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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Jorge Willy VALERA CHUQUILLANQUI,

Petitioner,

v.

POLLY KAISER, Acting Field Office Director of the
San Francisco Immigration and Customs
Enforcement Office; TODD LYONS, Acting Director
of United States Immigration and Customs
Enforcement; KRISTI NOEM, Secretary of the
United States Department of Homeland Security,
PAMELA BONDI, Attorney General of the United
States, acting in their official capacities,

Respondents.

Case No. Case 3:25-cv-06320

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONER'S EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER**

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INTRODUCTION

Petitioner Jorge Willy Valera Chuquillanqui went to the San Francisco Immigration Court on July 25, 2025, expecting a routine master calendar hearing in which he would discuss his case with the immigration judge and schedule further proceedings on her pending asylum application. So he was surprised when, during the hearing, the Department of Homeland Security (DHS) lawyer orally moved to dismiss his case altogether. The Immigration Judge did not grant the motion to dismiss. Instead, the judge gave Petitioner time to respond and set a further hearing for October 17, 2025. Minutes after Petitioner exited the courtroom, a group of DHS agents arrested him before he could leave the courthouse.

Nothing about Petitioner's immigration case justified this arrest and detention. When Petitioner first entered the country in December 2022, federal immigration officers released him within days on his own recognizance and with no ankle shackle or intrusive supervision conditions. The government thus necessarily determined that he did not pose a flight risk or danger to the community—let alone one warranting detention. Since then, Petitioner's exemplary conduct has only confirmed the government's prediction. He attended every court hearing and check-in. He filed an application for asylum, withholding of removal, and protection under the Convention Against Torture. He obtained employment. He has never been arrested and has no criminal history—anywhere in the world.

None of this mattered to the government. Rather than determining that Petitioner posed a flight risk or danger to the community, federal immigration agents arrested him pursuant to a new, sweeping, and unlawful policy targeting people for arrest at immigration courthouses for the purpose of placing them in expedited-removal proceedings. This enforcement campaign is specifically intended to increase ICE arrest numbers to satisfy internal agency quotas.

Petitioner's summary arrest and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without making any affirmative showing of changed circumstances, the

1 government violated Petitioner's procedural due process rights. At the very least, he was
2 constitutionally entitled to a hearing before a neutral decisionmaker at which the government
3 should have justified his detention.

4 As a result of his arrest and detention, Petitioner is suffering irreparable and ongoing harm.
5 The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable
6 injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from
7 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
8 the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678,
9 690 (2001). Petitioner also faces numerous additional irreparable harms due to his detention,
10 including suffering through intense pain caused by aggravation of a prior medical condition. He
11 was also held for days in inhumane conditions at 630 Sansome.

12 In light of this irreparable harm, and because he is likely to succeed on the merits of his
13 due process claims, Petitioner respectfully requests that this Court issue a temporary restraining
14 order ("TRO") immediately releasing from him custody and enjoining the government from re-
15 arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision
16 maker. Confronted with substantially identical facts and legal issues, two courts in this circuit
17 have recently granted the exact relief Petitioner seeks. *See Garro Pinchi v. Noem*, 2025 WL
18 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __,
19 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D.
20 Cal. July 11, 2025) (granting preliminary injunction). To maintain this Court's jurisdiction, the
21 Court should also prohibit the government from transferring Petitioner out of this District and
22 removing him from the country until these proceedings have concluded.

23 BACKGROUND

24 Petitioner is a 47-year-old man who fled persecution in Peru. Petitioner's Habeas Petition
25 ("Pet.") ¶ 1; He arrived in the United States in December 2022. *Id.* He was briefly detained by
26 federal agents after entering the United States. Pet. ¶ 48. Determining that he was not a flight risk
27 or a danger to the community, the agents released Petitioner on his own recognizance with a notice
28 to appear for removal proceedings in immigration court. *Id.*

1 Petitioner has lived in California for over two years. Pet. ¶ 48. He is close with his sister,
2 Magaly Emperatriz Valera Chuquillanqui, whose daughters lived with Petitioner in San Francisco
3 before their mother joined them in California in 2024. Declaration of Magaly Emperatriz Valera
4 Chuquillanqui (“Valera Chuquillanqui Dec.”) ¶ 4. Ms. Valera Chuquillanqui’s immigration case
5 concluded before Petitioner’s, and she was granted asylum in 2024. *Id.* ¶ 8. From the beginning
6 of her time in the United States, Petitioner supported her and helped her navigate her immigration
7 case. *Id.* He would tell her that she needed to attend her hearing dates and follow the rules of the
8 court. *Id.* She attributes her asylum grant to Jorge’s support and his respect for following the rule
9 of the court, which had given her confidence to attend her hearing. *Id.* Petitioner, himself, went
10 to all of his ICE check-ins, appeared for telephonic ICE check-ins, and complied with all
11 conditions of his release. Pet. ¶ 50.

