

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Brenda Liliana Solis Garcia

Petitioner,

v.

David Easterwood, Field Office
Director of Enforcement and Removal
Operations, St. Paul Field Office,
Immigration and Customs
Enforcement; Kristi Noem, in her
official capacity as Secretary of the
U.S. Department of Homeland
Security; Todd Lyons, in his official
capacity as acting director of U.S.
Immigration and Customs
Enforcement; Pam Bondi, in her
official capacity as Attorney General
of the United States

Respondents.

Case No. 0:26-cv-652

**PETITIONER'S
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

**EMERGENCY HANDLING
REQUESTED**

I. INTRODUCTION

Petitioner Brenda Liliana Solis Garcia brings the instant motion for Temporary Restraining Order (“TRO”) and Preliminary Injunction (“Motion”) seeking injunctive relief and challenging Respondents’ actions in detaining Petitioner. She was arrested by Respondents on January 26, 2026, and remains in detention. Despite being granted a Bona Fide Determination (BFD) on Petitioner’s Form I-918 petition for a U-visa, Respondents have alleged Petitioner is properly detained. Respondents cannot lawfully detain someone with a bona fide determination and eligibility for deferred action that has not been properly revoked, without a charge to support mandatory detention, and further deny her an opportunity to review their custody or a hearing prior to revocation of her bona fide determination.

Courts across the country have granted Temporary Restraining Orders to non-citizens like Ms. Solis Garcia who have been unlawfully detained. In light of these developments, and the special concerns Petitioner faces as a mother and U-visa applicant, emergency relief is necessary. Petitioner seeks injunctive relief to prevent Respondents from continuing to unlawfully detain her. Petitioner seeks declaratory and injunctive relief to remedy violations of her constitutional and statutory rights. Finally, Ms. Garcia Solis’s petition is properly before this Court.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Petitioner unlawfully detained and remains detained despite being granted a bona fide determination

On February 09, 2024, Petitioner was granted a Bona Fide Determination (BFD) on her pending Form I-918, petition for a U-visa. To date, no agency has formally issued a notice revoking Petitioner's bona fide determination. On January 26, 2026, Petitioner was arrested and taken into Immigration and Customs Enforcement ("ICE") custody. No charging documents have been filed to date, rendering it impossible to determine the authority under which Respondents purport to have lawful authorization to detain the Petitioner.

Petitioner is the mother of multiple children, including a U.S. citizen son with a history of receiving special educational services. DHS continues to hold her in custody, separating her from her family and preventing her from providing for their basic needs. As long as she remains detained, she has suffered and will continue to suffer significant, irreparable harm.

III. ARGUMENT

A. Ms. Solis Garcia is entitled to a temporary restraining order and preliminary injunction.

In determining whether to grant a Temporary Restraining Order, this Court must consider four factors:

- (1) the probability that the moving party will succeed on the merits;
- (2) the threat of irreparable harm to the moving party;
- (3) the balance between harm to the moving party and the potential injury inflicted on other party litigants by granting the injunction;
and
- (4) whether the issuance of a TRO is in the public interest.

See Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Consideration of these four factors does not require mathematical precision but rather should be flexible enough to encompass the particular circumstances of each case. *See Dataphase*, 640 F.2d at 113. The basic question is whether the balance of equities so favors the moving party “that justice requires the court to intervene to preserve the status quo until the merits are determined.” *Id.* Although the probability of success on the merits is the predominant factor, the Eighth Circuit has “repeatedly emphasized the importance of a showing of irreparable harm.” *Caballo Coal Co. v. Ind. Mich. Power Co.*, 305 F.3d 796, 800 (8th Cir. 2002). Here, all four factors weigh heavily in favor of injunctive relief.

1. Ms. Solis Garcia is likely to succeed on the merits of her petition for writ of habeas corpus.

Writs of habeas corpus “may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective

jurisdictions.” 28 U.S.C. § 2241(a). “The writ of habeas corpus shall not extend to a prisoner unless...He is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(2).

a. Ms. Solis Garcia’s detention is in violation of Due Process.

i. Noncitizens like Ms. Solis Garcia are protected by the Fifth Amendment.

