

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Mirta Amarilis Co Tupul,

Petitioner,

v.

Kristi Noem, et al.,

Respondents.

No. CV-25-02748-PHX-DJH (JZB)

**ORDER**

The Court has reviewed the Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief and Motion for Temporary Restraining Order.<sup>1</sup> (Docs. 1-2.) The Court grants a temporary restraining order without notice.

Petitioner names Department of Homeland Security Secretary Kristi Noem; United States Attorney General Pam Bondi; Immigrations and Customs Enforcement Acting Director Todd Lyons and Field Office Director John Cantu; and Eloy Detention Center Warden Fred Figueroa as Respondents. (Doc. 1 ¶¶ 10-14.)

Petitioner is a noncitizen who entered the United States at the age of nine and has lived continuously in the United States since that time. (Doc. 1 ¶ 2.) She has three United States citizen children, ages 8, 16, and 18. (*Id.*) On July 22, 2025, Petitioner alleges she was driving in an area of Phoenix, Arizona that is predominantly Latino. (Doc. 1 ¶ 17.) She was pulled over by an officer believed to be a Customs and Border Patrol agent who inquired about her immigration status. Petitioner did not respond, the

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<sup>1</sup> The Court notes Petitioner filed both a Petition and Complaint but will refer to the pleading as a Petition for clarity.

1 officer contacted ICE and then arrested Petitioner. (Doc. 1 ¶¶ 17-18.) She was  
 2 transported to the Florence Processing Center and was transferred to the Eloy Detention  
 3 Center, where she remains in immigration detention. (Doc. 1 ¶ 19.) Three days later,  
 4 counsel for Petitioner contacted Petitioner’s removal officer and was informed Petitioner  
 5 was placed in expedited removal proceedings and would be removed in one to three  
 6 weeks. (Doc. 1 ¶ 20.) The removal officer explained ICE had a “‘new policy’ of  
 7 utilizing Expedited Removal for non-citizens with ‘their first contact with ICE.’”  
 8 (Doc. 1 ¶ 21.) Petitioner’s counsel submitted evidence of Petitioner’s continuous  
 9 decades-long presence in the United States, including vaccination records, other official  
 10 records, and sixteen signed affidavits, but ICE continues to subject Petitioner to expedited  
 11 removal. (Doc. 1 ¶¶ 22–25.) Based on these facts, Petitioner presents five claims for  
 12 relief: her traffic stop violated her Fourth Amendment rights as it lacked reasonable  
 13 suspicion and, as a result, any evidence obtained must be excluded from her immigration  
 14 proceedings; she is statutorily ineligible to be placed in expedited removal proceedings as  
 15 she has been physically present in the United States for 30 years; her placement in  
 16 expedited removal proceedings violates her due process rights; Respondents’ policy to  
 17 subject noncitizens to expedited removal irrespective of their length of physical presence  
 18 is beyond their authority; and to the extent § 1252(e) applies to Petitioner’s claims, such  
 19 application violates the Suspension Clause (Doc. 1 at 9-13).

20 In the Ninth Circuit, “a petitioner seeking a stay of removal must show that  
 21 irreparable harm is probable and either: (a) a strong likelihood of success on the merits  
 22 and that the public interest does not weigh heavily against a stay; or (b) a substantial case  
 23 on the merits and that the balance of hardships tips sharply in the petitioner’s favor.”  
 24 *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (discussing application of *Nken*  
 25 *v. Holder*, 556 U.S. 418, 444 (2009)); see also *Winter v. Natural Resources Defense*  
 26 *Council, Inc.*, 555 U.S. 7, 20 (2008).<sup>2</sup>

27 <sup>2</sup> Where a party “can only show that there are ‘serious questions going to the  
 28 merits’—a lesser showing than likelihood of success on the merits—then a preliminary  
 injunction may still issue if the ‘balance of hardships tips sharply in the [party]’s favor,’  
 and the other two *Winter* factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*,

1 Unlike a preliminary injunction, *see* Fed. R. Civ. P. 65(a), a temporary restraining  
 2 order (TRO) may be entered “without written or oral notice to the adverse party.” Fed.  
 3 R. Civ. P. 65(b). A TRO may issue, *ex parte*, if: “(A) specific facts in an affidavit or a  
 4 verified complaint clearly show that immediate and irreparable injury, loss, or damage  
 5 will result to the movant *before* the adverse party can be heard in opposition; and (B) the  
 6 movant’s attorney certifies in writing any efforts made to give notice and the reasons why  
 7 it should not be required.” Fed. R. Civ. P. 65(b) (emphasis added).<sup>3</sup>