12 In 2024, Petitioner applied for asylum, withholding of removal, and protection under the
13 Convention Against Torture. Pet. ¶ 49. He subsequently received employment authorization and
14 worked as a cleaner. *Id.* ¶ 50.

15 On July 25, 2025, as the government told him to do, Petitioner went to San Francisco
16 Immigration Court for a routine hearing before Immigration Judge Joseph Park, where the
17 government orally moved to dismiss his case. Declaration of Jordan Weiner (“Weiner Dec.”) ¶
18 12. This was part of the government’s new practice is to seek dismissal in order to initiate fast-
19 track “expedited removal” proceedings—even for people like Petitioner who are statutorily
20 ineligible for them. *See Make the Road N.Y. v. Noem*, No. 1:25-cv-00190-JMC, Plaintiffs’ Mem.
21 in Support of Mot. to Postpone the Date of Agency Action, Dkt. 50-1 at 11 (D.D.C. June 10, 2025)
22 (citing multiple instances in which government sought expedited removal for people who had
23 been present for more than two years). IJ Park did not grant the motion to dismiss. Pet. ¶ 52.
24 Instead, the judge gave Petitioner time to respond and set a further hearing for October 17, 2025
25 at 8:30 AM. *Id.*

26 Minutes after Petitioner exited the courtroom, a group of DHS agents arrested him before
27 he could leave the courthouse. Valera Chuquillanqui Dec. ¶ 10. The agents took Petitioner to the
28 San Francisco ICE office, located on a different floor of the same building, where attorneys from

1 the San Mateo Rapid Response Network met with him shortly after. Declaration of Jessica S.
2 Yamane (“Yamane Dec.”) ¶ 3; Weiner Dec. ¶ 3. Attorney Jessica Yamane was one of the
3 responding attorneys. Dec. ¶ 3. As she met with Petitioner, she witnessed him experience a serious
4 medical event. *Id.* She and her colleague escalated his condition to ICE. *Id.* ¶¶ 4–5. Petitioner was
5 later removed from the building on a stretcher. *Id.* ¶ 6.

6 Ms. Weiner also spoke with Petitioner on the phone on July 28, 2025. Weiner Dec. ¶ 8.
7 Concerned about the severity of his medical condition, she decided to file a habeas petition as
8 soon as possible. *Id.*

9 On July 28, 2025, Law Student UjwalaMurthy, went to meet with Petitioner under the
10 supervision of Ms. Weiner. Declaration of Ujwala Murthy (“Murthy Dec.”) ¶ 3. He said he had
11 been feeling well in the past few days, including the day of his arrest and the days after. *Id.* ¶ 7.
12 He had been having serious pain on the right side of his body and some chest pain. *Id.* He also
13 described how the detainees were only given two cereal bars and a bottom of water for each meal
14 by ICE, forced to sleep on a metal slab, had no shower, and had to use an open toilet with no
15 privacy. *Id.* It was like a high security prison. *Id.* He had not been able to communicate with
16 anyone. *Id.*

17 Ms. Weiner filed the habeas petition on July 28, 2025. ECF No. 1. On July 29, 2025 at
18 2:53 PM, Counsel for Petitioner spoke on the phone to the Civil Chief of the U.S. Attorney’s
19 Office for the Northern District of California. Weiner Dec. ¶ 14. Counsel informed the Civil Chief
20 that the habeas petition had been filed and a Motion for TRO would be forthcoming. *Id.* Counsel
21 provided a copy of the petition by email to the Civil Chief. *Id.*

22 Petitioner’s arrest did not have anything to do with his individual case. Instead, it is part of
23 a new, nationwide DHS strategy of sweeping up people who attend their immigration court
24 hearings, detaining them, and seeking to re-route them to fast-track deportations.¹ Since mid-May,
25 DHS has implemented a coordinated practice of immigration detention to strip people like
26

27 ¹ Joshua Goodman and Gisela Saloman, *ICE Agents Wait in Hallways of Immigration Court as*
28 *Trump Seeks to Deliver on Mass Arrest Pledge*, LA Times, May 22, 2025,
<https://www.latimes.com/world-nation/story/2025-05-22/ice-agents-wait-in-hallways-of-immigration-court-as-trump-seeks-to-deliver-on-mass-arrest-pledge>.

