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

**Carolina ORTIZ CALDERON,**

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. 3:25-cv-06695-AMO

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION**

Date: August 22, 2025
Time: 1:00 p.m.
Location: Courtroom 3, 3rd Floor - Oakland

The Honorable Araceli Martínez-Olguín

## TABLE OF CONTENTS

## INTRODUCTION

The government's positions are unprecedented. Never before has the government undertaken such a sweeping campaign to arrest and detain people like Petitioner—individuals in ongoing removal proceedings with serious claims for relief, who have no criminal history and have complied with all immigration-court and supervision requirements. Binding precedent squarely holds the Due Process Clause protects noncitizens like Petitioner from unlawful detention, and the government's only legitimate interests in civil immigration detention are mitigating danger and flight risk. Where those interests are not present, detention violates due process and the detained individual must be released. Indeed, in just the past few weeks, multiple courts faced with essentially indistinguishable facts as Petitioner's have issued precisely that relief. See *Garro Pinchi v. Noem*, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025); *Valdez v. Joyce*, 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025); *Martinez v. Hyde*, 2025 U.S. Dist. LEXIS 115194, at *5-*6 (D. Mass. June 17, 2025); Opinion & Order, *Singh v. Andrews*, 1:25-cv-00801-KES-SKO (E.D. Cal. July 11, 2025) ("*Singh* Order") (attached as Exhibit A)..

The Court should therefore grant Petitioner's request for a preliminary injunction.

## ARGUMENT

### I. Petitioner is likely to succeed on the merits of her due process claims.

#### a. Petitioner is not in expedited removal proceedings.

Petitioner is not in expedited removal proceedings—she remains in § 1229a removal proceedings,[1] Opp. 10, and her TRO motion and requested relief do not concern expedited removal at all. See Mot. 12-20 (challenging only detention). Thus, contrary to Respondents' repeated suggestions,

[1] 8 U.S.C. § 1229a codifies Section 240 of the INA, governing non-expedited removal hearings.

Opp. 11-15, the motion is squarely focused on challenging only the lawfulness of her detention; it has nothing to do with whether, in the future, Respondents will place her in expedited removal proceedings.[2] Her challenges to detention are properly before this Court.

**b. The Government's Election to Release Conferred a Protected Liberty Interest**

U.S. immigration law distinguishes between detention of noncitizens seeking admission under § 1225(b) and detention of those already in the country pending removal proceedings under § 1226. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

When the government released Petitioner on her own recognizance shortly after her 2024 entry, it necessarily determined that she was neither a danger to the community nor a flight risk. See, e.g., *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); 8 C.F.R. § 1236(c)(8) ("Any [authorized] officer … may … release [a noncitizen] not described in section 236(c)(1) of the Act … provided that the [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding."). Here, the government released Petitioner and affirmatively placed her in full removal proceedings under § 1229a and released her under § 1226(a), not § 1225(b). That choice reflected an explicit determination that Petitioner posed neither a danger nor a flight risk. Dkt. 16-1 (Order of Release on Recognizance stating, "[i]n accordance with section 236 of the Immigration and Nationality Act [§ 1226] . . . you are being released on your own recognizance"), See 8 C.F.R. § 236.1(8) ("Any officer authorized to issue a

[2] Although not relevant to resolution of the TRO, this Court would still have jurisdiction over Petitioner's detention challenge even if she were in expedited removal. See, e.g., *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170-72 (W.D. Wash. 2023) (explaining that the Supreme Court's jurisdictional holding in *DHS v. Thuraissigiam*, 591 U.S. 103, 107 (2020), is "limited" to due process challenges to admission processes, and does not bar due process challenge to detention by noncitizens placed in expedited removal).

warrant of arrest may" release a noncitizen if she "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that [she] is likely to appear for any future proceeding."); see also *Hernandez*, 872 F.3d at 983 ("If the DHS officer or IJ determines that the non-citizen does not pose a danger and is likely to appear at future proceedings, then she may release the non-citizen on bond or other conditions of release."). By releasing Petitioner under § 1226(a), the government recognized that she fell outside the mandatory detention scheme of § 1225(b). See *Lopez Benitez v. Francis*, 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) ("[A] noncitizen cannot be subject to both mandatory detention under § 1225 and discretionary detention under §1226[.]").