The federal courts have held that noncitizens are entitled to guarantees of the Fifth Amendment. *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (“all aliens[] are clearly protected by the Fifth and Fourteenth Amendments”). Courts treat Equal Protection and Due Process rights under the Fifth Amendment in the same manner as Equal Protection Claims under the Fourteenth Amendment. *Weinberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975). Due process is only implicated when governmental decisions deprive an individual of “liberty” or “property” interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67, 78 (1976); see also *Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002).

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be...deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem”); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10, 413 (D.N.J. 1999) (holding that, in analyzing due process in the immigration context, the first factor in the procedural due process analysis, “the petitioner’s private interest in [her] physical liberty, must be accorded the utmost weight.”).

ii. Respondents continue holding Petitioner in detention in violation of Due Process and without any legitimate basis.

Immigration detention is civil and must “bear a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and effect.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Id.*; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

Civil detention cannot be a “mechanism for retribution,” *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (internal quotation marks omitted), because “[r]etribution and deterrence are not legitimate nonpunitive governmental objectives,” *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979). And unlawful detention necessarily harms Petitioner. See *Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a “serious,” “detrimental impact on the individual”); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) (“Liberty is the norm; every moment of [detention] should be justified.”) (alteration in original) (citation omitted).

Civil confinement of non-citizens must be limited to the underlying purpose justifying the detention. *Zadvydas*, 533 U.S. at 690. “Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.* at 699. *Zadvydas* held that civil detention violates due process unless special, nonpunitive circumstances outweigh an individual's interest in avoiding restraint. 533 U.S. at 690 (**immigration detention must remain “nonpunitive in purpose and effect”**) (emphasis added).

The government's detention of Petitioner is punitive. First, DHS has expressed and vocalized an intent to use civil detention punitively against noncitizens for the dual purposes of: (1) encouraging self-deportation, and (2)

coercing foreign recalcitrant governments to issue travel documents for its citizens ordered deported from the United States by demonstrating through a systematic campaign of abuse and terror that the recalcitrant government's citizens detained in post-removal-order custody will suffer immensely in the absence of such travel documents being issued. *100 Days of Fighting Fake News*, Department of Homeland Security (Apr. 30, 2025) ("The reality is that prison isn't supposed to be fun. It's a necessary measure to protect society and punish bad guys. It is not meant to be comfortable. What's more: prison can be avoided by self-deportation. CBP Home makes it simple and easy. If you are a criminal alien and we have to deport you, you could end up in Guantanamo Bay or CECOT. Leave now.");¹*Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F.Supp.3d ---, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) ("Punishing Petitioner for protected speech or **using him as an example to intimidate other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes.**") (emphasis added).

The procedural history of Petitioner's case further demonstrates that DHS is acting in a manner meant to keep her detained for as long as possible, despite knowing there is no legitimate evidence to support her detention. Respondents have presented no evidence to justify revocation of the

¹ Found at <https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news>

Petitioner's bona fide determination and eligibility to apply for deferred action, have presented no evidence of prior notice of revocation, and have presented no charging documents to support her detention at all.

Petitioner is eligible to seek deferred action on account of her bona fide determination and her continued detention hinders her ability to apply. "The Supreme Court described deferred action in *AADC* as meaning 'no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated.'" *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400, at *7 (W.D. Wash. July 24, 2025) (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484, 119 S. Ct. 936, 943, 142 L. Ed. 2d 940 (1999)). The process of granting deferred action pursuant to a Non-Immigrant U visa petition was that "USCIS solicited applications from eligible aliens, instituted a standardized review process, and sent formal notices indicating whether the alien would receive the two-year forbearance." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1906, 207 L. Ed. 2d 353 (2020). "These proceedings are effectively adjudications." *Id.* (cleaned up). "[T]he result of these adjudications—DHS's decision to 'grant deferred action' ...—is an 'affirmative act of approval' ... conferring affirmative immigration relief." *Id.* Thus, "the grant of [deferred action] constitutes a conferred benefit that requires procedural safeguards before it can be terminated." *Inland Empire -*