Petitioner of their substantive and procedural rights and pressure them into deportation. DHS is aggressively pursuing this arrest and detention campaign at courthouses throughout the country, including Northern California. At the San Francisco Immigration Court, where Petitioner was arrested, dozens of people have been arrested in the last month after attending their routine immigration hearings.²

This “coordinated operation” is “aimed at dramatically accelerating deportations” by arresting people at the courthouse and placing them into expedited removal.³ The first step of the operation typically takes place inside the immigration court. When people arrive in court for their master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without any notice to the affected individual. Although DHS regulations do not permit such motions to dismiss absent a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. § 239.2(a)(7), (c), DHS attorneys are not conducting any case-specific analysis of changed circumstances before filing these motions to dismiss.

The next step takes place outside the courtroom. ICE officers, in consultation with DHS attorneys and officials, station themselves in courthouse waiting rooms, hallways, and elevator banks. When an individual exits their immigration hearings, ICE officers—typically masked and in plainclothes—immediately arrest the person and detain them. The officers execute these arrests regardless of how the IJ rules on the government’s motion to dismiss. Once the person is detained, DHS attorneys often unilaterally transfer venue to a “detained” immigration court where they renew their motion to dismiss and seek to place individuals in expedited removal. That is what happened

² Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron., June 12, 2025, <https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php>; Margaret Kadifia, *Immigrants Fearful as ICE Nabs at Least 15 in S.F., Including Toddler*, Mission Local, June 5, 2025, <https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/>; Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF Immigration Court*, S.F. Standard, May 27, 2025, <https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/>.

³ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post, May 23, 2025, <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>; see also Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html> (updated June 1, 2025).

1 to Petitioner here. Petitioner went to his routine immigration court hearing and was suddenly
 2 arrested as he exited the courtroom. Valera Chuquillanqui Dec. ¶ 10.

3 Petitioner suffers serious and ongoing harm every day he remains in detention. Prior to his
 4 detention, Petitioner had lost his vision in one eye and was partially paralyzed. Valera
 5 Chuquillanqui Dec. ¶ 7. Now, in detention, he is experiencing intense pain and other symptoms.
 6 Weiner Dec. ¶ 8; Yamane Dec. ¶ 3; Murthy Dec. ¶ 6.

7 ARGUMENT

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

18 I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

19 A. Petitioner’s detention violates substantive due process because he is neither a 20 flight risk nor a danger to the community.

21 The Due Process Clause applies to “all ‘persons’ within the United States, including
 22 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*,
 23 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary
 24 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of
 25 power without any reasonable justification in the service of a legitimate government objective,”
 26 *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from
 27 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
 28 that Clause protects.” *Zadvydas*, 533 U.S. at 690.

1 To comply with substantive due process, the government's deprivation of an individual's
2 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil,
3 not criminal," and "nonpunitive in purpose and effect," must be justified by either
4 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
5 ("[T]he government has no legitimate interest in detaining individuals who have been determined
6 not to be a danger to the community and whose appearance at future immigration proceedings can
7 be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are
8 absent, immigration detention serves no legitimate government purpose and becomes
9 impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*,
10 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests
11 in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL
12 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may
13 "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with
14 a punitive purpose *or* that it lacks any legitimate reason to detain him").

15 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
16 detention, including so-called "mandatory" detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003)
17 (Kennedy, J., concurring) ("Were there to be an unreasonable delay by the INS in pursuing and
18 completing deportation proceedings, it could become necessary then to inquire whether the
19 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to
20 incarcerate for other reasons."); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) ("Our decision today
21 on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional
22 challenges to applications of the statute as we have now read it.").

23 Petitioner, who has no criminal record and who is diligently pursuing his immigration case
24 with the assistance of an attorney, is neither a danger nor a flight risk. Therefore, his detention is
25 both punitive and not justified by a legitimate purpose, violating his substantive due process rights.
26 Indeed, when Respondents chose to release Petitioner from custody in 2022, that decision
27 represented their finding that he was neither dangerous nor a flight risk. *See Saravia v. Sessions*,
28 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d

1 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is
2 not a danger to the community or a flight risk.”). Nothing has transpired since to disturb that finding.

