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13 UNITED STATES DISTRICT COURT
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 Sergio MEDRANO,

16 Petitioner-Plaintiff,

17 v.

18 PAM BONDI, U.S. Attorney General; KRISTI
19 NOEM, Secretary, United States Department of
20 Homeland Security; CALEB VITELLO,
21 Director, U.S. Immigration and Customs
22 Enforcement; MOISES BECERRA, San
23 Francisco Field Office Director, U.S.
24 Immigration and Customs Enforcement; RON
25 MURRAY, Warden of the Mesa Verde ICE
26 Processing Center;

27 Respondents-Defendants.

Case No. 1:25-cv-00166-EPG

MOTION FOR TEMPORARY
RESTRAINING ORDER;

POINTS AND AUTHORITIES IN
SUPPORT OF MOTION

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, as soon as he may be heard, Petitioner will and hereby does move, pursuant to Civil L.R. 231 and Fed. R. Civ. Pro. 65, for a temporary restraining order on Counts One and Two of the Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief, directing that he be released, or in the alternative, that he be provided an individualized bond hearing before a neutral decisionmaker at which the government bears the burden of proof by clear and convincing evidence to establish that his continued detention is justified even after considering alternatives to detention. This motion is supported by the following Memorandum of Points and Authorities, by his Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief, and supporting exhibits, ECF No. 1.

On February 7, 2025, counsel for Petitioner sent an email to Mr. Elliot Wong and Mr. Edward Olsen at the U.S. Attorney's Office for the Eastern District of California to advise of the emergency reasons requiring Petitioner to seek a temporary restraining order. In addition, Petitioner's counsel spoke with Mr. Olsen by phone on February 10, 2025, and e-mailed copies of (1) the Petition for a Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief; (2) Motion for Temporary Restraining Order and supporting exhibits; and (3) [Proposed] Order to Mr. Elliot Wong, Mr. Edward Olsen, and Ms. Michelle Rodriguez on February 10, 2025.

Dated: February 10, 2025

Respectfully Submitted

/s/Johnny Sinodis
Marc Van Der Hout
Johnny Sinodis
Attorneys for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Mr. Medrano is a citizen and native of Mexico who has lived in the United States since the age of four and has been incarcerated without the possibility of a bond hearing by the U.S. Department of Homeland Security (DHS) at the Mesa Verde ICE Processing Center for more than nineteen months—nearly three times as long as the Supreme Court of the United States and the Ninth Circuit Court of Appeals (Ninth Circuit) have deemed to be constitutionally permissible in other civil proceeding contexts. Mr. Medrano is the loving husband of a U.S. citizen and the father of two minor U.S. citizen children, one of whom is autistic. At the very least, he must be provided with a hearing before a neutral decisionmaker where DHS bears the burden to show, by clear and convincing evidence, that his continued custody is justified.

As background, in 2015, DHS initiated removal proceedings against Mr. Medrano following a misdemeanor conviction for vandalism under Cal. Penal Code § 584(b)(2)(a) with a gang enhancement pursuant to Cal. Penal Code § 186.22(D). Since then, he has twice been granted bond by an Immigration Judge (IJ) who determined that he did not present a flight risk or danger to the community.

Most recently, on June 6, 2021, Mr. Medrano pleaded guilty to possession of a dirk or dagger under Cal. Penal Code. § 21310(a)(1). Prior to his sentencing date, the District Attorney (DA) granted him a *Cruz* waiver, *People v. Cruz*, 44 Cal.3d 1247, 1254 (1988), enabling him to be released from custody on an order of own recognizance so that he could prepare his affairs and say goodbye to his daughter, son, and family members. Had the DA believed Mr. Medrano to be a danger or flight risk, they would not have granted him a *Cruz* waiver. Importantly, Mr. Medrano appeared for sentencing and self-surrendered for his prison sentence on the date required and was incarcerated in the Pleasant Valley State Prison until June 22, 2023, at which point the U.S. Immigration and Customs Enforcement (ICE) incarcerated him, without the possibility of a bond hearing, at the Mesa Verde ICE Processing Center.

