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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HAZVINEYI GRACE MUTSEYEKWA,
Petitioner,

vs.

SERGIO ALBARRAN, Acting Field Office Director of the San Francisco Immigration and Customs Enforcement Office; DAVID J. VENTURELLA, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Acting Attorney General of the United States, acting in their official capacities,

Respondents.

Case No.: 3:26-cv-08468

MOTION AND MEMORANDUM IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Northern District of California, that Petitioner Hazvineyi Grace Mutseyekwa, will and hereby does move for an ex parte temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b). Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully request that this Court (1) order Petitioner's immediate release from Respondents' custody pending these proceedings and return Petitioner to the status quo before her arrest on August 14, 2026.

This motion is based on this Notice of Motion and Motion; the supporting declarations, the papers, evidence, and records on file in this action; and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court. This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1).

Petitioner seeks relief at the earliest possible opportunity. As detailed further in the Declaration of Nicole A. Gorney, Counsel for Petitioner emailed Respondents and advised that a Motion for TRO would be forthcoming. Petitioner also emailed Counsel for Respondents a copy of the Memorandum of Points and Authorities shortly before filing it. As of this filing, Respondents have not stipulated to a TRO or a briefing schedule.

DATED: August 14, 2026

VIDAS Legal Services

By:/s/ Nicole A. Gorney
Nicole A. Gorney
Pro Bono Attorney for Petitioner

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Petitioner Hazvineyi Grace Mutseyekwa has been in the United States since 2004. She entered the United States to seek asylum and on March 22, 2005 was granted Withholding of Removal by an Immigration Judge. Since being ordered removed but granted Withholding, Petitioner has remained subject to, and fully compliant with ICE supervision.

Petitioner was previously scheduled for her annual check-in with U.S. Immigration and Customs Enforcement ("ICE") on January 22, 2027. A few days before August 14, 2026, Petitioner received a call from ICE, and was informed that her check-ins would now be every six months and that she must report to the San Francisco ICE office on August 14, 2026. (De Bremaeker Declaration, ¶ 5).

On August 14, 2026, Petitioner duly reported to her appointment as instructed. However, she was then unlawfully detained and informed that since she could not be removed to Zimbabwe, she would be removed to Cameroon . De Bremaeker Declaration, ¶ 6.

Petitioner was arrested without a notice- much less a warrant- at the ICE facility in San Francisco at 630 Sansome Street. Petitioner was arrested and detained without prior warning or any evidence of changed circumstances that would warrant Petitioner a flight risk or a danger to the community.

Petitioner has complied fully and repeatedly with every ICE check-in required of her. She brings this petition to secure her release and to enjoin Respondents from unlawfully redetaining her without a meaningful opportunity to be heard on whether her detention is necessary and warranted.

Further, Respondents have failed to provide Petitioner the opportunity to express her fear of being sent to a third country, specifically Cameroon. Because the proper process has not been

followed as required by regulations and US law, Petitioner should be ordered immediately released. See *Ffriend v. Albarran,* No. 3:26-cv-03942-WHO (N.D. Cal. May 1, 2026) (Petitioner ordered released on TRO after ICE attempted to effectuate a third country removal without proper notice or due process).

Petitioner suffers from multiple chronic medical conditions, including high cholesterol, diabetes, high blood pressure and schizophrenia, each of which requires consistent daily medication to manage. Continued detention, where consistent access to her prescribed medications cannot be guaranteed, threatens serious, irreversible harm to Petitioner's physical and mental health.

Petitioner's case is one of a growing number of cases where ICE unlawfully arrests individuals for a third-country removal without following due process or the required multi-step process for designating and removing noncitizens to a third country.

Petitioner's arrest and detention flout the Constitution. The only legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without making any affirmative showing of changed circumstances, the government violated Petitioner's procedural due process rights. At the very least, she was constitutionally entitled to adequate notice and a hearing where the government must properly designate a proposed third country for removal.

