

LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Maria Elena Ruiz Otero, as next friend on behalf
of Ismael David Caicedo Ruiz,

Petitioner-Plaintiff,

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; and

Pamela BONDI, Attorney General of the United
States, acting in their official capacities;

Respondents-Defendants.

Case No.

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

1 In the interest of expedition and in light of the ongoing irreparable harm to her 20-year-old
 2 son, Petitioner-Plaintiff hereby incorporates and respectfully refers the Court to her verified
 3 Petition-Complaint for a full statement of the facts giving rise to this motion. In sum, this case
 4 presents facts materially similar to recent cases in which courts have provided swift interim
 5 relief: ICE has detained Ismael, not pursuant to any change in circumstances to justify detention
 6 based on flight risk or danger, but rather pursuant to a new, unlawful policy targeting people for
 7 arrest at immigration court for the purpose of placing them in expedited-removal proceedings.
 8 This detention violates Ismael's due process rights and causes him irreparable, ongoing harm.
 9 The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable
 10 injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from
 11 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
 12 the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678,
 13 690 (2001). In addition to physical and psychological trauma, Ismael's detention separates him
 14 from his loved ones, church, and community.

15 Petitioner thus respectfully requests that this Court issue a temporary restraining order (1)
 16 prohibiting the government from transferring or removing Ismael pending these proceedings; and
 17 (2) releasing Ismael from custody and enjoining the government from re-arresting him absent the
 18 opportunity to contest that arrest at a hearing before a neutral decision maker. *Accord Garro*
 19 *Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025); *Singh v. Andrews*, 2025 WL
 20 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction).

21 ARGUMENT

22 To warrant a TRO, a movant must show (1) they are "likely to succeed on the merits,"
 23 (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the
 24 balance of equities tips in [their] favor," and that (4) "an injunction is in the public interest." *All*
 25 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res.*
 26 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); see *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,
 27 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary restraining
 28 order and a preliminary injunction is substantially the same). Even if the movant raises only

1 “serious questions” as to the merits of their claims, the court can grant relief if the balance of
 2 hardships tips “sharply” in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. All factors
 3 here weigh decisively in Ismael’s favor.

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

5 A. Petitioner’s detention violates substantive due process.

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

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

26 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
 27 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
 28

1 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing
2 and completing deportation proceedings, it could become necessary then to inquire whether the
3 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but
4 to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision
5 today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,
6 constitutional challenges to applications of the statute as we have now read it.”).

7 Ismael, who has no criminal record and who is diligently pursuing his immigration case, is
8 neither a danger nor a flight risk. Therefore, his re-detention is not justified by a legitimate purpose.
9 Indeed, Respondents chose to release Ismael from custody in 2023, indicating that they had
10 determined that he was neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp.
11 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th
12 Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a danger
13 to the community or a flight risk.”). Nothing has transpired since to disturb that finding.

14 *First*, because Ismael has had no criminal history, with no intervening criminal history or
15 arrests since her release, there is no credible argument that he is a danger to the community.

16 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
17 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
18 F.3d at 990-91. There is no basis to argue that Ismael, who was arrested by Respondents *while*
19 *appearing in immigration court* for a master calendar hearing, is a flight risk. Moreover, Ismael
20 has viable paths toward immigration relief and a pathway to lawful permanent residence, further
21 mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163,
22 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where
23 plaintiffs have bona fide asylum claims and desire to remain in the United States). Ismael has filed
24 an application for asylum and is in the process of applying for SIJS. He has every intention of
25 continuing with his case and attending court.

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

B. The government violated procedural due process by depriving Ismael of the opportunity to contest his detention before a neutral decision-maker.