Since being incarcerated, Mr. Medrano has had several immigration hearings, including

1 his final Individual Calendar Hearing on January 22, 2024. At that time, the Immigration Judge
2 (IJ) denied his application for deferral of removal under the Convention Against Torture (CAT)
3 and ordered him removed to Mexico, even though there is overwhelming evidence that Mr.
4 Medrano would be tortured in Mexico at the direction of, or with the consent or acquiescence of,
5 a public official. Mr. Medrano appealed the IJ's decision, and on April 22, 2024, the Board of
6 Immigration Appeals (BIA) affirmed the IJ's ruling.

7 Mr. Medrano thereafter filed a petition for review with the Ninth Circuit Court of Appeals
8 on June 3, 2024. The Ninth Circuit promptly granted him a stay of removal, which remains in
9 effect, over the government's objection. Mr. Medrano also successfully defended a motion for
10 summary judgment on his petition for review on November 12, 2024. At present, Mr. Medrano's
11 briefing will not close until mid-March 2025, at the earliest, at which point it will likely take
12 months for a final decision to be rendered.

13 Mr. Medrano faces the prospect of a lengthy detention as he fights for his right to remain
14 in the United States, a country where he has resided for over twenty-five years. Absent intervention
15 from this Court, he will not be provided a bond hearing. Due process is not satisfied with such
16 arbitrary detention; it demands more. Mr. Medrano must be immediately released or granted a
17 bond hearing before a neutral decisionmaker at which the government must prove that his
18 incarceration is justified by clear and convincing evidence.

19 **STATEMENT OF FACTS**

20 Mr. Medrano is a native of Mexico who was born on October 8, 1994. *See* ECF 1-1,
21 Declaration of Johnny Sinodis (Sinodis Decl.) at Exhibit (Exh.) A. He was brought to the United
22 States in or around 1999, when he was four years old. Mr. Medrano's son, daughter, and wife are
23 all U.S. citizens. *Id.* at Exhs. A, C-E. Prior to his current detention, Mr. Medrano lived in a home
24 in Santa Barbara, California, with his sister. He provided regular care to his U.S. citizen son,
25 supporting him both financially and emotionally. He was employed at an animal feed warehouse,
26 where he managed inventory, orders, and deliveries. *Id.* at Exh. B.

27 Mr. Medrano grew up in a neighborhood dominated by gang activity. *Id.* At a young age,
28 he was diagnosed with ADHD but could not continue taking his medications due to their high

1 cost. *Id.* His family simply could not afford to provide him with the treatment that he needed. *Id.*
2 Mr. Medrano struggled in school and had great difficulty exercising sound decision-making and
3 judgment.

4 To make matters worse, because of the overwhelming presence of gang members and
5 gang activity in his neighborhood, police identified Mr. Medrano as an affiliated gang member,
6 years before he ever actually was. He was frequently targeted for questioning and searches
7 which, as a result, led to several arrests and minor infractions that did not carry any immigration
8 consequences. *Id.* These include two arrests for riding his bicycle on the sidewalk and one for
9 riding it without a light. *Id.*

10 On October 23, 2014, when he was twenty years old, Mr. Medrano was arrested for
11 vandalism. Several months later, on February 9, 2015, he pleaded guilty to misdemeanor
12 vandalism under PC § 584(b)(2)(a) with a gang enhancement under PC § 186.22(D). He was
13 sentenced to 120 days in jail, three years of probation, and \$300 in restitution.

14 On March 3, 2015, ICE served Mr. Medrano with a Notice to Appear, alleging that he
15 was removable as a noncitizen present in the United States who had not been admitted or paroled
16 pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* at Exh. G.

17 On April 23, 2015, an IJ granted Mr. Medrano bond in the amount of \$10,000, which he
18 paid. Two years later, on June 27, 2017, ICE detained Mr. Medrano for a second time and
19 cancelled his bond the following day. Shortly thereafter, on August 1, 2017, an IJ again ordered
20 Mr. Medrano to be released on a bond in the amount of \$12,500.

21 Several years later, on April 5, 2019, Mr. Medrano pleaded guilty to assault with a deadly
22 weapon in violation of Cal. Penal Code § 245(a)(1) and admitted as true a gang enhancement
23 under PC § 186.22. *Id.* at M. He received credit for time served and was placed on probation.

24 On June 4, 2021, Mr. Medrano pleaded guilty to carrying a dirk or dagger in violation of
25 PC § 21310. *Id.* at N. Following his change of plea hearing, the District Attorney granted him a
26 *Cruz* waiver and released him on an order of own recognizance so that he could say goodbye to
27 his daughter, son, and family members. If the District Attorney believed that Mr. Medrano was a
28 danger or flight risk, they would not have exercised their discretion to grant a *Cruz* waiver.

