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DETAINED

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Mara Astrid Jaimes-Martinez,

Petitioner

Case No.: 3:26-cv-00138

vs.

**Ronnie Woodall, Warden, Baker
County Correctional Institution;
Garrett J. Ripa, Director of the
Miami Field Office, U.S. Customs
And Immigration Enforcement;
(or current Director in title);
Pamela Jo Bondi, Attorney General
of the United States;
Kristi Noem, Secretary of Homeland
Security; and
Scotty Rhoden, Sheriff Baker County
Florida**

**Notice of Motion
Request for Emergency
Treatment of Habeas
Corpus Petition, Where
Circumstances Threaten
Irreparable Harm to Detained
Petitioner**

Pursuant to Local Rule 3.01(f)

Now comes petitioner, Detained at Baker County Detention Center, through counsel Stephanie Mc Clure, for a motion seeking emergent injunctive relief, and disposition pursuant to Fed.R.Civ.Pro 65. This motion is made under the Emergency Provision of the Local Rule 3.01(f) **specifically due to the irreparable harm that will continue absent emergent relief.** It is respectfully requested that this motion be considered as quickly as possible in the light of continually accruing and exponential irreparable harm.

INTRODUCTION AND EMERGENT NATURE

Petitioner, Mara Morillo, is a domestic violence survivor, [REDACTED] and a mother of three U.S. citizen children, including one who is only 11 years old. Mara has no criminal convictions. She was born in Venezuela. She entered the United States lawfully, with a valid visa and was subject to inspection. She married a U.S. citizen, who abused her severely for many years, brutalizing her mentally and physically. After escaping the domestic violence, she planned to pursue adjustment of status through her daughter, Angelina Morillo, when she turned 21 years of age. She did. A lawful I-130 was filed and approved.

Petitioner was arrested at a routine ICE check-in in May 2025. A prior decision to release her was made by Respondents. However, she received no notice of intention to revoke her release, nor an informal hearing, nor a pre-detention hearing as required by 8 C.F.R. 241.13.

Petitioner has continuously been detained for more than **nine months**, displacing her (fatherless) children from their home, notwithstanding the indisputable fact that she was denied due process under the above regulatory authority in further violation of her Fifth Amendment Right to Due Process; and despite the fact that she is statutorily eligible to adjust status under the Immigration and Nationality Act (“INA”) § 245, 8 U.S.C. § 1255, based on an approved I-130 immigrant visa petition. Her sole ground of removability—overstay of a nonimmigrant visa—is, by statute, automatically forgiven upon adjustment, without necessity for an additional waiver. Congress has already spoken as to her eligibility in this regard, and the forgiveness of the overstay in favor of family unity. Yet, she remains imprisoned, without bond, as a result of the Government’s wholly unsubstantiated claim that she is a “danger” to society made at a prior bond hearing.

The government's sole argument offered to the court was a constitutionally **vacated** criminal conviction from 15 years ago, which was vacated specifically due to constitutional deprivations in the underlying proceeding. Not one item of evidence was produced by the Government to date, to substantiate their dangerousness argument or any change of circumstance from the prior custody determination and release order. This not sufficient pursuant to *Garces v. U.S.* 611 F.3d 1337 (11th Cir. 2010).

The government violated the Code of Federal Regulations when it failed to comply with any single regulation concerning her re-detention as further briefed in the petition and has been held unlawfully without a scintilla of evidence of any change in circumstance since her prior release that is sufficient to warrant a dangerousness finding. Her re-detention violates the C.F.R., the Administrative Procedures Act, and the Constitution and serves no permissible regulatory function as briefed in the petition.

In the interim she is suffering irreparable harm. She has been separated from her children, including her 11 year-old fatherless daughter, leaving her children parentless and displaced from their home. **"[I]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' *Elrod v. Burns*, 427 U.S. 347, 373 (1976))."** Petitioner is being deprived of liberty without any lawful justification. She has an approved I 130 and no bars to becoming a permanent resident and citizen. She has always attended every immigration check-in and never violated any part of a prior release order. She has no admissibility issues and has no criminal convictions. Continued detention is in no way related to the current NTA which charges her only with an overstay of a visa which has been congressionally forgiven by INA 245(a) and will be adjudicated as such once her petition is adjudicated by U.S.C.I.S. Her I 130 was already approved and that adjudication is underway. Detention has not been justified

by a change of circumstance, or any evidence, and is unlawful for a myriad of reasons briefed in the Petition for Habeas Corpus. Until that is decided, her unlawful continued detention, keeping her from her children who are parentless and displaced from their home is causing not only suffering but irreparable harm pursuant to established Supreme Court precedent. See *Elrod*, *surpa*.

