

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CINDY ROSARIO RIVERA CALDERON,

A# 

Petitioner,

v.

KRISTEN SULLIVAN, Field Office Director,
Atlanta Field Office, Enforcement and
Removal Operations, U.S. Immigration
and Customs Enforcement;

DAVID J. VENTURELLA, Director, U.S.
Immigration and Customs Enforcement;

MARKWAYNE MULLIN, Secretary, U.S.
Department of Homeland Security;

TODD BLANCHE, Attorney General of
the United States;

JOSEPH EDLOW, Director, U.S.
Citizenship and Immigration Services;

MICAH BROWN, Field Office Director,
Atlanta Field Office, U.S. Citizenship
and Immigration Services;

Respondents.

Civil Action No.

**EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER
AND FOR A PRELIMINARY INJUNCTION,
WITH INCORPORATED MEMORANDUM OF LAW**

EXPEDITED CONSIDERATION REQUESTED — LR 7.2(B), NDGa.

Petitioner Cindy Rosario Rivera Calderon respectfully moves this Court, pursuant to Federal Rule of Civil Procedure 65(a) and 65(b), 28 U.S.C. § 1651(a), and LR 7.2(B), NDGa., for (1) a temporary restraining order barring Respondents from removing her from the United States or transferring her outside this District, and (2) a preliminary injunction continuing that restraint until the Court resolves her contemporaneously filed Petition for a Writ of Habeas Corpus.

Petitioner does not seek an order to show cause by this Motion. She requests that relief in the Petition itself, where 28 U.S.C. § 2243 places it. This Motion seeks only the ancillary restraint necessary to keep that request from being mooted before the Court can reach it.

STATEMENT OF THE NECESSITY FOR EXPEDITED PROCEDURE

LR 7.2(B), NDGa., requires that a motion seeking expedited procedure "set forth in detail the necessity for such expedited procedure." Petitioner does so here.

Petitioner was taken into custody on August 21, 2026 — the same day this Motion is filed. Respondents have told counsel she will be held at the Stewart Detention Facility and that her removal is imminent. She is subject to an unexecuted expedited removal order, which means Respondents take the position that they may remove her without further process and on no notice at all.

The consequence is that the window in which this Court can grant meaningful relief may be measured in hours. If Petitioner is removed, the Petition becomes a

dead letter: no order of this Court could restore her to the country, to her United States citizen daughter, or to the adjustment application the Government is still adjudicating. If she is transferred, counsel's access is disrupted and the Court's ability to manage the proceeding is impaired.

Meanwhile, a three-year-old United States citizen child with three monitored chronic conditions — abnormal liver function studies followed by a pediatric gastroenterologist, a feeding disorder in therapy, and iron deficiency anemia requiring twice-daily medication — has lost the parent who administers her medication and takes her to her appointments, and the family's sole wage-earner must choose between his employment and his daughter's medical care. That harm compounds every day.

MEMORANDUM OF LAW

I. The Court Should Restrain Removal and Transfer Pending Resolution of the Petition.

A. This Court Has Authority to Preserve Its Own Jurisdiction.

The All Writs Act empowers federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). The Supreme Court has long recognized that this includes "a limited judicial power to preserve the court's jurisdiction or maintain the status quo by injunction pending review." *FTC v. Dean Foods Co.*, 384 U.S. 597, 604 (1966). Until a court announces a judgment declining jurisdiction, it retains "authority, from the necessity of the case,

to make orders to preserve the existing conditions and subject of the petition." *United States v. Shipp*, 203 U.S. 563, 573 (1906).

That authority is squarely engaged here. Petitioner's removal during the three-day return period would not merely prejudice her; it would extinguish the subject matter of the Petition before this Court could rule on it.

In this Circuit, *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1366–68 (11th Cir. 2006), holds that 8 U.S.C. § 1252(a)(5) and § 1252(b)(9) apply to strip jurisdiction only where review of a removal order is sought, and that § 1252(g), while shielding the exercise of discretion, "does not proscribe substantive review of the underlying legal basis for those discretionary decisions and actions." *Id.* at 1368. Petitioner does not seek review of the expedited removal order or of any charging decision. The restraint she requests is ancillary and temporary: it preserves this Court's ability to decide the detention question that *Madu* confirms is properly before it.

