

**UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF LOUISIANA  
ALEXANDRIA DIVISION**

BRITANIA URIOSTEGUI RIOS,

*Petitioner,*

v.

DONALD J. TRUMP, et al.,

*Respondents.*

Civil Action No. 1:25-cv-01320

Judge Edwards

Magistrate Judge Perez Montes

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

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## **INTRODUCTION**

Petitioner, Britania Uriostegui Rios (“Britania”), respectfully moves this Court for a Temporary Restraining Order. She asks this Court to prohibit Respondents from continuing to detain her for two reasons. First, she seeks release for all the reasons outlined in her now fully briefed habeas petition, Dkt.1, underscoring the unconstitutionality of her detention now that she is more than eight months post-order. Second, she seeks release because Respondents cannot be entrusted to not violate due process by deporting her to the very country from which she was granted relief from removal. Indeed, an immigration judge (“IJ”) determined that Britania was likely to be tortured or killed if sent to Mexico, but Respondents deported her there anyway. Immediate release is eminently reasonable under these circumstances.

Keeping Britania detained—despite Respondents’ now demonstrated inability to remove her to a third country—appears premised on little more than the intent to punish Britania for having ever deigned to seek refuge in this country and for being transgender. But immigration detention cannot *ever*, for any reason, be used as a form of punishment. *See Zadvydas v. Davis*, 533 U.S. 678, 691 (2001) (stating that noncriminal detention by the Government is permissible only in narrow nonpunitive circumstances); *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (stating that, to comply with the Due Process Clause, detention must always bear “some reasonable relation to the purpose for which the individual was committed”). Significantly, before Respondents’ unlawfully removed Britania to Mexico, her detention was already exacerbating her Post-Traumatic Stress Disorder (“PTSD”) and Major Depressive Disorder (“MDD”), to such an extreme that she was at risk of suicide. *See* Dkt. 1-2; Ex. A, Psychological Evaluation and Report by Darien Combs, PhD. Now returning from her unlawful deportation back to detention, that risk has increased exponentially. Indeed, she now must process her eight-day ordeal, which included risking life and

limb to avoid death, maiming, or torture, as she travelled across Mexico without any assistance whatsoever from Respondents. *See* Ex. C, Authenticated emails between counsel for Petitioner and counsel for Respondents. Because Britania’s lawful removal is not reasonably foreseeable, continuing to hold her in ICE custody only serves to harm her and make a second “inadvertent” removal more likely. She needs urgently to be released.

At bottom, Britania’s *lawful* removal (to a third country from which she does not claim fear-based protection) is not imminent: over the past 8 months since Britania won her case, the government has searched for—and failed to find—any country willing to accept her. Dkt. 1. Indeed, the government has already reached out to six countries (one of them twice), all to no avail, which is unsurprising considering Britania does not have citizenship or status in any country but Mexico. Dkt. 16; Dkt. 16-2; Dkt. 13-1. Having failed to find another country to accept Britania, the government simply removed her to Mexico. Now in indefinite detention, the Sword of Damocles (here, the actual threat of another unlawful deportation to Mexico) looms large over Britania’s head. The law is clear that, where, as here, “the Government ha[s] [more than] thrice failed to secure the transfer of [a noncitizen] subject to a final order of removal, and c[an] offer no promise of future success, as all the nations to which the [noncitizen] had ties ha[s] refused h[er] admission . . . ,” release is appropriate because detention no longer serves a legitimate government purpose. *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006) (distinguishing *Zadvydas*, 533 U.S. 678 in denying habeas relief).

As demonstrated below, Britania satisfies all four factors for the granting of preliminary relief. First, she is likely to succeed on the merits of her due process claims based on binding Supreme Court precedent. Second, she has established irreparable injury as constitutional violations in and of themselves constitute irreparable harm. *Kostak v. Trump*, No. CV 3:25-1093,

2025 WL 2472136 (W.D. La. Aug. 27, 2025) (finding that “the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm”). The looming threat of another unlawful removal only heightens the irreparable harm she faces. Third, the balance of equities and public interest weigh in favor of her release. If Britania’s protection under the Convention Against Torture (“CAT”) is to mean anything, Britania must be protected from the possibility of removal to Mexico, which means she must be released from ICE custody and allowed to go home since she cannot be protected from such removal by ICE so long as she remains detained. Moreover, Britania has already “fully suffered” the punishments associated with her criminal conviction. *Ex parte Lange*, 85 U.S. 163 (1873).