Immigrant Youth Collective v. Nielsen, No. EDCV172048PSGSHKX, 2018 WL 4998230, at *20 (C.D. Cal. Apr. 19, 2018). Automatic termination of deferred action by detaining beneficiaries without an opportunity to be heard “creates an unacceptably high risk of erroneous deprivation.” *Id.*, at *19. Due process requires a pre-detention hearing at which Petitioner received notice and had the opportunity to be heard regard the revocation of her eligibility for deferred action, and if revoked, a subsequent opportunity to argue she is not sufficiently dangerous or a flight risk that requires detention.

Courts have consistently granted immediate release for non-citizens who were detained despite having a valid grant of deferred action. A Minnesota District Court granted release within 48 hours, noting that by virtue of being granted deferred action, USCIS had already determined the Petitioner was not a risk to national security or public safety. *Victor G. v. Lyons*, No. 26-CV-119 (ECT/SGE), 2026 WL 127733, at *3 (D. Minn. Jan. 17, 2026); *see also Juan M. v Bondi*, No. 26-CV-266 (ECT/JFD), 2026 WL 129059 (D. Minn. Jan. 17, 2026). District Courts across the country have also granted immediate release. *Nevarez Jurado v. Freden*, No. 25-CV-943-LJV, 2025 WL 3687264, at *12 (W.D.N.Y. Dec. 19, 2025); *see also Gama v. Bondi*, No. 2:25-CV-01925-TL, 2025 WL 3559942, at *3–4 (W.D. Wash. Dec. 12, 2025); *see also B.D.A.A. v. Bostock*, No. 6:25-CV-02062-AA, 2025 WL 3484912, at *8 (D. Or. Dec. 4, 2025)

(granting immediate release under prior terms and conditions, without an ankle monitor); *see also* *Patel v. Hyde*, No. CV 25-12518-RGS, 2025 WL 3169875 (D. Mass. Nov. 12, 2025); *see also* *F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858 (D. Or. Oct. 30, 2025) (noting that seeking a removal order against a deferred action recipient would nullify the grant of deferred action); *see also* *Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 WL 2792588, at *14 (W.D. Tex. Oct. 2, 2025); *O.A.M.R. v. Wofford*, No. 1:25-CV-01955-TLN-JDP, 2025 WL 3702171, at *3 (E.D. Cal. Dec. 21, 2025). Courts ordering release have noted there is no lawful basis to detain a deferred action recipient for the purpose of removing them as their status prevents their removal. *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4–5 (W.D. Wash. Aug. 4, 2025); *see also* *Espinoza Cruz v. Eng.*, No. 3:25-CV-919-CCB-SJF, 2025 WL 3676992, at *4 (N.D. Ind. Dec. 18, 2025).

As a result, Ms. Solis Garcia's detention is for illegitimate, punitive purposes—not in accordance with the lawful, Congressional purposes of civil immigration detention—and should be enjoined. For the aforementioned reasons, it is likely that Petitioner will succeed on the merits of the amended petition.

- iii. All *Mathews* factors weigh in Petitioner's favor and he is thus likely to succeed on the merits of her petition for writ of habeas corpus.

A *Mathews* analysis supports finding Ms. Solis Garcia's Fifth

Amendment rights and fundamental liberty interests outweigh any putative governmental interests and are owed additional procedural protections.

Mathews requires weighing

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 interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976).