3 *First*, because Petitioner had no criminal history, and has had no intervening criminal
4 history or arrests since his release, there is no credible argument that he is a danger to the
5 community.

6 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
7 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
8 F.3d at 990-91. There is no basis to argue that Petitioner, who was arrested by Respondents *while*
9 *appearing in immigration court* for a master calendar hearing, is a flight risk. Petitioner has
10 complied with all of his Immigration Court and ICE obligations. Pet. ¶ 50. What’s more, he cares
11 deeply about following the rules of the United States and has helped his sister navigate the
12 complicated immigration court process. Valera Chuquillanqui Dec. ¶ 8. Moreover, Petitioner has a
13 viable path toward immigration relief and a pathway to lawful permanent residence, further
14 mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163,
15 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where
16 plaintiffs have bona fide asylum claims and desire to remain in the United States). At the time of
17 his arrest, Petitioner had filed an application for asylum, withholding of removal, and protection
18 under the Convention Against Torture. With the assistance of counsel, he has every intention of
19 continuing to pursue his applications for immigration relief.

20 In sum, Petitioner’s actions since Respondents first released him confirm that he is neither
21 a danger nor flight risk. Indeed, his ongoing compliance and community ties compel the conclusion
22 that he is even *less* of a danger or flight risk than when he was originally released. Accordingly,
23 Petitioner’s ongoing detention is unconstitutional, and substantive due process principles require
24 his immediate release.

25 **B. The government violated procedural due process by depriving Petitioner of the**
26 **opportunity to contest his arrest and detention before a neutral decisionmaker.**

27 Noncitizens living in the United States like Petitioner have a protected liberty interest in
28 their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court

1 “usually has held that the Constitution requires some kind of a hearing *before* the State deprives
2 a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
3 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671, 683 (D.C.
4 Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-
5 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
6 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482
7 (1972) (same, in parole context).

8 Accordingly, the Supreme Court has repeatedly held that individuals released from
9 custody on bond, parole, or other forms of conditional release have a protected interest in their
10 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
11 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
12 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
13 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
14 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
15 963, 970 (N.D. Cal. 2019). Petitioner thus has a protected liberty interest in his freedom from
16 physical custody.

17 Once a petitioner has established a protected liberty interest, as Petitioner has done here,
18 courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See*
19 *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S.
20 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk
21 of erroneous deprivation and probable value of procedural safeguards; and (3) the government’s
22 interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioner and prohibiting
23 his re-detention without a custody hearing at which the government bears the burden of proof.

24 *First*, the private interest affected in this case is profound. When considering this factor,
25 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
26 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
27 here is high. Petitioner, who is experiencing severe pain as a result of a medical condition that
28 was aggravated by his arrest, has been completely deprived of his physical liberty and held in

1 poor conditions. Petitioner’s detention has ripped from him the “free[dom] to be with family and
2 friends and to form the . . . enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.
3 Cutting someone off from the “core values of unqualified liberty”—for Petitioner, who is
4 separated from his family and cannot control his environment, which is necessary for mitigating
5 his pain —creates a “grievous loss.” *Id.* Moreover, because Petitioner faces *civil detention*, “his
6 liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” *See Ortega*, 415
7 F. Supp. 3d at 970. As someone in civil detention, therefore, “it stands to reason that [Petitioner]
8 is entitled to protections at least as great as those afforded to a[n] . . . individual . . . accused but
9 not convicted of a crime.” *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

10 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
11 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
12 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.
13 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*,
14 No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents grabbed
15 Petitioner by surprise as he left his immigration court hearing, detaining him with no notice and
16 no opportunity to contest his re-detention before a neutral arbiter. In such circumstances, when
17 Respondents have provided *no* procedural safeguards, “the probable value of additional
18 procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5. This is
19 especially true here, where there is no change in Petitioner’s circumstances suggesting that
20 Petitioner now poses a flight risk or danger to the community. His re-detention instead appears to
21 be motivated instead by Respondents’ new arrest quotas and practice of leveraging detention to
22 secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality
23 Act, to initiate expedited removal. Pet. ¶¶ 35–47. Neither constitutes a lawful justification to re-
24 detain a person who does not pose a flight risk or danger to the community.

25 Because the private interest in freedom from immigration detention is substantial, due
26 process also requires that in cases like this one, the government bears the burden of proving “by
27 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community.”
28 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775,

1 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing
2 evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025
3 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which
4 government bears burden by clear and convincing evidence).