Finally, the public has no interest in violating the law by continuing to detain her despite no substantial likelihood of her reasonably foreseeable removal. *Zadvydas*, 533 U.S. at 690 (stating that immigration detention is permitted only in certain narrow and nonpunitive circumstances).

In short, this Court should issue a Temporary Restraining Order ordering Britania’s immediate release from detention, and to prevent another unlawful removal to Mexico.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Britania is a transgender woman from Mexico, who has survived significant trauma—including being sex-trafficked as early as age 12. *See* Ex. A. Accordingly, on March 14, 2025, an IJ granted her protection under CAT, prohibiting her removal to Mexico because it is *more likely than not* that Britania would be tortured or killed with the acquiescence of the Mexican government if she were ever forced to return thereto. *Id.*; *see* 8 C.F.R. §§ 1208.16(c)(3), 1208.17. Neither she nor the government appealed. Yet, after nearly eight months of post-order detention, on or about November 12, 2025, Respondents flew Britania to Harlingen, Texas and placed her on a bus to

Mexico—the very place from which she escaped innumerable atrocities, and from which she was granted unequivocal protection months before. *See* Ex. B, Declaration of Talia Lepson.

Britania was born and raised in Acapulco, Mexico, where she suffered a difficult childhood. *See* Ex. A at 2. Britania’s mother died shortly after she was born, so she was raised by her grandparents, who physically abused her. *Id.* at 3–4. An adult male neighbor then began sexually abusing Britania when she was 8 years old. *Id.* at 4. When Britania’s grandfather discovered this “relationship,” he severely beat Britania and kicked her out of the house. *Id.* Britania, then homeless and just 12 years old, became a victim of sex trafficking. *Id.*

For a few years in her teens, Britania lived with and worked for a neighbor, an experience that was relatively stable compared to her earlier childhood. *Id.* She helped at the neighbor’s restaurant by making tortillas, and later, she also worked at a beauty salon. *Id.* This stable period of her life was short-lived as Britania was ultimately forced to leave the neighbor—and Mexico—because the cartels who had trafficked her were still looking for her and planned to kidnap or kill her. *Id.* at 4–5. She knew she was not safe anywhere because of the reach of the cartels and because there was nowhere safe for a transgender woman to turn. *Id.* at 5.

Britania came to the United States fleeing physical abuse, sexual abuse, sex trafficking, and constant threats of kidnapping and torture. *Id.* at 5. She established a life in the United States and, around 2012, adjusted her status and became a legal permanent resident—*i.e.*, a green card holder. Dkt. 13-1, 16. Still, Britania struggled over the years to cope with the traumatic events she had experienced in Mexico, leading to severe depression and substance abuse disorder. Ex. A at 7. In 2023, she pled guilty to assault with a deadly weapon and was sentenced to a suspended sentence

of 18–60 months<sup>1</sup> and for probation that was not to exceed 36 months. *Id.* Her suspended sentence meant that Britania was allowed to remain in the community (as opposed to state prison). Ex. A at 8. Britania then successfully completed a six-month rehabilitation program in Las Vegas and has maintained her sobriety ever since. *Id.*

Still, on April 16, 2024—nearly 19 months ago—ICE took custody of Britania and placed her in removal proceedings. *Id.* at ¶¶ 32, 35. On August 20, 2024, an IJ deemed Britania incompetent on the basis that she did not understand the nature and object of the proceedings, among other reasons. *Id.* at ¶ 35; *see also Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011). Britania also underwent a separate, independent psychiatric assessment in December of 2024, confirming that Britania shows signs of cognitive impairment and extreme trauma, and diagnosing her with PTSD and MDD. Dkt. 1-2, ¶¶ 14-18. Finally, after 11 months in immigration detention, on March 14, 2025, Britania was granted deferral of removal under CAT. Dkt. 1, ¶ 6.