The private interest here includes Petitioner's Fifth Amendment rights. Petitioner has participated in immigration proceedings in good faith and presented sufficient factual evidence to a neutral agency to demonstrate she posed no threat to public safety or national security. Depriving her of the opportunity to continue pursuing her petition before USCIS and indefinitely detaining her is a violation of her right to fair proceedings. Additionally, while there is no Constitutional right to counsel in a civil proceeding, detention inherently interferes with a detainee's access to counsel and deprivation of access to counsel is plainly harmful to litigant since it

handicaps her ability to present her case to the court. *See In re Guantanamo Bay Detainee Continued Access to Couns.*, 892 F. Supp. 2d 8, 15 (D.D.C. 2012) (finding deprivation of access to counsel seriously handicaps detainees seeking to prosecute habeas claims); *see also Al Odah v. United States*, 346 F. Supp. 2d 1, 8–9 (D.D.C. 2004) (holding that government procedures may not inappropriately burden a habeas petitioner’s attorney-client relationship). This injury hinders the exercise of Ms. Solis Garcia’s Fifth Amendment rights.

Further, Petitioner’s liberty interest in caring for her family has been violated. The parental right to care for one’s child without undue state interference has long been recognized. *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35, 45 S. Ct. 571, 573, 69 L. Ed. 1070 (1925) (“The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *see also Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S. Ct. 1388, 1397, 71 L. Ed. 2d 599 (1982); *see also Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 2159–60, 68 L. Ed. 2d 640 (1981) (This Court’s decisions have by now made plain beyond the need for multiple citation that a parent’s desire for and right to ‘the companionship, care, custody and management of his or her children’ is an important interest that

‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’”) (internal quotation modified). Mr. Solis Garcia’s detention has interfered with her ability to financially support her children and care for them. This separation from family is a deprivation of incarceration that burdens a substantial private interest and supports finding the Petitioner’s conditions are indistinguishable from criminal detainees. *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at *9 (D. Minn. Aug. 15, 2025); *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at *7 (D. Minn. May 21, 2025). One of her children is confirmed to have a history of requiring special education services. A letter confirming this was filed with her U-visa and the government had, at a minimum, constructive awareness of this before Respondents unlawfully detained petitioner. The first *Mathews* factor thus weighs heavily in favor of Petitioner.

The Respondent’s course of action has substantially increased the risk of erroneous deprivation of rights, and a return to standard proceedings would significantly mitigate that risk. The deprivation of the notice of a revocation of deferred action status and respond to demonstrate that revocation is not factually warranted is a procedural deficit that necessarily increases the risk of erroneous deprivation. The second *Mathews* factor thus weighs heavily in favor of the Petitioner.

The Respondents have no articulable interest in subjecting the Petitioner to mandatory detention. Indeed, detaining a BFD beneficiary runs directly contrary to Congress's purpose in creating the U-visa program. The BFD process requires a background check that screens for national security and public safety concerns before eligibility for deferred action is established. USCIS Policy Manual, Vol. 3, Pt. C, Ch. 5. Because Petitioner has already been vetted, DHS would bear the burden of overcoming this evidence to justify continued detention. While DHS would have to overcome the evidence the Petitioner warrants discretionary release, the existing agency procedures are adequate to protect any legitimate government interest in Petitioner's case. The third *Mathews* factor thus does not counterbalance Petitioner's weighty interests, and the sum of the *Mathews* factors weigh in her favor.

Courts have concluded similarly situated habeas petitioners were entitled to emergency relief. *See, supra*, Sec.III.A.1.a.ii. Given the established Fifth Amendment violations embedded in recategorization of non-citizens without evidence, these analysis in these cases further support a grant of immediate relief for Petitioner.

- iv. Petitioner has been and continues to be prejudiced by the government violating her due process rights.

In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771,

782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if “an alternate result may well have resulted without the violation.” *Id.* (citation omitted) (internal quotations omitted); see also *Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). “To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided.” *Morales Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted). Petitioner is clearly prejudiced by her continued, unjustified detention. She has been detained despite her valid grant of a bona fide determination.

