, Petitioner is likely to succeed in demonstrating that her detention and the negative credible fear determination are unlawful. Accordingly, Petitioner has a strong likelihood of success on the merits of her habeas corpus petition and is entitled to relief to prevent irreparable harm while this Court considers her claims.

**B. Petitioner Will Suffer Irreparable Harm Absent Immediate Injunctive Relief.**

Next, it is respectfully submitted that absent immediate injunctive relief, Petitioner faces the imminent and irreparable harm of deportation from the United States, as explicitly contemplated by the Immigration Judge's order affirming the DHS credible fear determination. The IJ concluded that "the Applicant has not established a significant possibility of eligibility for asylum under section 208 of the Immigration and Nationality Act (Act), withholding of removal under section 241(b)(3) of the Act, or withholding of removal under the Convention Against Torture (CAT)," and ordered that "the DHS credible fear determination is AFFIRMED, and the case is returned to DHS for removal of the Applicant."

This Immigration Judge's order, if effectuated, places Petitioner at immediate risk of being removed/deported without any meaningful opportunity to present her due process claims or undergo a medically necessary neuropsychological evaluation. Because Petitioner suffers from severe post-concussive and cognitive impairments that materially affect her ability to participate

in immigration proceedings, her removal would irreparably compromise her ability to develop the evidentiary record and assert her rights under the Fifth Amendment, and to meaningfully pursue her asylum claims. Such actions would also risk mooted the habeas corpus petition by divesting this Court of jurisdiction. Where, as here, a petitioner alleges ongoing violations of constitutional rights, irreparable harm is presumed. See Jolly v. Coughlin, 76 F.3d 468, 482 (2d Cir. 1996); Conn. Dep't of Env't Prot. v. O.S.H.A., 356 F.3d 226, 231 (2d Cir. 2004). Petitioner seeks only to preserve the status quo pending adjudication of his habeas corpus petition. Because the looming removal cannot be remedied after the fact, the irreparable-harm prong is clearly satisfied.

**C. Public Interest and Balance of Equities.**

Finally, the balance of equities and the public interest strongly favor Petitioner. Issuance of a temporary restraining order would not significantly burden Respondents. The requested relief is temporary and narrowly tailored: it would merely preserve the status quo by preventing Petitioner's removal until this Court has an opportunity to fully consider and adjudicate the Petition for Writ of Habeas Corpus, ensuring that Petitioner's Due Process rights are protected. Absent a TRO, Petitioner faces the risk of imminent removal/deportation before this Court can adjudicate her habeas corpus claims, effectively depriving Petitioner of meaningful judicial review. The requested relief does not require Petitioner's immediate release. Finally, it is well established that "the public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." Coronel v. Decker, 449 F. Supp. 3d 274, 287 (S.D.N.Y. 2020); see also Leqaa Kordia v. Noem, 2025 U.S. Dist. LEXIS 136346, at \*18–19 (N.D. Tex.

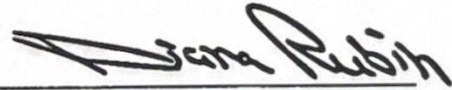
June 27, 2025). Accordingly, both the balance of equities and the public interest weigh decisively in Petitioner's favor.

**CONCLUSION**

Because Petitioner has demonstrated a likelihood of success on the merits, irreparable harm absent relief, that the balance of equities favors injunctive relief, and that a temporary restraining order serves the public interest, the Court should grant Petitioner's instant application for a temporary restraining order, preserving the status quo pending adjudication of the Petition for Writ of Habeas Corpus by this Court, and grant Petitioner such other and further relief as the Court deems just and proper.

Dated: January 8, 2026  
Port Washington, New York

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diana Rubin", is written over a horizontal line.

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ALTYNAI ASHYRAPOVA, in her own capacity and on  
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Petitioner(s),

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-against-

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); MARCOS CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; ALEJANDRO N. MAYORKAS, Secretary, U.S. Department of Homeland Security; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States, and WARDEN of DILLEY IMMIGRATION PROCESSING CENTER, in their official capacity as custodian of petitioner, THE WARDEN OF THE FACILITY WHERE PETITIONER IS CURRENTLY DETAINED, in his or her official capacity as custodian of Petitioner

**ORDER TO SHOW CAUSE FOR  
TEMPORARY RESTRAINING  
ORDER**

Case No.:

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**PLEASE TAKE NOTICE** that upon the annexed Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, the accompanying Memorandum of Law of Diana Rubin, Esq., submitted herewith, and all prior pleadings and proceedings in this matter, Petitioner, by and through undersigned counsel, respectfully requests that this Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure, issue an Order temporarily restraining and enjoining

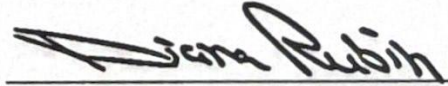
Respondents, their officers, agents, employees, and all persons acting in concert with them, pending the Court's determination of the Petition for Writ of Habeas Corpus, from:

- (i) deporting/removing Petitioner;
- (ii) directing that Petitioner remains in her current place of detention during the pendency of these proceedings;
- (iii) granting such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that this application is made on an expedited/emergency basis due to the imminent risk of transfer or removal/deportation of the Petitioner, which would irreparably harm Petitioner and divest this court of jurisdiction.

Dated: January 8, 2026  
Port Washington, New York

Respectfully submitted,

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