5 *Third*, the government's interest in detaining Petitioner without first providing notice and
6 submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
7 hearings, which impose a "minimal" cost to the government. *See Doe*, 2025 WL 691664, at *6;
8 *A.E.*, 2025 WL 1424382, at *5. Petitioner has an impeccable record of attending his immigration
9 proceedings; there is no reason to believe that between the date of his release and his custody
10 hearing, his compliance will change. Indeed, courts regularly hold that the government's interest
11 in re-detention without a custody hearing is low when the petitioner "has long complied with his
12 reporting requirements." *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D.
13 Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-
14 deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561,
15 at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition
16 ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-
17 *5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing petitioner who
18 had been detained without process, who had "voluntarily attended his scheduled immigration
19 court proceedings" and "established ties" through his work and volunteering with the church).

20 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without
21 a pre-deprivation hearing in which the government bears the burden of proof violates due process,
22 and grant the emergency relief Petitioner seeks here. *See Garro Pinchi v. Noem*, ___ F. Supp. 3d
23 ___, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her
24 immigration court hearing into preliminary injunction prohibiting the government from re-
25 detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11,
26 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO
27 over one month after petitioner's initial detention); *see also, e.g., Diaz*, 2025 WL 1676854, at *3-
28 *4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025);

1 *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL
 2 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
 3 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

4 In short, Respondents violated Petitioner’s due process rights when they detained him
 5 without notice and without a custody hearing before a neutral arbiter. Here, only an order releasing
 6 Petitioner and enjoining re-detention—unless Respondents provide Petitioner with a custody
 7 hearing where the government bears the burden of proof—would return the parties to the “last
 8 uncontested status which preceded the pending controversy.” *Doe v. Noem*, __ F. Supp. 3d __,
 9 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney*
 10 *Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez*, 2025 WL 1707737, at *4-*5 (ordering
 11 petitioner’s immediate release as remedy for procedural due process violation).

12 * * * * *

13 For the foregoing reasons, Petitioner is likely to succeed on the merits of his claims. But
 14 even if the Court disagrees, he presents at least “serious question[s] going to the merits,” alongside
 15 a “balance of hardships” tipping decidedly in their favor. *All. for the Wild Rockies*, 632 F.3d at
 16 1135. Indeed, the constitutional concerns delineated above are of the weightiest order and beyond
 17 colorable. This Court should therefore enter the requested TRO.

18 **II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE** 19 **INJURY ABSENT A TRO.**

20 Without a temporary restraining order, Petitioner will suffer immense irreparable injury.
 21 Indeed, he faces such injury every day he remains in detention in violation of his Fifth Amendment
 22 rights. “It is well established that the deprivation of constitutional rights ‘unquestionably
 23 constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695
 24 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional right is involved,
 25 most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v.*
 26 *Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks omitted). And the
 27 unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*,
 28 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that they

[we]re likely to be unconstitutionally detained for an indeterminate period of time”); *see also*, e.g., *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual” (cleaned up)).

As a result of his arrest and detention, Petitioner is also suffering additional ongoing irreparable harms. He has been torn away from his family and his community. Pet. ¶ 6. He is also experiencing severe pain, made worse by poor conditions of his confinement. *Id.*

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

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

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

SECURITY

No security is necessary here. Courts “may dispense with the filing of a bond when,” as here, “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond

1 requirement in cases raising constitutional claims, because “to require a bond would have a negative
2 impact on plaintiff’s constitutional rights, as well as the constitutional rights of other members of
3 the public.” *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996).
4 Finally, Plaintiff’s showing of a high likelihood of success on the merits supports the court’s
5 waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l*
6 *Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

7 CONCLUSION

8 For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to restore
9 the *status quo ante* that (1) immediately releases him from Respondents’ custody and enjoins
10 Respondents from re-detaining him absent further order of this Court; (2) in the alternative,
11 immediately releases him from Respondents’ custody and enjoins Respondents from re-detaining
12 him unless they demonstrate at a pre-deprivation bond hearing, by clear and convincing evidence,
13 that Petitioner is a flight risk or danger to the community such that his physical custody is required;
14 and (3) prohibits the government from transferring him out of this District and/or removing him
15 from the country until these habeas proceedings have concluded.

16
17
18
19 Date: July 29, 2025

Respectfully submitted,

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