1 Several weeks later, on July 30, 2021, Mr. Medrano appeared before the criminal court judge for
2 sentencing and was order to serve two years in prison for violating PC § 245(a)(1), two years in
3 prison for violating PC § 21310 (to run concurrent with his aggravated assault conviction), and
4 five years for the gang enhancement. *Id.* In total, Mr. Medrano served two years in custody and
5 was released early from prison on June 22, 2023.

6 During his prison sentence, Mr. Medrano left his gang and publicly renounced gang life.
7 He made this decision despite the great danger that it carried. Prison officials thereafter placed
8 him into segregated housing in recognition of the fact that he could be killed for walking away
9 from the gang, especially because Mr. Medrano has gang tattoos in prominent locations all over
10 his body.

11 On June 22, 2023, ICE incarcerated Mr. Medrano upon his release from prison. *See*
12 Declaration of Johnny Sinodis at Exh. G. He has been subjected to mandatory incarceration
13 without the possibility of a bond hearing since that time due to his PC § 245(a)(1) conviction.
14 *Safaryan v. Barr*, 975 F.3d 976 (9th Cir. 2020) (finding PC § 245(a)(1) to be a CIMT).

15 Importantly, Mr. Medrano explains that his daughter's birth served as a defining moment,
16 convincing him that he needed to leave gang life and become more devout in his spirituality, two
17 goals that he has since achieved. *Id.* at Exh. B. If released from custody, Mr. Medrano intends to
18 become a parishioner at his cousin's Catholic church in Santa Barbara.

19 Furthermore, prior to his incarceration in 2021, Mr. Medrano had participated in an
20 outpatient recovery program called Project Recovery, a program to which he intends to return
21 upon his release. *Id.* He regularly attended meetings and was tested to confirm that he was
22 maintaining his sobriety, his prior alcohol use a result of being introduced to alcohol in his home
23 as a child by his father. Mr. Medrano was also actively pursuing his secondary education, which
24 was interrupted by his detention during COVID-19 lockdowns. *Id.* Mr. Medrano intends to return
25 to this upon his release as well.

26 Since being detained by ICE on June 22, 2023, Mr. Medrano had a number of hearings
27 before the Adelanto Immigration Court, culminating with his final Individual Calendar Hearing
28 on January 22, 2024.

1 While in removal proceedings, Mr. Medrano sought protection under the Convention
2 Against Torture (CAT) given the exceedingly high likelihood that he would be subjected to
3 torture at the direction of, or with the consent or acquiescence of, a public official in Mexico due
4 to his prior gang affiliation and gang tattoos that are readily apparent in prominent locations on
5 his body. Mr. Medrano further testified about how his mother was kidnapped and ransomed for
6 money in Mexico, and that his cousin was also murdered by a Mexican cartel.

7 On January 22, 2024, despite finding that Mr. Medrano provided credible testimony, and
8 even though a country conditions expert concluded that there is a clear probability that Mr.
9 Medrano would be tortured in Mexico, the IJ issued a decision finding Mr. Medrano had not met
10 his burden to obtain deferral of removal under the CAT and ordered him removed to Mexico.
11 Sinodis Decl. at Exh. J. On February 3, 2024, Mr. Medrano appealed the IJ's decision to the
12 BIA, which affirmed the IJ's decision and dismissed his appeal on April 22, 2024. *Id.*

13 On June 3, 2024, Mr. Medrano filed his pending petition for review with the Ninth
14 Circuit. He was issued a stay of removal over the government's opposition which remains in
15 effect. *See Medrano v. Garland*, Case No. 24-3474 at Dkt. 2. On July 11, 2024, the government
16 filed a Motion for Summary Disposition, which Mr. Medrano opposed. *Id.* at Dkts. 9, 13, 16. On
17 November 12, 2024, the Ninth Circuit denied the government's Motion for Summary
18 Disposition. *Id.* at Dkt. 17.

19 Mr. Medrano filed his Opening Brief with the Ninth Circuit on January 22, 2025. The
20 government's Answering Brief is due on February 21, 2025. Mr. Medrano's Reply Brief is due
21 on March 14, 2025.