The Courts granting each of these TROs across the country are holding specifically that the non-citizens face irreparable injury and are enjoining the government from detaining them. See, *supra*, Sec.III.A.1.a.iii. The Courts have noted the irreparable harm petitioners suffer including by virtue of the length of detention they are threatened with. *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (noting the indefinite detention “would result in the very harm that the bond hearing was designed to prevent) (citing to *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) and *Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025)).

1. Petitioner will continue to face irreparable harm if emergency relief is not granted.

It is well established that deprivation of constitutional rights constitutes “irreparable injury” and justifies issuance of a temporary restraining order. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). *See also Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action*, 558 F.2d 861, 867 (8th Cir. 1977). When an alleged deprivation of constitutional rights is involved, no further showing of irreparable injury is necessary. *Planned Parenthood of Minnesota*, 558 F.2d at 867 (citing 11 C. Wright & A. Miller, *Federal Practice & Procedures: Civil* § 2948 at 439 (1973)); *Ng v. Bd. of Regents of the Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) (“[T]he denial of a constitutional right is a cognizable injury and an irreparable harm.”); *Hernandez*, 872 F.3d at 994–95; *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). Further, Petitioner is irreparably harmed because indefinite detention bears no “reasonable relation” to its purpose. *Dega M. Y.*, 2020 WL 4928321, at *3; *see Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing “[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual” (cleaned up) (internal quotation marks omitted) (citation omitted)).

In the present case, Petitioner's Fifth Amendment rights are being violated because of on-going detention after the wrongful denial of her right to a pre-deprivation notice and opportunity to respond on the merits. *See, supra*, Sec.III.A.1.a.ii. Courts across the country have held that DHS detention constitutes irreparable injury where it deprives non-citizens of their liberty, access to counsel, and access to their families. *See, supra*, Sec.III.A.1.a.iii. Courts have affirmed that injury to the family relationship and to the welfare of the detainee's children can constitute irreparable harm. *Martinez v. Sec'y of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *5 (W.D. Tex. Sept. 8, 2025) (noting a finding of irreparable harm was supported by facts that the Petitioner's son was experience mental health distress and would further suffer from a lack of stability and financial support if his father remained detained.) Petitioner is the mother of multiple children. Forcible separation from a parent is damaging to a child, and that damage is highly distressing to a parent. Petitioner is situated similar to *Martinez* and on-going harm to her children is an irreparable injury the Court ought to intervene to cease.

As noted above, Petitioner's interests as a mother are a weighty Constitutional right. The parental right to care for one's child without undue state interference has long been recognized. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35, 45 S. Ct. 571, 573, 69 L. Ed. 1070 (1925) ("The child is not the mere creature of the state; those who

nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *see also Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S. Ct. 1388, 1397, 71 L. Ed. 2d 599 (1982); *see also Lassiter v. Dep’t of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 2159–60, 68 L. Ed. 2d 640 (1981) (This Court’s decisions have by now made plain beyond the need for multiple citation that a parent’s desire for and right to ‘the companionship, care, custody and management of his or her children’ is an important interest that ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’”) (internal quotation modified). Petitioner’s separation from her children with no definite date for reunification or clear termination is punitive and without rational relationship to any legitimate state interest.

Following the rulings in *Elrod* and *Planned Parenthood of Minnesota*, these Fifth Amendment violations involving deprivations of due process constitute irreparable injury to the Petitioner and justify issuance of a temporary restraining order. Petitioner’s liberty has been and continues to be restricted in violation of her constitutional rights.

2. Respondents will face no injury or harm if emergency relief is granted.

The federal courts have routinely ruled that threatened or actual violations to a person’s constitutional rights outweigh any harm to the government’s interest in pursuing a government action. *See Morrison v.*

Heckler, 602 F. Supp. 1482 (D. Minn. 1984); *see also Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1236-7 (10th Cir. 2005).

Petitioner's harms, discussed above, are weighty; these harms are the direct result of Respondents' conduct in denying Petitioner due process as required under the Constitution. In fact, Petitioner's continued detention is actually a burden for Respondents in that her unnecessary and unexplained detention is costly to the U.S. government.