LEGAL STANDARD

The case of *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008) set forth a four prong test to determine when a TRO should issue in order to prevent irreparable harm. A plaintiff seeking preliminary injunctive relief must establish “[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.” *Winter*, 555 U.S. at 20. “[W]hen the Government is the opposing party,” the final two factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

LEGAL ARGUMENT

Specific regulations, 8 C.F.R. §§ 241.13(i) and 241.4(l), govern how and when ICE may revoke the release of a noncitizen who has been released or paroled. Section 241.13(i) permits revocation of release “if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.”³ 8 C.F.R. § 241.13(i)(2). As the *Nguyen, supra*. court explained, the regulations at 8 C.F.R. §§ 241.13(i) and 241.4(l) apply to non-citizens in petitioner’s situation and outline the process to be followed. *Id.*; *Escalante*, 2025 WL 2206113, at *3. After *Zachydas v. Davis*, 533 U.S. 678, 690 (2001) the immigration regulations were

revised to implement administrative review procedures for . . . those who are re-detained upon revocation of their supervised release.” (citing 8 C.F.R. § 241.13)). In *Escalante*, which also dealt with a noncitizen who had been ordered removed, released, and then re-detained, the court noted that:

Section 241.13(i)(2)[,] [which is] entitled “Revocation for removal[,]” provides that “the Service may revoke an alien’s [supervised] release under this section and return the alien to custody if, on account of changed circumstances, *the Service determines* that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2) (emphasis added). Section 241.4(b)(4)[,] which is entitled “*Service determination under 8 C.F.R. 241.13[,]*” states that, after supervised release under section 241.13, “*if the Service subsequently determines, because of a change of circumstances, that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future [to the country to which the alien was ordered removed or] a third country, the alien shall again be subject to the custody review procedures under this section.*” 8 C.F.R. § 241.4(b)(4) (emphasis added). *Escalante*, 2025 WL 2206113, at *1–3.

The regulations at 8 C.F.R. §§ 241.13(i) and 241.4(l) set out the procedures to be followed in revoking release or parole, procedures that protect important due process rights. Those procedures include:

Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he [will] be removed in the reasonably foreseeable future, or that he [] has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3)

Under the Due Process Clause of the Fifth Amendment to the United States Constitution,

no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Due process “is a flexible concept that varies with the particular situation.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).

The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge*, *infra* factors. First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government’s. For similar reasons as those discussed in the aforementioned cases, this Court held that the three factors relevant to the due process inquiry set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976)—“the private interest that will be affected by the official action,” “the risk of an erroneous deprivation . . . and the probable value, if any, of additional or substitute procedural safeguards,” and “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,” *Id.* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976))

Petitioner has a significant private interest in remaining free from detention. “Freedom 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). Petitioner had been out of custody for years since her release determination, and during that time, re-built her life in the United States for the first time since she escaped her domestic violence assailant. Her detention denies her of that freedom which vested after the initial

release determination was made. Second, the court looked to the risk of an erroneous deprivation of liberty as high because 8 C.F.R. §§ 241.13 and 241.4 do not provide for review of ICE's reasons for revocation by a neutral arbiter. Courts have examined this precise issue and found that the **"reasoning applies even more forcefully where, as here, ICE fails to timely provide even the notice and interview required by its own regulations. See Yang, 2025 WL 2791778, at *9"** J.L.R.P. v. Wofford, 1:25-cv-01464-KES-SKO (E.D.Cal. 2025) at page 16.

