

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Zharick Daniela Buitrago Ortiz,

Petitioner,

v.

LaDeon Francis, et al.,

Respondents.

Civil Action No. 1:26-cv-0353-SEG-JEM

HEARING REQUESTED

MOTION AND MEMORANDUM IN SUPPORT OF
TEMPORARY RESTRAINING ORDER

NOW COMES Petitioner Zharick Daniela Buitrago Ortiz (“Ms. Buitrago”) and respectfully moves this Court for a Temporary Restraining Order enjoining Respondents from (1) transporting Petitioner from this district, pending resolution of this habeas action; (2) transporting or transferring Petitioner without advance notice to counsel and without ensuring continuity of medical care; and (3) continuing to detain Petitioner in conditions that deny her necessary and urgent prenatal medical care, in violation of the Constitution, federal law, and Respondents’ own binding policies.

Emergency relief is necessary to preserve this Court’s jurisdiction, prevent irreparable harm to Petitioner and her unborn child, and ensure meaningful access to habeas review.

FACTUAL BACKGROUND

Petitioner is a 21-year-old woman who is eight months pregnant and currently in the custody of Immigration and Customs Enforcement (“ICE”). She entered the United States in November 2025 with her mother and two younger siblings to seek protection from persecution in Colombia. Her family has since been released, but Petitioner remains detained.

On January 20, 2026—after Respondents confirmed in writing that Petitioner was not scheduled for removal—Respondents abruptly transferred her from a detention facility in Louisiana to Hartsfield-Jackson International Airport in Atlanta, where she is being held for imminent removal by airplane to Colombia.

Petitioner is in acute medical distress. She is experiencing severe abdominal and back pain, nausea, vomiting, and dizziness. Removal by air at this stage of pregnancy presents grave and foreseeable risks to her life and the life of her unborn child. Respondents are aware of her condition and have nevertheless failed to provide adequate medical evaluation, treatment, or continuity of care, and have ignored urgent communications from counsel.

Petitioner recently learned that the father of her unborn child was murdered in Colombia, compounding her fear of return and underscoring the severity of harm she faces if removed. Absent immediate judicial intervention, Respondents may remove Petitioner within hours—mooting this Court’s jurisdiction and subjecting Petitioner and her unborn child to irreversible harm.

LEGAL STANDARD

Federal Rule of Civil Procedure 65 authorizes courts to enter preliminary injunctions and issue temporary restraining orders (“TRO”). Fed. R. Civ. P. 65(a), (b).

A Court deciding whether, in its discretion, to grant emergency relief must consider four factors: (1) whether petitioner has established a likelihood of success on the merits; (2) that petitioner is likely to suffer irreparable harm in the absence of such relief; (3) that the balance of equities tips in the petitioner’s favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (citing *Church v. City of Huntsville*, 30 F.3d 1332, 1342 (11th Cir.

1994)). “The first two factors are ‘the most critical.’” *Swain v. Junior*, 958 F.3d 1081, 1088 (11th Cir. 2020). The moving party must show more than a mere “possibility” of irreparable harm. See *Florida v. Dep’t of Health & Human Servs.*, 19 F.4th 1271, 1291 (11th Cir. 2021) (citing *Winter*, 555 U.S. at 22).

ARGUMENT

The Court should grant Petitioner’s temporary restraining order in order to ensure access to justice, access to counsel, and in the interest of fairness.

I. Ms. Buitrago is Likely to Succeed on the Merits of Her Petition

Petitioner is likely to succeed on the merits of her Petition for Habeas Corpus. Moreover, “[w]here, as here, the ‘balance of the equities weighs heavily in favor of granting the [injunction]’ the Petitioner need[s] only show a ‘substantial case on the merits.’” *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1289, 1298 (11th Cir. 2005).

1. Petitioner’s Detention Under Conditions Threatening her Health and Safety and that of her Unborn Child Violate the Fifth Amendment

The Due Process Clause protects all “persons” in the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Freedom from physical restraint and from government conduct that threatens life and bodily integrity lies at the core of that protection.

Respondents’ conduct—detaining a visibly ill, eight-months-pregnant woman, denying medical care, and attempting to force her onto an international flight—shocks the conscience and lacks any legitimate governmental justification. See *City of Sacramento v. Lewis*, 523 U.S. 833, 846-47 (1998).

Civil immigration detention is permissible only where it reasonably relates to a legitimate purpose. Detention that endangers life or health and forecloses access to medical care cannot

satisfy that standard. So Petitioner is likely to succeed on the merits of her claim.

2. Respondents Are Violating the APA and the Accardi Doctrine by Disregarding Binding Medical-Care Policies

ICE's Performance-Based National Detention Standards require continuity of care, medical clearance prior to transport or release from detention, and protection of detained people with serious medical needs. These policies exist to protect individual rights and are enforceable under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

Respondents' failure to provide prenatal care, evaluate Petitioner's fitness for travel, or ensure continuity of treatment violates the Administrative Procedure Act, the Fifth Amendment, and Respondents' own mandatory regulations.

Courts routinely enjoin removals where ICE disregards medical-care obligations in ways that endanger detainees. Petitioner is therefore likely to prevail on her APA and constitutional claims.

II. Petitioner Will Suffer Irreparable Harm If the Status Quo is not Maintained

Petitioner will suffer irreparable harm to both her constitutional rights and because she cannot be returned to the position she was in without a TRO. Harm "is 'irreparable' only if it cannot be undone through monetary remedies." *N.E. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990).

Here, Petitioner's harm is irreparable because harm to the health and safety of her and her baby cannot be remedied by money, after the fact. Therefore, she is likely to face significant irreparable injury absent a TRO.

III. The Harm Ms. Buitrago Would Suffer Outweighs Harm to the U.S. Government and an Injunction is in the Public Interest

When the non-moving party in a motion for preliminary relief is the government, the two final factors merge. *Swain*, 958 F.3d at 1091 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

Here, the requested relief—namely, that Petitioner not be transferred out of this Court’s jurisdiction pending adjudication of her habeas—does no harm to the government and is squarely in the public interest. The public, and therefore the government, has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Nken*, 556 U.S. at 436 (describing the “public interest in preventing [noncitizens] from being wrongfully removed, particularly to countries where they are likely to face substantial harm”).

Accordingly, because Petitioner is likely to succeed on the merits of her petition, transferring or removing her without due process would cause irreparable harm, and the public interest supports the requested relief, this Court should grant Petitioner’s motion for emergency relief pending an outcome in her petition for habeas corpus.

Dated: January 21, 2026

Respectfully submitted,

/s/ Sarah E. Decker

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Attorneys for Petitioner

** Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that I filed this Motion for a Temporary Restraining Order and all attachments using the CM/ECF system, which will send a notice of this filing to all participants in this case. I will furthermore send a courtesy copy to counsel for Respondents.

Dated: January 21, 2025

/s/ Alexandra M. Smolyar
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Attorney for Petitioner