As a result of her arrest and detention, Petitioner is suffering irreparable and ongoing harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom 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).

In light of this irreparable harm, and because she is likely to succeed on the merits of her due process claims, Petitioner respectfully requests that this Court issue a temporary restraining order ("TRO") immediately releasing her from custody and enjoining the government from re-arresting her absent sufficient notice and due process.

To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Petitioner out of this District and removing her from the country until these proceedings have concluded.

FACTUAL BACKGROUND

Petitioner is a native of Zimbabwe. Petitioner was granted Withholding on March 22, 2005, after an Immigration Judge found it is more likely than not that she would suffer persecution if returned to Zimbabwe.

Since her grant of Withholding, Petitioner has been subject to and compliant with an ICE order of supervision. The petitioner has never missed a required appointment.

Petitioner has been living at liberty in the United States since 2004- over twenty years- during which she has built enduring community ties. She works as a caregiver, and also attends St. Anne's Church in Fremont, California.

Petitioner made a good faith effort to comply with all release and supervision terms imposed upon her. She has not committed or been charged with any crimes. Prior to her arrest, Petitioner received a call from ICE and she complied with their orders- which shows her intent to cooperate with their required supervision, rather than an intent to evade it.

Nothing has transpired since 2005 that now makes her a flight risk or danger. Her

detention is thus not authorized under the Due Process Clause. If Respondents wish to attempt to remove Petitioner to a third country, they must adhere to the procedural protections required by US law.

Petitioner, her family and community suffer serious and ongoing harm while she remains in detention.

ARGUMENT

To warrant a TRO, a movant must show (1) they are "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [their] favor," and that (4) "an injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)(quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)(noting the analysis for issuing a temporary restraining order and a preliminary injunction is substantially the same). Even if the movant raises only "serious questions" as to the merits of their claims, the court can grant relief if the balance of hardships tips "sharply" in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. All factors here weigh decisively in Petitioner's favor.

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. Petitioner's detention violates substantive due process because he is neither a flight risk nor a danger to the community.

The Due Process Clause applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government

objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him").

The Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called "mandatory" detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) ("Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."); *Nielsen v. Preap*, 586 U.S. 392, 420

(2019)("Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.").

Petitioner is neither a danger nor a flight risk, as DHS itself determined when it released her under an Order of Supervision. That determination- made by the very agency now seeking to redetain her- undercuts any claim that her detention serves any legitimate regulatory purpose. Her detention is therefore punitive, rather than regulatory in nature, in violation of her substantive due process rights.

Petitioner is not a danger. She has no criminal history or any intervening criminal arrests. There is no new offense, no violation of her supervision terms, no new fact that could justify treating her differently now.

As to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. Petitioner has attended every check-in ever mandated. Petitioner's compliance extended even to this morning. Although her check-ins had historically occurred on an annual basis, ICE called her only days ago and instructed her to report six months ahead of her normal schedule, still, she appeared as instructed.

Any concerns about flight risk would be mitigated by the fact that Petitioner was arrested *while complying with ICE's orders.* Based on statements made by ICE officers today, it seems that Respondents wish to remove Petitioner to Cameroon, however, she has not been served with a proper notice or been provided due process as required by the Constitution.

In sum, Petitioner's actions since 2005 demonstrate that she is neither a danger nor a flight risk. Indeed, her ongoing compliance over two decades, coupled with her deep community ties, compels the conclusion that she is, if anything, *less* of a danger or flight risk today.

Accordingly, Petitioner's ongoing detention is unconstitutional, and substantive due process principles require her immediate release.