Such is the exact situation in the case at bar where ICE completely failed to provide any notice of revocation at all, nor the interview required by its own regulation. Petitioner has a clear success on the merits claim, because the violation of the pertinent provision of the C.F.R. is blatant and incontrovertible. Because of this violation and the agency's failure to provide notice or an opportunity to be heard, the arrest is deemed not only unlawful under the regulation cited, but also the Fifth Amendment of the United States Constitution (Due Process) and the Administrative Procedure Act, which authorizes courts to set aside agency actions which are "arbitrary, capricious, an abuse of discretion, **or otherwise not in accordance with law.**" 5 U.S.C. § 706(2)(A). Because there are "serious questions going to the merits (in petitioner's favor)" - "the balance of hardships tips sharply" in petitioner's favor. *Weber*, 767 F.3d at 942.

Petitioner is suffering and will continue to accrue exponential irreparable harm in the absence of the requested emergent relief. "[I]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Petitioner is a victim of severe and persistent domestic violence corroborated by police documentation and witness reports. She has three U.S. citizen children, including an 11 year old daughter and a 21 year old daughter who are suffering and parentless, displaced from their home. They relied on her completely for emotional

and financial support and this unlawful detention has been catastrophic upon this family.

This is particularly egregious where, as here, she is eligible for adjustment and already has an I-130 approved. She has no admissibility issue or criminal convictions. Counsel is attempting to coordinate biometrics while in custody in furtherance of her adjustment. No valid removal order is in place at this time.

Her continued incarceration is enough under Supreme Court precedent noted above to establish irreparable harm, and irreparable harm that is multiplying daily.

Finally, the balance of the equities and the public interest, which merge in light of the fact that the government is the opposing party, tip sharply in Petitioner-Plaintiff's favor. The public has a strong interest in upholding the constitution and procedural protections written into law, especially those which prevent against unlawful detention. Even detention for minimal periods of time "**unquestionably constitutes irreparable harm**" where detention is unconstitutional. *Elrod v. Burns*, 427 U.S. 347 (1976) See also *Hernandez*, 872 F.3d at 996.

This Circuit has long agreed that unlawful restraint on liberty results in **serious constitutional injury**. *United States v. Matus-Leva*, 287 F.3d 758 (11th Cir. 2002) Unlawful detention violates the fourth and fifth amendments of the constitution where, as here, unlawful seizure and due process violations have occurred. *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1133 (11th Cir. 2005). Such constitutional injury constitutes irreparable harm. *Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005).

The *Winters* factors are satisfied in this instance and injunctive relief should issue accordingly as a lack of immediate injunctive relief will indeed result in continued irreparable harm.

We respectfully request that this court issue the same emergent relief it has offered other petitioners in the same exact circumstance; and do so *pursuant to* Fed. R. Civ. Pro. 65, ex parte, because waiting for a response from the opposition will result in continually accruing and exponential irreparable harm.

Finally, please note that this emergent request was previously made prior to the undersigned's ECF permissions were granted after Special Permission. The emergent application was made initially by uploading the motion into the "portal" on the court's website and subsequently uploaded to the docket by the court (not counsel). The motion was uploaded by a Clerk as a motion for miscellaneous relief and it is the belief of the undersigned that the court may not be aware of the emergent nature of the filing. As such, this second emergent filing is being made to replace the first, at [DE 2].

LEGAL ARGUMENT

POINT ONE

THE RE-DENTION OF THIS PETITIONER WAS UNLAWFUL IN VIOLATION OF THE CODE OF FEDERAL REGULATIONS AND A CHANGE IN DHS POLICY DOES NOT ABROGATE EXISTING REGULATION

It is axiomatic to say that DHS policy changes do not override statutory regulation of its powers. The re-detention of individuals is addressed with specificity by 8 C.F.R. § 241.13(i)(3). Under that regulatory framework, if re-detention is sought by DHS, they must provide an individual with: (1) notice of revocation; (2) a pre-detention informal interview; and (3) an opportunity to present evidence. More specifically, the regulations provide that: **"Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in**

the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he [will] be removed in the reasonably foreseeable future, or that [she] has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3)

Here, petitioner was released in 2021 after being determined not dangerous or a flight risk. See Exhibit. Unless and until this provision of the Code of Federal Regulations is changed, after notice and opportunity for public comment, and full compliance with the Administrative Procedures Act, ICE is required to abide by the written code that provides for limits to its powers and for the Due Process of individuals subject to its power.