22 As stated above, despite being incarcerated by ICE for more than nineteen months, Mr.
23 Medrano has yet to be provided with a constitutionally compliant bond hearing where the
24 government must justify his detention by clear and convincing evidence. Nevertheless, Mr.
25 Medrano has utilized his time at the Mesa Verde ICE Processing Center to better himself and to
26 prepare himself to reintegrate into society once released. On a daily basis, in addition to
27 attending church services, he prays, meditates, and reads the Bible. Sinodis Decl. at Exh. B.
28 Every week, he participates in "CRC," a substance use program, and Alcoholics Anonymous. *Id.*

1 He has also worked as a porter, cleaning the detention facility and ensuring that his time is well
2 utilized to benefit those around him. *Id.*; *see also id.* at Exh. K.

3 Mr. Medrano's letters of support further evidence that he strives to be a positive role
4 model for others at Golden State Annex while also providing assistance to those in need,
5 including by helping "monolingual Spanish speakers and illiterate individuals in his dorm" to
6 "sign up for consultations and access legal services[,] fill out form for applications for relief[,]
7 helping them enroll in the facility's religious services and the facility's 'CRC' program, which
8 provides rehabilitative classes[,]interpreting letters from the court and lawyers[,] and assisting
9 individuals with gathering information and evidence relative to their cases." *Id.* at Exh. M. Given
10 his significant transformation over the last four years, community members "wholeheartedly
11 believe [he] will continue to be a positive influence and a productive member of society" who
12 "will work diligently to support his family[.]" *Id.*

13 LEGAL BACKGROUND

14 The statute at 8 U.S.C. § 1226 sets out a framework for the detention and release of
15 noncitizens during their removal proceedings. Section 1226(a) creates the "default rule."
16 *Jennings v. Rodriguez*, 138 S. Ct. 830, 837 (2018) ("*Rodriguez IV*"). The government may arrest
17 and detain a noncitizen "pending a decision on whether the [noncitizen] is to be removed from
18 the United States" and, "[e]xcept as provided in subsection (c) [of Section 1226] . . . may
19 continue to detain" or "may release" the noncitizen pending removal proceedings. 8 U.S.C. §
20 1226(a). Section 1226(c) creates a narrow exception to the default rule of bond eligibility.
21 Paragraph (1) of Section 1226(c) provides that the government "shall take into custody any
22 [noncitizen] who" is removable on certain criminal and national security grounds, "when the
23 [noncitizen] is released" from criminal custody. 8 U.S.C. § 1226(c)(1). Paragraph (2) of Section
24 1226(c) provides that the government "may release a[] [noncitizen] described in paragraph (1)
25 only" in rare circumstances. Thus, Section 1226(c) subjects certain noncitizens to mandatory
26 detention throughout the individual's proceedings before the Immigration Judge and, at least,
27 any appeal to the Board of Immigration Appeals and the Circuit Courts of Appeals without the
28 individualized bond hearing contemplated by Section 1226(a). That whole process can often take

many years.

LEGAL STANDARD

Mr. Medrano is entitled to a temporary restraining order if he establishes that he is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if Mr. Medrano does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Medrano overwhelmingly satisfies both standards.

Argument

I. MR. MEDRANO IS LIKELY TO SUCCEED ON HIS CLAIM THAT HE IS CONSTITUTIONALLY ENTITLED TO A BOND HEARING.

A. Mr. Medrano is Constitutionally Entitled to a Bond Hearing.

The Supreme Court has expressly left open the possibility of as-applied constitutional challenges to mandatory immigration detention under Section 1226(c). *Nielsen v. Preap*, 586 U.S. 392, 972 (2019) (“*Preap*”) (“Our decision today on the meaning of [Section 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.”); *see also Lopez v. Garland*, 631 F. Supp. 3d 870, 884 (E.D. Cal. 2022); *Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048 (E.D. Cal. Sept. 8, 2023); *Sho v. Current or Acting Field Off. Dir.*, No. 1:21-CV-01812 TLN AC, 2023 WL 4014649, at *1 (E.D. Cal. June 15, 2023), *report and recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21, 2023). Mr. Medrano’s case calls on this Court to hold that applying Section 1226(c) to bar him from receiving a bond hearing is

1 unconstitutional because his detention has become prolonged, his removal is not foreseeable, and
2 he does not pose a danger to the community or a flight risk.