8 In her Petition, Petitioner seeks an order vacating the expedited removal order and  
 9 requiring Respondents to provide Petitioner with a hearing under 8 U.S.C. § 1229(a) and  
 10 to release her from custody. She further moves to enjoin her removal from the United  
 11 States pending adjudication of her habeas petition. In the interests of justice, the Court  
 12 finds it necessary to issue a temporary stay of removal. Petitioner alleges she has been  
 13 present in the United States for 30 years and, as a result, is statutorily ineligible for  
 14 expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (conditioning the  
 15 Attorney General’s ability to apply expedited removal procedures to non-arriving  
 16 noncitizens on those noncitizens’ having been present in the United States for under two  
 17 years); *see also* 8 C.F.R. § 235.3(b)(1)(2) (providing that expedited removal proceedings  
 18 may only be applied to “arriving aliens” and “as specifically designated by the  
 19 Commissioner, aliens who have not established to the satisfaction of the immigration  
 20 officer that they have been physically present in the United States continuously for the  
 21 two-year period immediately prior to the date of determination of inadmissibility”). At  
 22 this juncture, the Court finds a temporary restraining order appropriate as the evidence  
 23 creates a serious question whether Petitioner is eligible for expedited removal  
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25 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*,  
 26 632 F.3d 1127, 1135 (9th Cir. 2011)). Under this Ninth Circuit “serious questions” test,  
 27 “[t]he elements . . . must be balanced, so that a stronger showing of one element may  
 28 offset a weaker showing of another.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir.  
 2012).

<sup>3</sup> Petitioner attaches an affidavit from counsel indicating her requests to Respondents to  
 comply with their statutory obligations, but those requests were denied.

proceedings given her decades long presence in the United States. Because removal would deprive Petitioner of her rights to judicial review of her removal, she has alleged that it is probable that she would suffer irreparable harm absent a stay. She has also shown that he has a substantial case on the merits, without prejudice to Respondents demonstrating the contrary.<sup>4</sup> Lastly, the balance of hardships tips sharply in Petitioner's favor. A stay will maintain the status quo until Respondents have had an opportunity to brief the Petition and Motion for Preliminary Injunction and will facilitate a considered review of the parties' arguments by the Court and a reasoned decision on the issues presented.

Accordingly,

**IT IS THEREFORE ORDERED** Petitioner's Motion for a Temporary Restraining Order without notice is **granted**. Respondents are enjoined from removing Petitioner Mirta Amarilis Co Tupul from the United States pending further order of this Court. Petitioner's request for a Preliminary Injunction remains pending.

**IT IS FURTHER ORDERED** the Clerk of Court must immediately transmit by

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<sup>4</sup> The Ninth Circuit has held, pursuant to 8 U.S.C. § 1252(a)(2)(A), that "Congress has clearly and unambiguously precluded [the courts] from asserting jurisdiction over the merits of individual expedited removal orders, even with regard to constitutional challenges to such orders." *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1149 (9th Cir. 2022); *see also Lamare v. Garland*, 2023 WL 8666044, No. 20-71358, at \*1 (9th Cir. Dec. 15, 2023) ("Congress has stripped [the courts] of subject matter jurisdiction to review expedited removal proceedings that involve aliens who . . . have not yet effected entry into the United States."). In those Ninth Circuit cases, the petitioner was subjected to expedited removal proceedings and expedited removal orders pursuant to Section 1225(b). District courts in the Ninth Circuit have consistently held that the jurisdictional bar under Section 1252(a)(2)(A) applies to the expedited removal proceedings that are brought under Section 1225(b). *C.f. United States v. Avalos-Perez*, No. 3:16-CR-02827, 2017 WL 1400018, at \*3 (S.D. Cal. Apr. 19, 2017) ("As to a meaningful opportunity for judicial review, that too is foreclosed by expedited removal proceedings brought under 8 U.S.C. § 1225."); *United States v. Arizmendi-Depaz*, No. 18-CR-4949, 2019 WL 3945459, at \*2 (S.D. Cal. Aug. 21, 2019) (holding "the INA precludes meaningful judicial review of the validity of the proceedings that result in an expedited removal order under 8 U.S.C. § 1225"). The Supreme Court has confirmed that the jurisdictional bar under Section 1252(a)(2)(A) is "aimed at protecting the Executive's *discretion* from the courts." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 486 (1999) (emphasis added). Whether an individual physically present in the United States for more than two years is eligible to be placed in expedited removal proceedings is not a matter of discretion. Judicial review of such decision, therefore, is not barred by Section 1252(a)(2)(A).

1 email a copy of this Order and a copy of Petitioner's Petition and Motion (Docs. 1, 2) to  
2 the United States Attorney for the District of Arizona, to the attention of Katherine  
3 Branch at katherine.branch@usdoj.gov, Melissa Kroeger at melissa.kroeger@usdoj.gov,  
4 and Lon Leavitt at lon.leavitt@usdoj.gov.

5 **IT IS FURTHER ORDERED** if not already issued, the Clerk's Office must issue  
6 any properly completed summonses.

7 **IT IS FURTHER ORDERED** Counsel for Petitioner must immediately serve the  
8 Petition and Motion upon Counsel for Respondents.

9 **IT IS FURTHER ORDERED** Counsel for Respondents must file a response to  
10 the Motion for Preliminary Injunction no later than Wednesday August 13, 2025.  
11 Petitioner may file a Reply no later than Friday August 15, 2025.

12 Dated this 4th day of August, 2025.

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16 Honorable Diane J. Humetewa  
17 United States District Judge  
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