Noncitizens living in the United States like Ismael have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court “usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

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

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

First, the private interest affected in this case is profound. When considering this factor, courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,

1 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
 2 here is high. Ismael, who has lived a law-abiding and honorable life, faces prolonged detention,
 3 denying him the “free[dom] to be with family and friends and to form the . . . enduring
 4 attachments of normal life.” *Morrissey*, 408 U.S. at 482. Cutting someone off from the “core
 5 values of unqualified liberty”—including his ability to worship, be with family, and enjoy the
 6 peace and safety he could not find in Colombia—creates a “grievous loss.” *Id.* Moreover, because
 7 Ismael faces *civil detention*, his liberty interest “is arguably greater than the interest of the
 8 parolees in *Morrissey*.” See *Ortega*, 415 F. Supp. 3d at 970. It therefore “stands to reason that
 9 [he] is entitled to protections at least as great as those afforded to a[n] . . . individual . . . accused
 10 but not convicted of a crime.” *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

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

24 Because the private interest in freedom from immigration detention is substantial, due
 25 process also requires that in cases like this one, the government bears the burden of proving “by
 26 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community.”
 27 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); see *Martinez v. Clark*, 124 F.4th 775,
 28 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing
 evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025

1 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which
2 government bears burden by clear and convincing evidence).

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

18 In similar cases, courts have ruled that re-detaining noncitizens without a pre-deprivation
19 hearing in which the government bears the burden of proof violates due process, and have granted
20 the emergency relief Ismael seeks here. *See Garro Pinchi v. Noem*, ___ F. Supp. 3d ___, 2025 WL
21 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her immigration
22 court hearing into preliminary injunction prohibiting the government from re-detaining her
23 without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025)
24 (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO over one
25 month after petitioner's initial detention); *see also, e.g., Diaz*, 2025 WL 1676854, at *3-*4;
26 *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025); *Jorge*
27 *M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1443250,
28 at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312,
at *4 (N.D. Cal. Aug. 23, 2020).

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

9 * * * * *

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

15 **II. PETITIONER WILL SUFFER IRREPARABLE INJURY ABSENT A TRO.**

16 Without a temporary restraining order, Ismael will suffer irreparable injury. Indeed, he
 17 faces such injury every day that he remains in detention, in violation of his Fifth Amendment
 18 rights. “It is well established that the deprivation of constitutional rights ‘unquestionably
 19 constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695
 20 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional right is
 21 involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier*
 22 *v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks omitted). And the
 23 unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*,
 24 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that they
 25 [we]re likely to be unconstitutionally detained for an indeterminate period of time”); *see also*,
 26 *e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount
 27 of actual jail time is significant, and has exceptionally severe consequences for the incarcerated
 28 individual”) (cleaned up).

1 In addition to constitutional injury, Ismael will suffer other irreparable harms from
 2 continued detention, including physical and psychological trauma and separation from him from
 3 his family, church, and community.

4 **III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH 5 STRONGLY IN PETITIONER'S FAVOR.**

6 When the government is the party opposing the request for emergency relief, the balance
 7 of the equities and the public interest merge. *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991
 8 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance
 9 of equities overwhelmingly favors Petitioner's son, who faces irreparable injury in the form of
 10 ongoing constitutional harm and additional suffering if the TRO is not granted. *See Hernandez*,
 11 872 F.3d at 996 ("Faced with ... preventable human suffering, ... the balance of hardships tips
 12 decidedly in plaintiffs' favor.") (internal citation omitted).

13 The public interest likewise weighs strongly in Ismael's favor. As another California
 14 district court recently concluded, "[t]he public has a strong interest in upholding procedural
 15 protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the
 16 public of immigration detention are staggering." *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M.*
 17 *F.*, 2021 WL 783561, at *3). More fundamentally, "[i]t is always in the public interest to prevent
 18 the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals Serv.*,
 19 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134,
 20 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

21 **SECURITY**

22 No security is necessary here. Courts "may dispense with the filing of a bond when," as
 23 here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."
 24 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
 25 requirement in cases raising constitutional claims, because "to require a bond would have a
 26 negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other
 27 members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
 28 Cal. 1996). Finally, Petitioner's showing of a high likelihood of success on the merits supports the
 Court's waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v.*
Tahoe Reg'l Plan. Agency, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

1 **CONCLUSION**

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

11 Date: August 3, 2025

Respectfully Submitted,

12 /s/ Jordan Wells

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