3 “Freedom from imprisonment—from government custody, detention, or other forms of
4 physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*
5 *v. Davis*, 533 U.S. 678, 690 (2001). Due process requires “adequate procedural protections” to
6 ensure that the government’s asserted justification for physical confinement “outweighs the
7 individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at 690 (internal
8 quotation marks omitted).

9 The Supreme Court has long held that civil detention must not be punitive or arbitrary,
10 and generally must rest on an individualized determination of the necessity for detention
11 accompanied by fair procedural safeguards. For example, in the criminal pretrial setting, the
12 Court has upheld the denial of bail only where Congress provided stringent procedural
13 safeguards, including a requirement that the government demonstrate probable cause to believe
14 the detainee has committed the charged crime and “a full-blown adversary hearing” on
15 dangerousness, at which the government bears the burden of proof by clear and convincing
16 evidence that the individual is a danger to the community. *United States v. Salerno*, 481 U.S.
17 739, 750 (1987).

18 The Court has similarly upheld preventive detention pending a juvenile delinquency
19 determination only where the government proves a risk of future dangerousness in a fair
20 adversarial hearing with notice and counsel. *Schall v. Martin*, 467 U.S. 253, 277, 280-81 (1984).
21 Civil commitment is constitutional only when there are “proper procedures and evidentiary
22 standards,” including individualized findings of dangerousness. *Kansas v. Hendricks*, 521 U.S.
23 346, 357-58 (1997); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992) (noting individual’s
24 entitlement to “constitutionally adequate procedures to establish the grounds for his
25 confinement”).

26 In the immigration setting, civil detention is justified only where it serves its purpose of
27 effectuating removal or protecting against danger during the removal process, and where it is
28 accompanied by adequate procedural safeguards. *Zadvydas*, 533 U.S. at 690-91. In *Zadvydas*, the

1 Court interpreted the statute governing detention after a final order of removal to require the
2 release of a noncitizen whose removal is not “reasonably foreseeable.” *Id.* at 699-701. In doing
3 so, the Court reaffirmed that, as with other types of civil detention, immigration detention can
4 only be imposed with strong procedural safeguards to ensure that it serves a legitimate purpose.
5 *See, e.g., id.* at 691-92 (noting that preventive detention based on dangerousness is permissible
6 “only when limited to specially dangerous individuals and subject to strong procedural
7 protections,” and administrative process available to noncitizens with final orders of removal
8 was inadequate).

9 The Supreme Court’s decision in *Demore v. Kim* in no way sanctions Mr. Medrano’s
10 continued mandatory detention without the possibility of a bond hearing before a neutral
11 decisionmaker. 538 U.S. 510 (2003) (“*Kim*”). *Kim* represents a narrow exception to the general
12 rule that civil detention must be accompanied by an individualized hearing. In *Kim*, the Court
13 upheld Section 1226(c) against a *facial* challenge to the statute. *Id.* at 513-14; *see also* Brief for
14 Petitioner at 4, *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), 2002 WL 31016560;
15 *Salerno*, 481 U.S. at 745 (explaining that a facial challenge is “the most difficult challenge to
16 mount successfully, since the challenger must establish that no set of circumstances exists under
17 which the [statute] would be valid”).

18 The *Kim* Court pointed to evidence that deportable noncitizens with criminal
19 convictions “often committed more crimes before being removed” and frequently “absconded
20 prior to the completion of [] removal proceedings.” *Id.* at 518-20. It held, based on that factual
21 record, that “Congress, justifiably concerned that deportable criminal [noncitizens] who are not
22 detained continue to engage in crime and fail to appear for their removal hearings in large
23 numbers, may require that [such noncitizens] be detained for the brief period necessary for
24 their removal proceedings.” *Id.* at 513; *see also id.* at 526 (noting the “narrow” nature of the
25 mandatory detention statute).

26 Because the petitioner in *Kim* brought a facial challenge, the Court had no occasion to
27 address the constitutionality of the statute as applied to a noncitizen detained by ICE for as long
28 as the nineteen months that Mr. Medrano has been in this case. *See id.* at 529 (contemplating

1 detention times of one month on average and five months in a minority of cases). And the Court
2 in *Preap* made clear that as-applied constitutional challenges could be brought, notwithstanding
3 *Kim*. See *Preap*, 139 S. Ct. at 972.