In the months since Britania won relief from removal to Mexico, Respondents have attempted to remove her to at least 6 alternate countries: El Salvador, Guatemala, Panama, Honduras, Costa Rica, Nicaragua, and El Salvador again—all to no avail. Dkt. 16-2; *see also* Dkt. 13-1.

On September 8, 2025, Britania filed a habeas corpus petition because her removal was not reasonably foreseeable. Dkt. 1. On October 30, 2025, Respondents filed their opposition. Dkt. 13. On November 7, 2026, Britania filed her reply. Dkt. 14; Dkt. 16.

Suddenly, on or about November 12, 2025, Respondents removed Britania to Mexico despite her CAT protection. Ex. B. No notice whatsoever was provided to Britania’s immigration

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<sup>1</sup> A suspended sentence is a “sentence postponed so that the convicted criminal is not required to serve time unless he or she commits another crime or violates some other court-imposed condition.” *Sentence*, Black’s Law Dictionary (12th ed. 2024). “A suspended sentence, in effect, is a form of probation.” *Id.*

counsel or habeas counsel. *Id.* Within hours, Britania arrived in Mexico without any of her property, including her money, her necessary medications, or her phone. *Id.* She did what she could to seek safety and, eventually, and with no help from Respondents, made her way back to the Tijuana port of entry on November 18, 2025, where she had been told in no uncertain terms that she would be processed for re-entry to the United States. *See* Ex. C. But Respondents turned her away, forcing her to spend another night exposed in Mexico, wandering the streets of Tijuana looking for shelter. *Id.*

On November 19, 2025, a full week after being wrongfully deported, on information and belief, Britania entered the United States via the Tijuana port of entry and was immediately placed back into immigration detention. Respondents conceded that Britania’s removal was “inadvertent.”<sup>2</sup> *Id.* Britania was previously held in a unit specifically for trans people, in Aurora, Colorado, before being transferred to a soft-sided men’s facility in El Paso, Texas and then to Winn Correctional Center. Dkt. 1. As of November 20, 2025, on information and belief, Britania is back in ICE custody and travelling back to, or is back in, Winn Correctional Center.

### **ARGUMENT**

Under Rule 65 of the Federal Rules of Civil Procedure, a movant is entitled to preliminary relief, including a temporary restraining order, by showing: (1) a substantial likelihood of success on the merits of their claims for relief; (2) a substantial threat of irreparable injury absent the injunction; (3) that the threatened injury outweighs any damage that injunction may cause the opposing party; and (4) that the injunction will not disserve the public. *Lake Charles Diesel, Inc.*

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<sup>2</sup> “Inadvertence” is defined as “an accidental oversight, a result of carelessness.” INADVERTENCE, Black’s Law Dictionary (12th ed. 2024). If nothing prevented this “accident” from happening once—including a valid order from an IJ prohibiting it—there is no reason to believe that it will not happen again if Britania remains detained.

*v. General Motors Corp.*, 328 F.3d 192, 195 (5th Cir. 2003). Each of these factors weighs in favor of granting a Temporary Restraining Order here.

**I. BRITANIA IS LIKELY TO SUCCEED ON THE MERITS OF HER CLAIMS.**

Britania is likely to succeed on the merits of her procedural and substantive due process claims for two reasons. First, her detention violates 8 U.S.C. § 1231(a)(6) and her substantive due process rights under the Fifth Amendment because her removal—that is, her lawful removal to a third country from which she does not claim fear-based relief—is not reasonably foreseeable. She cannot *lawfully* be removed to her country of origin and she has no claim to citizenship or status anywhere else. Indeed, the government has already failed to remove her to six alternate countries. Furthermore, the fact that she is transgender, was deemed incompetent, and already won CAT protection once suggests that she is very likely to win CAT protection again to a third country, rendering her removal even less foreseeable. Second, Britania’s detention at this point appears premised on little more than an intent to punish, a goal for which immigration detention cannot be used. While Britania recovers from having been forcibly removed to Mexico despite her CAT protection, she sits in an all-male dorm with no end to her confinement in sight. Her mental health is deteriorating so significantly that she is at risk of suicide. Because her detention serves no lawful purpose, as discussed in further detail below, Britania is likely to prevail on the merits of one or more of her constitutional claims.