Should the Court conclude that § 1252(g) forecloses an order directed at removal itself, Petitioner respectfully asks in the alternative for an order restraining *transfer* outside this District. A transfer order implicates no removal decision whatsoever and rests comfortably within *Dean Foods* and *Ex parte Endo*, 323 U.S. 283 (1944).

B. The Four Injunction Factors Favor Petitioner.

A movant must show (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction issues; (3) that the threatened injury outweighs the harm to the opposing party; and (4) that the injunction would not be adverse to the public interest. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (per curiam); accord *Winter v. NRDC*, 555 U.S. 7, 20 (2009). Immediate injunctive relief is "an extraordinary and drastic remedy," and the movant "bears the burden of persuasion to clearly establish all four of these prerequisites." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1247 (11th Cir. 2016). The same factors govern a temporary restraining order. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005).

1. Substantial likelihood of success. The regulation is mandatory and its terms are plain. Upon revocation, Respondents "will [be] notified of the reasons," and must afford "an initial informal interview promptly after . . . return to Service custody." 8 C.F.R. § 241.4(l)(1). Revocation authority rests with the Executive Associate Commissioner, or with a district director who makes two specified findings. *Id.* § 241.4(l)(2). On the record available to counsel, Respondents satisfied none of these requirements. Agencies are bound by their own rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). Courts applying these regulations to re-detention at check-ins and

interviews have granted relief with notable consistency. *Ceesay*, 781 F. Supp. 3d at 162–66; *Zhang v. Genalo*, No. 25-6781, 2025 WL 3733542, at *10 (E.D.N.Y. Dec. 28, 2025); *Sarail A. v. Bondi*, 803 F. Supp. 3d 775, 788 (D. Minn. 2025); *Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 226 (D. Mass. 2025); *Rombot v. Souza*, 296 F. Supp. 3d 383, 388–89 (D. Mass. 2017).

2. Irreparable injury. Removal would be irreparable in the most literal sense: it would place Petitioner beyond the reach of any remedy this Court could fashion and would terminate, as a practical matter, an adjustment application the Government has not yet decided. Separation from a United States citizen child who depends on her for daily medical care cannot be compensated in damages. *And* unlawful physical detention is itself the paradigmatic irreparable injury. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3. Balance of harms. The order Petitioner seeks would preserve a state of affairs the Government itself maintained for years. Respondents released Petitioner, supervised her, and renewed that arrangement across every scheduled check-in without incident. Requiring them to refrain from removing or transferring her while this Court decides whether her detention is lawful imposes no cognizable burden. Against that, Petitioner faces permanent exile from her family.

4. Public interest. The public has no interest in the enforcement of a detention decision made without the process the Executive branch prescribed for

itself, on a factual premise that is wrong. It has a substantial interest in agencies following their own rules, in the integrity of a statutory adjudication Congress created, and in the welfare of a United States citizen child. *See Nken v. Holder*, 556 U.S. 418, 435–36 (2009).

D. The Requested Duration, and Why Petitioner Seeks Both a Restraining Order and a Preliminary Injunction.

Petitioner asks the Court to enter a temporary restraining order effective immediately, and to continue that restraint as a preliminary injunction until it resolves the Petition. She sets out the governing framework candidly, because the two forms of relief carry different durational limits.

Rule 65(b)(2) provides that a temporary restraining order "issued without notice" expires within a period the court sets, "not to exceed 14 days," subject to one like extension for good cause or a longer extension on the adverse party's consent. By its terms that limit governs *ex parte* orders. Petitioner seeks no *ex parte* relief; Respondents are being served contemporaneously. Petitioner nonetheless recognizes that an order restraining the Government for an extended period after an adversarial presentation is, in substance, a preliminary injunction, and is appealable as one under 28 U.S.C. § 1292(a)(1). She therefore asks for the relief in the form the Rules contemplate rather than for a restraining order of unlimited duration.