4 Examined against the Supreme Court's civil detention jurisprudence, Mr. Medrano's
5 detention without *any* hearing clearly violates due process. There is no basis for an irrebuttable
6 presumption, approved in extremely narrow circumstances in *Kim*, that he will commit criminal
7 offenses or abscond if released on bond pending removal proceedings. Mr. Medrano is unlikely
8 to be a flight risk nor a danger to the community on account of his desire to provide and care for
9 his family – including his U.S. citizen son who is autistic, his daughter who is only four years
10 old, and his U.S. citizen wife – as well as his religious awakening. Furthermore, Mr. Medrano
11 has now left gang life for good, a decision that required him to be placed in administrative
12 segregation for his own protection. Sinodis Decl. at Exh. B. In this case, mandatory detention
13 bears no relationship to the government's interest in preventing danger and flight risk,
14 particularly where Mr. Medrano has been detained for nineteen months without even the
15 possibility of a bond hearing that complies with fundamental notions of due process. As it
16 stands, Mr. Medrano faces the prospect of incarceration for many additional months or years
17 based on past actions that he has learned from and vows never to repeat.

18 **B. The Balance of Factors Under *Mathews v. Eldridge* Confirms Mr. Medrano's**
19 **Entitlement to a Bond Hearing.**

20 Mr. Medrano's constitutional entitlement to a bond hearing is also confirmed by the
21 balance of factors under *Mathews v. Eldridge*, 424 U.S. 319 (1976), which courts apply to
22 determine whether the procedures followed by the government in any particular case are
23 constitutionally sufficient. Under *Mathews*, the "specific dictates of due process generally
24 requires consideration of three distinct factors: First, the private interest that will be affected by
25 the official action; second, the risk of an erroneous deprivation of such interest through the
26 procedures used, and the probable value, if any, of additional or substitute procedural safeguards;
27 and finally, the Government's interest, including the function involved and the fiscal and
28 administrative burdens that the additional or substitute procedural requirements would entail."

1 *Mathews*, 424 U.S. at 335. Here, the *Mathews* factors unquestionably weigh in favor of Mr.
2 Medrano and require the government to provide him with a bond hearing before a neutral
3 decisionmaker where DHS bears the burden to establish, by clear and convincing evidence, that
4 his continued incarceration is necessary.

5 First, the private interest at stake in this case is among the most profound individual
6 interests recognized by our legal system: Mr. Medrano's physical freedom. *See Zadvydas*, 533
7 U.S. at 690; *see also Cooper v. Oklahoma*, 517 U.S. 348 (1996); *Foucha v. Louisiana*, 504 U.S.
8 71, 80 (1992). The Ninth Circuit has characterized the right at stake when a noncitizen is held in
9 immigration detention as "fundamental." *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir.
10 2017); *see also Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (noting that the Supreme
11 Court "repeatedly has recognized that civil commitment for *any* purpose constitutes a significant
12 deprivation of liberty") (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979)). Mr. Medrano,
13 who is being held in "incarceration-like conditions," has an overwhelming interest at stake in this
14 case, regardless of the length of his immigration detention, because "any length of detention
15 implicates the same" fundamental rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020
16 WL 7626414, at *6 (N.D. Cal. Dec. 22, 2020). This interest must be weighed heavily when
17 determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-36.¹

18 Second, providing a bond hearing would decrease the risk of Mr. Medrano being
19 erroneously deprived of his liberty. The only process currently available to Mr. Medrano is the
20 ability to submit a release request to ICE pursuant to ICE Policy Memorandum 11090.1 to—the
21 same agency that has arrested and detained him without the possibility of a bond hearing. As the
22 Ninth Circuit has recognized, the risk of erroneous deprivation is high where custody
23 determinations are not made by a neutral arbiter. ICE's own custody review procedures are not
24 constitutionally adequate because "they do not provide an in-person hearing, they place the
25 burden on the [noncitizen] rather than the government and they do not provide for a decision by a

26
27 ¹ In addition, Mr. Medrano has other protected interests that are implicated as well by ICE's
28 mandatory detention as he has lived in the United States since the age of four and developed
significant employment, community, and family ties, including his U.S. wife and two minor U.S.
citizen children.