**A. Britania’s Detention Is Likely Unlawful Because It Violates 8 U.S.C. § 1231(a)(6) and the Fifth Amendment of the U.S. Constitution.**

Binding Supreme Court precedent and the “Constitution[] demand[]” that detention during the post-removal period be limited to “a period reasonably necessary to bring about the [noncitizen’s] removal from the United States. It does not permit indefinite detention.” *Zadvydas*, 533 U.S. at 689. The removal period is, by statute, 90 days. 8 U.S.C. § 1231(a)(1)(A).

Acknowledging that the government may need more time to effectuate removals in certain instances, however, the Supreme Court recognized that “six months is the appropriate period.” *Id.* at 680. After six months, if the noncitizen can show “good reason to believe” that there is no significant likelihood of removal in the reasonably foreseeable future, the government must “furnish evidence sufficient to rebut that showing.” *Id.* at 680. Specifically, the Supreme Court stated: “there is reason to believe that [Congress] doubted the constitutionality of more than six months’ detention.” *Id.*

Britania has met her initial burden that removal is not reasonably foreseeable because she has CAT protection from Mexico and no other country to claim. Of course, while the government asserts that Britania “must demonstrate that ‘the circumstances of [her] status’ or the existence of ‘particular and individual barrier to repatriation’ to [her] country of origin,” Dkt. 13 at 11, that is exactly what she has done. Britania’s CAT protection is a particular and individual barrier to her repatriation to Mexico. The fact that the government has ignored this protection only strengthens Britania’s claim that her detention serves no *lawful* purpose, as it instead renders her *unlawful* removal more likely. For this reason, before they entirely gave up and defied a judicial decree, the government undertook efforts to remove Britania to at least 6 alternate countries over the last eight months—all to no avail. Dkt. 16-2; Dkt. 13-1. The law is clear that, where, as here, “the Government ha[s] [more than] thrice failed to secure the transfer of [a noncitizen] subject to a final order of removal, and c[an] offer no promise of future success, as all the nations to which the [noncitizen] had ties ha[s] refused h[er] admission . . . ,” release is appropriate because detention no longer serves a legitimate government purpose. *Andrade*, 459 F.3d at 543.

The evidence that the government has provided in response—one declaration from Assistant Field Office Director (“AFOD”) Hodges—is insufficient. Dkt. 13-1. AFOD Hodges

concedes that multiple countries have declined to accept Britania, which is unsurprising given she has no claim to legal status anywhere except Mexico. Dkt. 13-1, ¶¶ 20–21. The government now claims it is seeking removal to El Salvador, Dkt. 13-1, ¶25—but El Salvador already declined to accept Petitioner in April. *See* Dkt. 16-2. Indeed, having failed to gain approval from these alternate countries, the government simply removed Britania to the only place that would take her: Mexico. Ex. B; Ex. C. There is no reason to believe that her lawful removal to another country is “imminent[]”, as the government suggests. Dkt. 13 at 7. The government provides no concrete assurances a document is forthcoming. *Butt v. Holder*, No. CA 08-0672-CG-C, 2009 WL 1035354, \*5 (S.D. Ala. March 19, 2009). The only concrete evidence before this Court is that the government is able to remove Britania *to Mexico*, which cannot be permitted. The fact that the government claims that it “continues to act diligently to execute Rios’s removal,” Dkt. 13 at 6, is insufficient. The Supreme Court in *Zadvydas* was clear that ongoing, “good faith efforts to effectuate . . . deportation” do *not* demonstrate the lawfulness of continued detention. 533 U.S. at 702. Surely it is not the case that a removal is reasonably foreseeable until Respondents have asked the more than 190 countries in the world whether they will accept an individual who is not their own citizen. By this calculation, a removal remains foreseeable for 95 years<sup>3</sup>—in short, until someone’s death.