Accordingly, Petitioner requests a temporary restraining order that expires on the earlier of fourteen days from entry or the Court's ruling on the Petition, together with a preliminary injunction under Rule 65(a)(1) continuing the restraint until that ruling issues. Rule 65(a)(1) requires only notice to the adverse party, which has been given.

Petitioner further asks the Court to consolidate under Rule 65(a)(2). Rule 65(a)(2) permits the Court, before or after the preliminary-injunction hearing, to "advance the trial on the merits and consolidate it with the hearing." Consolidation is particularly apt here. The question presented by the preliminary injunction — whether Petitioner is likely to show that her detention is unlawful — is the same question presented by the Petition itself. There are no disputed facts, no jury right to preserve in a habeas petition, and 28 U.S.C. § 2243 already directs the Court to "summarily hear and determine the facts." Consolidating the preliminary-injunction hearing with the return on the order to show cause would resolve the whole matter on one record, in one proceeding, within the period Congress specified.

In the alternative, the All Writs Act supplies authority not bounded by Rule 65's durational limits. Section 1651(a) authorizes relief "in aid of" jurisdiction, and the Supreme Court has long recognized a court's power to "preserve the existing conditions and the subject of the petition" until it can rule. *Shipp*, 203 U.S. at 573; *Dean Foods*, 384 U.S. at 604. Should the Court prefer to proceed under

that authority, Petitioner asks that Respondents be restrained from removing or transferring her pending resolution of the Petition, without reference to Rule 65's timetable.

E. Rule 65(b) and Notice.

Petitioner does not seek *ex parte* relief. Counsel will contemporaneously serve this Motion and all supporting papers upon the United States Attorney's Office for the Northern District of Georgia and upon the Office of the Principal Legal Advisor, and will provide notice consistent with LR 7.5(B), NDGa.

The specific facts supporting immediate and irreparable injury are set out in the verified Petition and in the accompanying Declarations of Daniela VanSuch, Esq., and Roberto Santiago Gonzalez. Fed. R. Civ. P. 65(b)(1)(A).

Petitioner respectfully requests that any security under Rule 65(c) be waived. She is detained, and the restraint sought imposes no monetary exposure on Respondents.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court (1) enter a temporary restraining order barring Respondents from removing Petitioner from the United States and from transferring her outside the Northern District of Georgia, effective on entry and expiring on the earlier of fourteen days or the Court's ruling on the Petition; (2) enter a preliminary injunction under Rule 65(a)(1)

continuing that restraint until the Court resolves the Petition; (3) set the preliminary-injunction hearing to coincide with the return on the order to show cause requested in the Petition, and consolidate that hearing with the merits under Rule 65(a)(2).

Respectfully submitted this 21st day of August, 2026.

/s/ James M. Slater

James M. Slater, Esq.
Georgia Bar No. 169869
Slater Legal PLLC
2296 Henderson Mill Rd #116
Atlanta, GA 30345
Tel.: +1 (404) 458-7283
Email: james@slater.legal
Local Counsel for Petitioner

VILERKA S. BILBAO, ESQ.

Florida Bar No. 1012139
(Pro Hac Vice Application Filed Herewith)
BILBAO LAW LLC
301 W. Bay Street, Suite 1449
Jacksonville, FL 32202
(904) 300-0825
vilerka@bilbaolaw.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2026 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and that I additionally served a copy by electronic mail and certified mail.

United States Attorney's Office, Northern District of Georgia
Civil Division, 600 U.S. Courthouse, 75 Ted Turner Drive, SW
Atlanta, GA 30303

Office of the Principal Legal Advisor, U.S. Immigration and Customs
Enforcement, Atlanta Office, 180 Ted Turner Drive SW, Suite 332,
Atlanta, GA 30303

Attorney General of the United States, U.S. Department of Justice,
950 Pennsylvania Avenue, NW, Washington, DC 20530

By: **James M. Slater**
James M. Slater