1 neutral arbiter such as an immigration judge.” *See Diouf v. Napolitano*, 634 F.3d 1081, 1091-92
2 (9th Cir. 2011) (explaining that ICE’s custody reviews in another context are not constitutionally
3 adequate). *See also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*
4 *other grounds by Fernandez-Vargas v. Gonzalez*, 548 U.S. 30 (2006) (“A neutral judge is one of
5 the most basic due process protections.”).

6 Here, the value of a bond hearing is high because Mr. Medrano has strong arguments that
7 he should receive bond. These include his family commitments, including his autistic son, infant
8 daughter, marriage to a U.S. citizen, religious devotion, and his commitment to leading a law-
9 abiding life. Furthermore, Mr. Medrano has left the gang that he was a part of; he was even
10 moved into a segregation unit for his own safety once he denounced gang activity. In turn, “[t]he
11 safeguard [Mr. Medrano] proposes—a decision from a neutral adjudicator— [therefore] could
12 provide substantial value.” *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *cf.*
13 *Rajnish*, 2020 WL 7626414, at *8 (finding that impermissibly holding a noncitizen to the burden
14 of proving to be neither a danger nor a flight risk was prejudicial as “he would plausibly would
15 have been granted a bond if the burden had been on the government”).

16 Third, the government’s interest here is very low, because the interest at stake “is not the
17 continued detention of Petitioner, but the government’s ability to detain him *without a bond*
18 *hearing.*” *Lopez v. Garland*, 631 F.Supp.2d 870, 882 (E.D. Cal. 2022) (quoting *Zagal-Alcaraz v.*
19 *ICE Field Office*, No. 3:19-cv-01358-SB, 2020 WL 1862254 (D. Or. 2020) (emphasis in
20 original); *cf. Zerezghi v. USCIS*, 955 F.3d 802, 810 (9th Cir. 2020) (explaining that while the
21 government’s general interest in immigration enforcement is substantial, the third *Mathews*
22 factor focuses on its specific interest in the procedures it is using for enforcement rather than on
23 the government’s general interest). “[T]he government has no legitimate interest in detaining
24 individuals who have been determined not to be a danger to the community and whose
25 appearance at future immigration proceedings can be reasonably ensured by a lesser bond or
26 alternative conditions.” *Hernandez*, 872 F.3d at 994.

27 Moreover, the bond hearing Mr. Medrano seeks is a routine process that the government
28 provides on a daily basis and would impose only a *de minimis* burden on the government. The

1 government has conceded as much in similar cases. *See id.*; *De Paz Sales v. Barr*, No. 19-cv-
2 04148-KAW, 2019 WL 4751894, at *7 (N.D. Cal. Sept. 30, 2019) (“[T]he Government does not
3 argue there are any costs to providing a bond hearing.”). Even assuming there are some
4 fractional costs borne by the government, they are “easily outweighed by the reduction in the risk
5 of erroneous deprivation of liberty that would result from the additional safeguard” of a bond
6 hearing. *Hernandez*, 872 F.3d at 994.

7 **C. Burden and Standard of Proof at Bond Hearing.**

8 If this Court orders a bond hearing for Mr. Medrano, to justify his continued detention,
9 the government must bear the burden at that hearing of proving by clear and convincing evidence
10 that he poses a danger or flight risk.

11 In *Singh v. Holder*, the Ninth Circuit held that the government must justify detention by
12 clear and convincing evidence at a bond hearing for a noncitizen subject to prolonged detention.
13 638 F.3d at 1200. As the Ninth Circuit explained, the Supreme Court has “repeatedly reaffirmed”
14 the principle that due process requires a “heightened burden of proof” on the government in civil
15 proceedings that implicate individual interests that are “particularly important and more
16 substantial than mere loss of money.” *Id.* at 1204 (quoting *Cooper*, 517 U.S. at 363). Where the
17 “possible injury to the individual” is so significant, the individual should not “share equally with
18 society the risk of error.” *Id.* at 1203-04 (quoting *Addington*, 441 U.S. at 427).