Furthermore, the fact the Britania will require process before removal to a third country only serves to further strengthen her claim that she will not be removed in the reasonably foreseeable future. Britania already won CAT protection from one country that does not respect the rights of transgender people: Mexico. Dkt. 1, ¶ 6. To win CAT protection, Britania had to prove that it was more likely than not that she would be tortured or killed if forced to return to Mexico. 8 C.F.R. §§ 1208.16(c)(3), 1208.17. The fact that this protection was flagrantly violated does not

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<sup>3</sup> Six-month removal period per country multiplied by approximately 190 countries = 1,140 months = 95 years.

weaken its import: this is an extremely high burden and, if met once, is likely to be met again—especially regarding another country in Central America where there is significant overlap in language, culture, institutions, and overwhelming anti-transgender sentiment.<sup>4</sup> Ultimately, then, the government cannot remove Britania until it finds a country that is both willing to accept her *and* safe for her as a transgender, incompetent woman. Together, these factors make Britania’s already unforeseeable removal even less likely. Dkt. 1, ¶ 82.

Finally, and contrary to the government’s assertions, a Petitioner’s criminal history does not provide an exception to the constitutional limits on post-order confinement. In *Tran*, the Government argued that the Petitioner—who had murdered his wife in the presence of his daughter—could be detained beyond the removal period because he was “specially dangerous.” *Tran v. Mukasey*, 515 F.3d 478 (5th Cir. 2008) (finding limits to post-order detention even when Petitioner murdered his wife in the presence of his daughter). But the Fifth Circuit rejected that argument, instead affirming that “in light of the unqualified holdings of both *Zadvydas* and *Clark* that § 1231(a)(6) does not permit continued detention where removal is not reasonably foreseeable, this Court cannot establish an exception where none exists.” *Id.* at 485. Here, Britania’s criminal history does not begin to approach that of the Petitioner in *Tran*, nor does it eclipse the Petitioner in *Zadvydas*, whose record included “drug crimes, attempted robbery, attempted burglary, and theft.” *Zadvydas*, 533 U.S. at 684 (“*Zadvydas* ha[d] a long criminal record, involving drug crimes, attempted robbery, attempted burglary, and theft. He [also] ha[d] a history of flight, from both criminal and deportation proceedings. [He was] [m]ost recently, . . . sentenced to 16 years’ imprisonment [before he was taken into ICE custody].”).

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<sup>4</sup> In her initial petition, Britania expressed fear of return to any country that does not respect the rights of transgender people, particularly those who are also incompetent. Dkt. 1, ¶ 81. This includes various countries in Central America. *See* Dkt. 1, n.3.

Britania’s offenses, for which she has already “fully suffered” the punishments, *Ex parte Lange*, 85 U.S., come after a lifetime of trauma including years of being sexually trafficked as a child, and indeed she was already making significant progress in addressing the root causes of her criminal history having successfully completed a rehabilitation program before being placed in ICE custody. *See* Ex. A. Furthermore, the Fifth Circuit has been clear that “the Government’s concerns” for public safety are “properly directed to Congress.” *Tran*, 515 F.3d at 485. Accordingly, if Britania can provide (which she has) “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” and if the government fails (which it has) to respond with evidence sufficient to rebut the showing, she must be released regardless of her criminal history. *Id.* at 702. Britania cannot be held indefinitely merely because of her criminal history, just as Mr. Zadvydas could not be held indefinitely for his history of “drug crimes, attempted robbery, attempted burglary, and theft.” *Zadvydas*, 533 U.S. at 684 ; *see also Tran*, 515 F.3d at 485.

Accordingly, the evidence is clear: lawful removal is not reasonably foreseeable because Britania has CAT protection to Mexico, the government has failed to find a third country willing to accept her in more than 8 months, and the likelihood of finding a safe third country is extraordinarily low. Meanwhile, Respondents have additionally proven, beyond a shadow of a doubt, that they can, they will, *and they already have* removed Britania to her home country in violation of her valid CAT. Therefore, they cannot be trusted to maintain custody of her. In the end, the only removal that is “reasonably foreseeable” in this case is another “inadvertent” removal to Mexico—and that cannot be permitted. Britania is accordingly likely to succeed on her claim that her continued detention violates federal law and the U.S. Constitution.

