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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SUSANA RAQUEL VENTURA-CLEMENTE,

Petitioner,

v.

Christopher LAROSE, Senior Warden, Otay

Mesa Detention Center;

Kristi NOEM, Secretary, U.S. Department of

Homeland Security;

Todd LYONS, Acting Director, U.S.

Immigration and Customs Enforcement;

Pamela BONDI, Attorney General, U.S.

Department of Justice.

Respondents

Case No.:



**PETITIONER'S EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

1 Petitioner Susana Raquel Ventura-Clemente respectfully submits this Ex Parte
2 Application for a Temporary Restraining Order pursuant to Federal Rule of Civil Procedure 65.
3 Petitioner has simultaneously filed a Petition for Writ of Habeas Corpus challenging the legality
4 of her continued detention by Respondents. As explained in the Petition, Respondents lack
5 statutory authority to detain Petitioner under INA § 235(b) after she was previously released
6 from immigration custody and lived at liberty in the United States for more than nine years
7 before being arrested by ICE in the interior of the country.

8 Petitioner entered the United States on or about December 28, 2016. Shortly thereafter,
9 she was encountered by immigration authorities and released from custody pursuant to Form I-
10 220A (Order of Release on Recognizance). Petitioner thereafter lived at liberty in the United
11 States for more than nine years, raising her children and establishing substantial ties to the
12 community.

13 On January 31, 2026, Petitioner was arrested by Immigration and Customs Enforcement
14 (“ICE”) officers in the interior of the United States in Palm Beach, Florida. She was
15 subsequently transferred to ICE detention and is currently detained at the Otay Mesa Detention
16 Center in San Diego, California.

17 Petitioner is the mother of four minor children, including a six-month-old infant who was
18 breastfeeding at the time of her arrest. As a result of Petitioner’s detention, the infant has been
19 separated from his primary caregiver during a critical stage of early development.

20 Respondents continue to detain Petitioner based on the interpretation of the Immigration
21 and Nationality Act articulated in *Matter of Yajure-Hurtado*, under which certain noncitizens
22 who entered without inspection are treated as applicants for admission subject to detention under
23 INA § 235 rather than INA § 236(a). As a result of this classification, Immigration Courts have
24 treated individuals in Petitioner’s position as ineligible for bond hearings, leaving Petitioner
25 detained without any individualized custody determination.

26 Without immediate judicial intervention, Petitioner will continue to suffer the irreparable
27 harm of unlawful detention and the deprivation of her physical liberty, as well as the ongoing

1 separation from her minor children, including her breastfeeding infant. Petitioner therefore
2 respectfully requests that this Court issue a temporary restraining order directing Respondents to
3 immediately release her from custody pending resolution of the habeas petition.

4 This application is submitted in conjunction with the Petition for Writ of Habeas Corpus,
5 the accompanying declaration of counsel, and the proposed order filed concurrently herewith.
6 Counsel for Respondents has been notified of Petitioner's intent to file this application.

7 **II. LEGAL STANDARD**

8 The requirements for granting a temporary restraining order are substantially identical to
9 those for granting a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,
10 240 F.3d 832, 839 n.7 (9th Cir. 2001). A TRO may issue where the movant shows (1) a
11 likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence
12 of preliminary relief, (3) that the balance of equities tips in the movant's favor, and (4) that an
13 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
14 In the Ninth Circuit, the Court may apply a sliding-scale approach under which "serious
15 questions going to the merits" and a balance of hardships that tips sharply toward the movant can
16 support injunctive relief, so long as the movant also shows a likelihood of irreparable harm and
17 that the injunction is in the public interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
18 1134–35 (9th Cir. 2011).

19 **III. ARGUMENT**

20 **A. Petitioner Is Likely to Succeed on the Merits**

21 Petitioner is likely to succeed on the merits of her habeas claim because Respondents lack
22 statutory authority to detain Petitioner under INA § 235(b) after she was previously released
23 from immigration custody and lived at liberty in the United States for more than nine years.