19 The “consensus view” now emerging among district courts is that the government “bears
20 the burden of proving that [] detention is justified” at bond hearings at the outset of detention.
21 *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (quoting *Darko v.*
22 *Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018)) (collecting cases). And the “overwhelming
23 majority of district courts” have held that the government must justify detention by “clear and
24 convincing evidence” at such hearings. *Dubon Miranda v. Barr*, 463 F. Supp. 3d 632, 646 (D.
25 Md. 2020) (citation omitted); *see also Rajnish*, 2020 WL 7626414, at *8 (holding that noncitizen
26 “was constitutionally entitled to a bond determination at which the burden was on the
27 government to prove that he was a flight risk or danger to the community by clear and
28 convincing evidence”); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1057 (N.D. Cal. Apr. 14,

1 2021) (same); *Manpreet Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019) (same);
2 *Vargas v. Wolf*, No. 2:19-CV-02135-KJD-DJA, 2020 WL 1929842, at *8 (D. Nev. Apr. 21,
3 2020) (same).

4 **II. MR. MEDRANO FACES IRREPARABLE HARM ABSENT RELIEF FROM**
5 **THE COURT.**

6 Mr. Medrano will suffer irreparable harm absent a temporary restraining order enjoining
7 the government from continuing to detain him without a bond hearing. “It is well established that
8 the deprivation of constitutional rights unquestionably constitutes irreparable injury.”
9 *Hernandez*, 872 F.3d at 995-96 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
10 2012)) (internal quotation marks omitted). Thus, a finding that Mr. Medrano is likely to succeed
11 on the merits of his due process claim also means that he has “carried [his] burden as to
12 irreparable harm.” *Id.* at 995. Moreover, the Ninth Circuit has recognized the “irreparable harms
13 imposed on *anyone* subject to immigration detention.” *Id.* (emphasis added).

14 The record in this case illustrates the numerous irreparable harms that Mr. Medrano, in
15 particular, will experience if ICE continues to detain him without the possibility of bond. Mr.
16 Medrano cannot work, rendering him unable to support his children, wife, and other family
17 members financially. He is only able to speak with his children weekly and so is unable to
18 support his family, and especially his minor U.S. citizen children, emotionally. Mr. Medrano is
19 distraught on both accounts and is both missing crucial moments in his children's growth and his
20 marriage is suffering.

21 **III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST SHARPLY**
22 **FAVOR MR. MEDRANO.**

23 The balance of equities and public interest tip sharply in Mr. Medrano's favor. On one
24 side of the scale, Mr. Medrano faces deprivation of his physical liberty and the prospect of
25 missing critical developmental milestones in the lives of his minor children, which is causing his
26 family to suffer immensely in his absence. *See Hernandez*, 872 F.3d at 996 (explaining that
27 indirect hardship to family can be considered in assessing public interest).
28

On the other side, any harm to the government should the temporary restraining order be granted is negligible at best. As an initial matter, because the government's detention of Mr. Medrano without a bond hearing is unconstitutional, it "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). The fiscal costs associated with providing a bond hearing to Mr. Medrano are also *de minimis*. See, e.g., *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019) (noting "minimal cost of conducting a bond hearing"). Even so, when faced with "a conflict between financial concerns and preventable human suffering," the Ninth Circuit has "little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Finally, the temporary restraining order sought here is in the public interest. The public has an interest in upholding constitutional rights. See *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). The public is also served by ensuring that the government does not expend its resources to detain individuals unnecessarily, and without adequate process. See *Hernandez*, 872 F.3d at 996 (noting "staggering" costs of immigration detention); *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

SECURITY

"Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely exercise this discretion to require no security in cases brought by incarcerated people. See, e.g., *Jorge M.F.*, 2021 WL 783561, at * 4 (detained noncitizen); *Vargas v. Jennings*, 2020 WL 5074312, at *5 (N.D. Cal. Aug. 23, 2021) (detained noncitizen); *Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 385 n.42 (C.D. Cal. 1982) (detained

1 noncitizens). This Court should do the same here.

2 CONCLUSION

3 For the reasons set forth above, the Court should grant a temporary restraining order and
4 either conduct a bond hearing and decide whether Petitioner should be released and under what
5 amount of bond, if any, if so, or order Respondents-Defendants to, within ten days, provide Mr.
6 Medrano with a bond hearing before a neutral decisionmaker at which the government bears the
7 burden by clear and convincing evidence to show that his continued incarceration is justified
8 even after considering alternatives to detention.

9
10 Dated: February 10, 2025

Respectfully Submitted

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14 Attorneys for Petitioners
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