**B. Britania’s Detention is Likely Unlawful Because It Appears Premised on Punishment, As It Serves No Lawful Purpose and Is Worsening Her PTSD and MDD.**

To comply with substantive due process, detention must always bear “some reasonable relation to the purpose for which the individual was committed.” *Jackson*, 406 U.S. at 738; *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018). The only legitimate purpose, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person’s attendance for legal hearings adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Zadvydas*, 533 U.S. at 690–91. But where, as here, the proceedings have concluded and removal is not reasonably foreseeable, the first justification “is weak or nonexistent.” *Id.* As for ensuring safety of the community, as established *supra*, Britania cannot be held indefinitely merely because of her criminal history, just as Mr. Zadvydas could not be held indefinitely for his history of “drug crimes, attempted robbery, attempted burglary, and theft.” *Id.* at 684. Therefore, Britania’s detention is untethered to a lawful purpose.

At this juncture, Britania’s re-detention after unlawful removal appears premised on nothing more than the intent to punish: a goal for which immigration detention cannot be used. *See Zadvydas*, 533 U.S. at 690–91. Britania is therefore also likely to succeed on her claim that her detention, including the conditions of her confinement, are exacerbating her PTSD and MDD violates her substantive due process.

The conditions of Britania’s confinement, housed in an all-male unit, has and will continue to result in the deterioration of her mental health, significantly increasing her risk of suicide. Dkt. 1, ¶¶ 85–86 (Britania’s detention renders her unable to maintain a humane existence and meaningfully engage with services; the government will not remedy this issue due to the Executive Order unlawfully prohibiting them from taking ameliorative action). As of December 2024—even before Britania’s transfer to an all-male dorm at Winn, and certainly before she was retraumatized

through her unlawful removal to Mexico—she was already suffering from severe mental health symptoms:

At the time of the comprehensive psychological evaluation, when she was detained in a transgender unit, the conditions of detention had worsened Ms. Uriostegui Rios’s trauma-related symptoms, contributing to heightened distress, depression, intrusive memories, and social withdrawal. She reported suicidal ideation and recurrent thoughts of death but denied having a plan or intent at the time of the evaluation.

*See* Dkt. 1-2, ¶ 18.

The psychiatric expert who examined Britania at the time also noted:

Given Ms. Uriostegui Rios’s history of trauma, including gender-based violence and prior experiences of being harmed by men, placement in a men’s facility is highly likely to trigger psychological distress and would likely exacerbate her symptoms of Complex PTSD and MDD. Without immediate changes to her detention, she could face the serious risk of deterioration of her mental health and further functional impairment, including cognitive decline, chronic mental and physical health issues, potential long-term disability, and she is at increased risk of suicidal ideation.

*Id.* at ¶ 23.

At bottom, the creation of a suicide risk surely has the effect of defeating any valid purpose of detention. *Id.* Therefore, Britania is likely to prevail on her claim that continuing to detain her—when her removal is not foreseeable, when there is no other lawful purpose for her detention, and when her detention is causing her to be a suicide risk—violates her substantive due process rights under the Fifth Amendment to the United States Constitution.

## **II. BRITANIA WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A TEMPORARY RESTRAINING ORDER.**

“Perhaps the single most important prerequisite” for the issuance of preliminary relief, such as a preliminary injunction or a temporary restraining order, “is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered.” *Monumental Task Comm., Inc. v. Foxx*, 157 F. Supp. 3d 573, 582–83 (E.D. La. 2016), *aff’d sub nom. Monumental Task Comm., Inc. v. Chao*, 678 F. App’x 250 (5th Cir. 2017)

(quotations omitted). The Fifth Circuit requires only a “substantial threat” of irreparable injury, *DSC Commc’ns Corp. v. DGI Techs., Inc.*, 81 F.3d 597, 600 (5th Cir. 1996). It is well-settled that an injury is irreparable “if it cannot be undone through monetary remedies.” *Interox Am. v. PPG Indus., Inc.*, 736 F.2d 194, 202 (5th Cir. 1984); *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013) (defining irreparable injury as “harm for which there is no adequate remedy at law”).