B. The government is violating procedural due process and APA by Attempting Third Country Removal

The Due Process Clause of the Fifth Amendment requires sufficient notice and an opportunity to be heard prior to the deprivation of any protected rights. U.S. Const. amend. V; *see also Louisiana Pacific Corp. v. Beazer Materials & Services, Inc.*, 842 F. Supp. 1243, 1252 (E.D. Cal. 1994) ("[D]ue process requires that government action falling within the clause's mandate may only be taken where there is notice and an opportunity for hearing."). The INA, FARRA, and implementing regulations further mandate meaningful notice and opportunity to present a fear-based claim to an IJ before ICE deports a person to a third country. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an IJ before DHS deports her to a third country. *See, e.g., Abduvakhidov v. Warden, Golden State Annex Detention Facility*, 2026 WL 1298157, (E.D.Cal., 2026), *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). She also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991). Petitioner further has a due process right to not be re-detained because Respondents have no procedural protections to ensure meaningful notice and an opportunity to present a fear-based claim prior to removal to a third country. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The APA likewise compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

Petitioner has a constitutionally protected interest in her liberty and life interest at stake. Thus, prior to any third country removal, she must be provided with constitutionally compliant

notice and an opportunity to respond and contest that removal if he shas a fear of persecution or torture in that country.

For these reasons, Petitioner's removal to any third country without adequate notice and an opportunity to apply for relief under the Convention Against Torture would violate her due process rights. The only remedy of this violation is for this Court to order that she not be summarily removed to any third country unless and until she is provided constitutionally adequate procedures.

In short, Respondents violated Petitioner's due process rights when they detained her without notice and without a pre-deprivation hearing. Petitioner has not been given proper notice and due process to be removed to a third country.

Here, only an order releasing Petitioner and enjoining re-detention- unless Respondents follow proper procedure as is constitutionally required would be appropriate to return Petitioner to the status quo. *See Doe v. Noem*, __ F. Supp. 3d __, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez*, 2025 WL 1707737, at *4-*5 (ordering petitioner's immediate release as remedy for procedural due process violation). *See also Abduvakhidov v. Warden, Golden State Annex Detention Facility*, 2026 WL 1298157, (E.D.Cal., 2026) (ordering petitioner's release after Respondents attempted third country removal without a meaningful opportunity to be heard on his fear-based claim before an Immigration Judge).

For the foregoing reasons, Petitioner is likely to succeed on the merits of her claims. But even if the Court disagrees, she presents at least "serious question[s] going to the merits," alongside a "balance of hardships" tipping decidedly in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135.

II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND

IRREPARABLE INJURY ABSENT A TRO

Without a temporary restraining order, Petitioner will suffer immense irreparable injury. Indeed, she faces such injury every day she remains in detention in violation of her Fifth Amendment rights. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed "by virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time"); *see also, e.g.*, *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018)(recognizing that "[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual" (cleaned up)).

Furthermore, Petitioner suffers from multiple serious chronic conditions- diabetes, hypertension, high cholesterol, and schizophrenia- each of which requires consistent daily medication to remain stable and controlled. Detention facilities have a documented history of failing to provide timely, uninterrupted access to necessary medications, and any lapse in Petitioner's regimen carries serious medical consequences. Absent a TRO, Petitioner faces continued detention without consistent access to medications, and the harm that results will be irreparable.

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER'S FAVOR.

When the government is the party opposing the request for emergency relief, the

balance of the equities and the public interest merge. *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing constitutional violations and continued additional suffering if the TRO is not granted. *See* Section II, *supra*; *Hernandez*, 872 F.3d at 996 (when "[f]aced with … preventable human suffering, … the balance of hardships tips decidedly in plaintiffs' favor") (internal citation omitted).

The public interest likewise weighs strongly in Petitioner's favor. As another California district court recently concluded, "[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M. F.*, 2021 WL 783561, at *3). More fundamentally, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134, 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to restore the *status quo ante* that (1) immediately releases her from Respondents' custody and enjoins Respondents from re-detaining her absent further order of this Court; (2) in the alternative, immediately releases her from Respondents' custody and enjoins Respondents from re-detaining her unless they demonstrate at a pre-deprivation hearing, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that her physical custody is required; and (3) prohibits the government from transferring her out of this District

and/or removing her from the country until these habeas proceedings have concluded.

DATED: August 14, 2026

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