Possible injuries to the government, should the restraining order be granted, are minimal and possibly nonexistent. Petitioner is seeking to be released from custody back to her home in the United States so that she can continue her work and care for her family. The Petitioner has a negligible criminal record and has otherwise been a diligent and supportive member of the community and her family.

For the aforementioned reasons, the irreparable harm to Petitioner that will occur should ICE fail to release her clearly outweighs any burden to Respondents in indefinitely keeping her detained. As this Court held in *Morrison*, 602 F.Supp. at 1484, the balance of harms supports the release of Petitioner even though the federal or state government may not be able to recover lost custodial time should Respondents' constitutional interpretation prevail. This insignificant harm is outweighed by the substantial harm facing Petitioner. Petitioner's harms include deprivations of due process and the

wrongful extended detention by ICE depriving Petitioner of liberty. Because Petitioner is in Respondents' custody, she faces the extreme hardship of deprivation of her due process rights and liberty, and separation from her family and community unless this Motion is granted.

3. The issuance of a TRO is 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 *Torres v. U.S. Dep't of Homeland Sec.*, 2020 WL 3124216, at *9 (C.D. Cal. Apr. 11, 2020) (“[T]he public has an interest in the orderly administration of justice[.]”). “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned up) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994)). The public has a “substantial” interest “in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (citation omitted). Respondents “cannot reasonably assert that [the government] is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Respondents “cannot suffer harm from an injunction that merely ends,” at least temporarily, a likely “unlawful practice.” *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015). Under

law, an immigration judge ought to consider Petitioner's history on the merits, in light of new evidence, to make an individualized determination if he should be released on bond.

The protection of individuals' constitutional rights against governmental interference is one of the overarching concerns of our system of American jurisprudence. The constitutional guarantee to due process is a fundamental limit on the government's power to skew, alter, or improperly affect legal proceedings related to an individual's property or liberty interest(s). To ensure the protection of Ms. Solis Garcia's constitutional rights, and to protect against overzealous federal government intrusion of constitutional rights of others in similar situations, a TRO and preliminary injunction should be issued by this Court to enjoin Respondents from continuing to detain her.

The United States criminal justice system and Constitution represent the essential blending of individual rights and the efficient administration of justice and government. One of the principal reasons for the success of the United States has been trusted in our country's legal system. If Respondents are entitled to violate the Constitution without censure, public trust in the judiciary will be harmed.

b. Ms. Solis Garcia has complied with the requirements of Rule 65.

Finally, as set forth *supra*, Petitioner asks this Court to find that she has complied with the requirements of Rule 65, Fed.R.Civ.P., for the purpose of granting a temporary restraining order. Respondents have been provided with a copy of the instant motion and supporting documents through the Court's summons process and are on notice. Rule 65(c) states that the court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the circumstances of this case, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to refrain from continuing to detain Petitioner, and/or to refrain from giving Respondents' unlawful actions legal effect, should not result in any conceivable financial damages to Respondents. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a bond).

IV. CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to grant her Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Ms. Solis Garcia's Petition, Motion, and Memorandum of Law violated the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, and the APA.
2. Enjoin Respondents from continuing to detain Ms. Solis Garcia in their custody during the pendency of her petition for writ of habeas corpus before this Court.
3. Order Respondents immediately release Ms. Solis Garcia from their custody.
4. Order Respondents immediately return Ms. Solis Garcia's driver's license and any other seized documents or property lawfully issued to her, so as not to impair her liberty upon her release.
5. If Ms. Solis Garcia is not immediately released from Respondents' custody, enjoin Respondents from transferring her to a detention facility out of this District where she would lose access to her counsel and support network.
6. Grant Ms. Solis Garcia such other relief as the Court deems appropriate and just.

DATED: January 26, 2026

Respectfully submitted,

/s/ Gloria Contreras Edin

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