Absent a TRO, Britania will suffer irreparable harm of the sort that cannot be remedied at law. First, as this Court has acknowledged, “the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm.” *Kostak*, 2025 WL 2472136, at 3.

Second, there is a “substantial threat,” *DSC Commc’ns Corp.*, 81 F.3d at 600, that she will be unlawfully removed again. Indeed, the government has already shown it is possible they will unlawfully remove her to Mexico if she remains in their custody— as they just did exactly that. *See* Ex. C. The fact that her removal was “inadvertent” renders the threat even more substantial; if nothing prevented Britania’s removal to Mexico the first time—not even a valid IJ order prohibiting it—no amount of assurances from the government will satisfactorily demonstrate it will not happen again. *See* Ex. C. Britania won CAT on the basis it was more likely than not that she would be tortured or killed in Mexico. *See* 8 C.F.R. §§ 1208.16(c)(3), 1208.17. Being removed to the very country from which she won such protection is *per se* irreparable harm. *Sagastizado v. Noem*, No. 5:25-CV-00104, 2025 WL 2957002 at \*14 (S.D. Tex. Oct. 2, 2025) (“Courts have agreed that removal to a country in which an individual faces persecution constitutes irreparable harm” and collecting cases). “[I]nadvertent” removal cannot be tolerated, and absolutely cannot be tolerated a second time.

Third, for Britania, the risks to her health from ongoing detention are acute. The psychiatric professional who examined Britania in December 2024 clearly stated that Britania was already suffering from suicidality, and that her symptoms stood to worsen in an all-male facility, where she is being returned today. Dkt. 1-2, ¶¶ 18–23. The psychiatric professional who issued that report did not even contemplate the possibility that Respondents would illegally remove Britania to Mexico, and how that may exacerbate her condition. The severity of Britania’s mental decompensation—especially considering the potential long-term consequences such as cognitive decline, chronic mental and physical health issues, potential long-term disability, and even suicide—are certainly of the sort that “cannot be undone through monetary remedies.” *Interox Am.*, 736 F.2d at 202.

### **III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST TILTS SHARPLY IN FAVOR OF BRITANIA’S IMMEDIATE RELEASE.**

Where, as here, the government is a party to the case, the third and fourth TRO factors—the balance of the equities and the public interest—merge. *Clarke v. Commodity Futures Trading Comm’n*, 74 F.4th 627, 643 (5th Cir. 2023). Generally, “a movant must establish that her irreparable harm is greater than the hardship the government would incur from a preliminary injunction.” *Purl v. United States Dep’t of Health & Hum. Servs.*, 760 F. Supp. 3d 489, 504 (N.D. Tex. 2024). Courts “may not consider a party’s desire or interest in continuing to engage in an alleged violation of statute.” *Id.* (internal quotations omitted). To be sure, “there is no public interest in the perpetuation of unlawful agency action[.]” *R.J. Reynolds Vapor Co. v. Food & Drug Admin.*, 65 F.4th 182, 195 (5th Cir. 2023). “To the contrary, there is a substantial public interest ‘in having governmental agencies abide by the federal laws that govern their existence and operations.’” *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022) (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)).

Once a person has served their criminal sentence imposed by the state, the state no longer has any interest in incarcerating them. *See Foucha v. Louisiana*, 504 U.S. 71, 72 (1992) (“Although a State may imprison convicted criminals for the purposes of deterrence and retribution,” no such interest exists where a criminal penalty is not being imposed); *Addington v. Texas*, 441 U.S. 418, 427 (1979) (requiring a heightened burden of proof to satisfy due process in cases of confinement). Here, Britania was already stripped of her LPR status and successfully completed a rehabilitative program. Dkt. 1, 3; Ex. A. She has “fully suffered” the punishments associated with her criminal conviction. *See Ex parte Lange*, 85 U.S. Continuing to detain Britania—as a trans woman in a men’s facility, despite no reasonable foreseeability of her removal, and despite the risk she will be suffer permanent health consequences as a result—is paramount to continuing to punish her.<sup>5</sup> Immigration detention is permitted only in certain narrow and nonpunitive circumstances. *Zadvydas*, 533 U.S. at 690. The public has no interest in violating the law by using civil detention for punishment.