Over the years that transpired since that release she has made a life with her daughters, recovering from severe domestic violence in their home at the hand of her U.S. citizen spouse (now estranged). After her daughter Angelina turned 21 years of age, she filed an I-130, to sponsor her mother, which was approved. She is eligible for adjustment as having arrived with inspection, and has no criminal convictions and is otherwise eligible for adjustment.

She was re-detained at a routine interview in May of 2025 without notice required by the C.F.R. Her incarceration is therefore unlawful not only by violating the regulation but because it denied her due process, it is also violative of her Fifth Amendment right under the Constitution of the United States and her Fourth Amendment Rights.

POINT TWO

**PETITIONER HAS A PROTECTED LIBERTY INTEREST AND THIS UNLAWFUL
DETENTION VIOLATES HER FIFTH AND FOURTH AMENDMENT RIGHTS**

The Due Process Clause of the Fifth Amendment prohibits government from depriving an individual's life, liberty, or property without due process of law. *Hernandez v. Session*, 872 F.3d 976, 990 (9th Cir. 2017). The Due Process Clause applies to all "persons" within the borders of the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent."). These rights extend to immigration proceedings, including deportation proceedings. *Id.* at 693–94; *Demore v. Kim*, 538 U.S. 510, 523 (2003). The Fourth Amendment of the Constitution prevents against unlawful seizures.

One's interest in liberty itself, that is the "freedom 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*, 533 U.S. at 690.

This petitioner has a substantial liberty interest based on her release five years ago by immigration authorities in 2021, as established in *Morrissey v. Brewer*, 408 U.S. 471, 481–82 (1972). To determine whether an individual's conditional release rises to the level of a protected liberty interest, *Morrissey* compar[ed] the specific conditional release to the liberty interest in parole. Here, the Court must find, consistent with *Morrissey*, that this Petitioner has developed "enduring attachments of normal life" as described in *Morrissey*, 409 U.S. at 482. Over the last five years, especially since she was re-establishing her life finally free from severe domestic

violence that plagued her and her daughters and their home. Petitioner built a life, community, and a new sense of family and safety with her daughters in that time during her release. Petitioner's release on conditions created a reasonable expectation that she would be entitled to retain her liberty, absent a material change in circumstances and provided she complied with conditions as she did. Furthermore, Petitioner has an approved I-130, a properly filed I 485, and is eligible for adjustment. Her interest in her liberty and returning to her girls who have been displaced from their home is substantial. The violation of this liberty interest, without a change of circumstance violates the stated regulations, the Fifth and Fourth Amendments of the Constitution, and impinges on her significant liberty interest in not only avoiding unlawful and unconstitutional injury, but also returning to her daughters who need and rely her as their only parent and support.

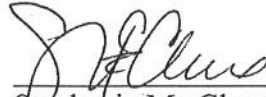
CONCLUSION

For these reasons, it is respectfully requested that the court:

- 1) Find a TRO is warranted and the *Winter* factors established; and
- 2) Issue an Order directing respondents to IMMEDIATELY RELEASE the petitioner and return her property; and allow for petitioner to place reasonable phone call(s) in order to coordinate her pickup from the detention center once released; and
- 3) Issue an Order enjoining Respondents from re-arresting petitioner unless and until a change in circumstance occurs and petitioner is given at least 10 days notice of intent to revoke parole, and a full pre-detention hearing, where he is represented by counsel, and has an opportunity to be heard and present evidence of a lack of change in circumstances and lack of flight risk; and

- 4) Issuing an for a Writ of Habeas Corpus, granting the relief requested *in toto*,
and
- 5) Any other relief this court deems just and proper.

Dated: 2/12/26



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CERTIFICATION OF SERVICE AND OF GOOD FAITH
EFFORTS TO MEET AND CONFER

I hereby certify that first: on January 22, 2025, I did cause to be served the original motion for expedited treatment, along with the petition for habeas corpus, to be served upon all respondents to their offices via the official email published on their individual official websites, used in the course of business, and by first class mail. On that same date, I contacted respondents via the US Attorneys Office, and left a voicemail indicating the full subject of emergent matter and requesting a call back in the event anyone could be assigned and would be willing to discuss alternate relief such as a stipulated release. No call back was received. Second, I did serve a copy of the instant motion and supporting documents, a second emergent motion, to be served upon respondents simultaneously with the filing to the emails now registered upon the docket.

Dated: 1/21/25

Respectfully Submitted,

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