24 As explained in the Petition for Writ of Habeas Corpus, Petitioner entered the United
25 States on or about December 28, 2016 and was shortly thereafter encountered by immigration
26 authorities. At that time, the Department of Homeland Security released Petitioner from custody
27 pursuant to Form I-220A (Order of Release on Recognizance). Petitioner thereafter lived at
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1 liberty in the United States for more than nine years before being arrested by Immigration and
2 Customs Enforcement officers in the interior of the country on January 31, 2026.

3 The Petition demonstrates that Respondents' attempt to detain Petitioner under INA §
4 235(b) is unlawful. Section 235 governs the initial inspection and admission process at or near
5 the border, whereas INA § 236(a) governs the detention of noncitizens who are already present
6 in the United States and later apprehended in the interior while removal proceedings are pending.
7 See *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

8 By treating Petitioner as an applicant for admission subject to detention under § 235 and
9 denying her access to a custody redetermination hearing, Respondents have effectively applied
10 the inspection-stage detention framework to an individual who has long been residing within the
11 United States. Nothing in the statutory scheme authorizes the government to apply § 235(b) to a
12 noncitizen who was previously released from immigration custody and subsequently
13 apprehended in the interior of the country many years after entry.

14 Because Respondents lack statutory authority to continue detaining Petitioner under INA
15 § 235(b), Petitioner has demonstrated a strong likelihood of success on the merits of her habeas
16 claim.

17 **B. Petitioner Will Suffer Irreparable Harm in the Absence of Immediate** 18 **Relief**

19 In the absence of immediate relief, Petitioner will continue to suffer the irreparable harm
20 of unlawful detention and the deprivation of her physical liberty. The Supreme Court has
21 recognized that “[f]reedom from imprisonment—from government custody, detention, or other
22 forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause.
23 See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Courts have repeatedly held that the loss of
24 liberty caused by unlawful detention constitutes irreparable harm warranting injunctive relief.

25 The harm in this case is particularly severe because Petitioner is the mother of four minor
26 children, including a six-month-old infant who was breastfeeding at the time of her arrest.
27 Petitioner's detention has resulted in the separation of the infant from his primary caregiver
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1 during a critical stage of early development. This separation is occurring during a medically
2 significant period of infant development when continuous maternal care is especially important.
3 Each additional day of detention therefore not only prolongs Petitioner's unlawful loss of liberty,
4 but also extends the separation between a very young child and his mother.

5 Because Petitioner continues to be detained without lawful statutory authority, each
6 additional day of detention inflicts irreparable injury that cannot be remedied after the fact.
7 Immediate injunctive relief is therefore necessary.

8 **C. The Balance of Equities and the Public Interest Favor Relief**

9 The balance of equities and the public interest weigh strongly in favor of granting relief.
10 Petitioner faces the continuing loss of her physical liberty through detention that lacks statutory
11 authorization, while Respondents suffer no cognizable harm from being required to comply with
12 governing law. Because the government is a party, the balance of equities and public interest
13 factors merge. Courts have repeatedly recognized that the public interest is served by ensuring
14 that federal officials act in accordance with the Constitution and federal statutes.

15 The equities in this case also weigh heavily in Petitioner's favor because her detention
16 has resulted in the separation of a six-month-old infant from his mother during a critical period
17 of early development, as well as the disruption of care for Petitioner's other minor children.
18 Requiring Respondents to comply with the limits imposed by federal law while this Court
19 considers the habeas petition would impose no comparable hardship on the government.

20 Accordingly, the balance of equities and the public interest strongly favor the issuance of
21 a temporary restraining order.

22 **IV. CONCLUSION**

23 For the foregoing reasons, Petitioner respectfully requests that this Court grant her
24 Application for a Temporary Restraining Order and order Respondents to immediately release
25 Petitioner from custody pending resolution of the Petition for Writ of Habeas Corpus.

26 Respectfully submitted,

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