Nor can the government state an interest in continuing to detain Britania merely on the basis that she presents a danger to the community. As established *supra*, there is no exception to the constitutional limits on prolonged detention for a Petitioner’s criminal history. *See supra*; *see also Tran*, 515 F.3d at 485 (stating, in a case where Petitioner had killed his wife in front of his daughter, that because “§ 1231(a)(6) does not permit continued detention where removal is not reasonably foreseeable, this Court cannot establish an exception where none exists.”). But even if

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<sup>5</sup> Scholars have suggested that detention which rises to the level of punishment, whether criminal or civil, could give rise to double jeopardy concerns. *See, e.g.,* Aaron S. Haas, *Deportation and Double Jeopardy After Padilla*, 26 Geo. Immigr. L.J. 121, 132 (2011) (Noting that “[e]ven a partially punitive purpose is enough to render the penalty punitive.”); Emma Kaufman, *Segregation by Citizenship*, 132 Harv. L. Rev. 1379, 1383–84 (2019) (Describing how “two discrete deference regimes—one from immigration law, the other prison law—combine to give federal prison officials broad latitude to determine how and where noncitizens can be punished”). Meanwhile, in *Padilla v. Kentucky*, the Supreme Court acknowledged that, while immigration is a civil process, “deportation is nevertheless intimately related to the criminal process.” 559 U.S. 356, 365 (2010).

there were such an exception, Britania presents no such danger. The Nevada Court gave Britania a suspended sentence, allowing her to be free and in society, not confined to a state prison. Dkt. 1, 3; Dkt. 13-1, 13; *see Mahdawi v. Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025). Courts are empowered to draw reasonable inferences based on how the entity “charged with the protection of the public from crime” decided to proceed. *Mahdawi*, 781 F. Supp. By giving Britania a suspended sentence, the Nevada court determined Britania did not present such a danger that she needed to be confined. Britania then completed rehabilitation and has been sober ever since. It does “not benefit the public in any way,” then, to detain Britania when, according to the criminal court responsible for reviewing the specific facts of her underlying criminal case, she “appears not to be either a flight risk or a danger to the community.” *Id.* at 235. Moreover, “[i]ncarceration that serves no legitimate purpose wastes taxpayers’ money.” *J.G. v. Warden, Irwin Cnty. Det. Ctr.*, 501 F. Supp. 3d 1331, 1340 (M.D. Ga. 2020).

Meanwhile, Britania is suffering alarming mental decompensation as a direct result of her unconstitutional confinement. Already deemed incompetent by an IJ in immigration court, she now faces potential long-term consequences of ongoing detention such as further cognitive decline, chronic mental and physical health issues, potential long-term disability, and even suicide. She sits in detention with no end in sight—19 months after being taken into ICE custody, 8 months after winning her case, and 6 failed attempts at removal later. Her continued detention violates federal law and the U.S. Constitution, and is therefore contrary to the public interest. The balance of the equities and public interest, then, militate towards the immediate release of Britania.

#### **IV. THE COURT SHOULD NOT REQUIRE BRITANIA TO PROVIDE SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER.**

Federal Rule of Civil Procedure 65(c) provides that “The court may issue a preliminary injunction or a 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.” However, “Rule 65(c) invests the district court with discretion as to the amount of security required, if any.” *O.E. v. New Orleans Region Transit Auth.*, No. 23-2578, 2024 WL 2208716 (E.D. La. May 16, 2024) (“The amount of security required pursuant to Rule 65(c) is a matter of discretion of the trial court, and a court may elect to require no security at all.”). In this case, Respondents will not incur any costs or damages if the requested relief is granted in this case. Therefore, Petitioner respectfully requests that the Court not require Britania to post a security.

### **CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court grant the motion for a temporary restraining order.

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Respectfully submitted,

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