This election carries constitutional significance. The Due Process Clause "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; see also *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, at *3 (E.D. Cal. Mar. 3, 2025) ("As a person inside the United States, [noncitizen] is entitled to the protections of the Due Process Clause."). As this Court recognized in granting Petitioner's motion for a temporary restraining order, "'[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.'" *Ramirez-Clavijo v. Kaiser*, 2025 WL 2097467, at *2 (N.D. Cal. July 25, 2025) (quoting *Zadvydas*, 533 U.S. at 690); see also *Lopez Benitez*, 2025 WL 2371588, at *9 ("It is well established that such protection extends to noncitizens, including those who are in removal proceedings."). By placing Petitioner in full removal proceedings and releasing her under § 1226(a), the government conferred on her a liberty interest protected by the Due Process Clause. See *Ortega v. Bonner*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [noncitizen] have a liberty interest in remaining out of custody on bond."); *Pinchi v. Noem*, -- F. Supp. 3d. --, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) ("Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a

protected liberty interest in remaining out of custody."); *Diaz v. Kaiser*, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025) ("Courts have previously found that individuals released from immigration custody on bond have a protectable liberty interest in remaining out of custody on bond."); *Garcia v. Bondi*, 2025 WL 1676855, at *2 (N.D. Cal. June 14, 2025) (same); *Lopez Benitez*, 2025 WL 2371588, at *9 (holding that noncitizen subject to detention under § 1226(a) has protected liberty interest); *Romero v. Kaiser*, 2022 WL 1443250, at *1–2 (N.D. Cal. May 6, 2022) (holding that noncitizen conditionally released after finding of no danger or flight risk "raised serious questions going to the merits of her claim that due process requires a hearing before an IJ prior to re-detention."); *Vargas v. Jennings*, 2020 WL 5074312, at *1, 3 (N.D. Cal. Aug. 23, 2020) (finding that noncitizen released on bond pursuant to § 1226(c) "raised serious questions on the merits of her claim that she is entitled to a pre-deprivation hearing before an immigration judge if she is re-arrested").

That liberty interest cannot be withdrawn at will. Once granted, it may be revoked only through procedures that ensure the government's "asserted justification for physical confinement outweighs [Petitioner's] constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990; see also *Doe*, 2025 WL 691664, at *5 ("Governmental actions may create a liberty interest entitled to the protections of the Due Process Clause." (citing *Bd. of Pardons v. Allen*, 482 U.S. 369, 371 (1987))). Respondents' contrary position—that Petitioner somehow remained perpetually "subject to" § 1225(b) despite her release under § 1226(a)—would permit the government to create the illusion of liberty and revoke it at will, without process or justification. Neither statute nor Constitution permit that result.

In similar circumstances, courts have rejected the government's attempts to rewrite its own paperwork after the fact. See *Lopez Benitez*, 2025 WL 2371588, at *4 ("Here, Respondents' own exhibits unequivocally establish that Mr. Lopez Benitez was detained pursuant to Respondents' discretionary authority under § 1226(a)."); *Gomes v. Hyde*, 2025 WL 1869299, at *1 (D. Mass. July 7, 2025) ("Because

Gomes was arrested on a warrant and ordered detained under Section 1226, her detention continues to be governed by Section 1226(a)'s discretionary framework."); *Dos Santos v. Noem*, 2025 WL 2370988, at *6 (D. Mass. Aug. 14, 2025).

*Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), does not require a different result. That case involved a noncitizen placed directly into expedited removal proceedings under § 1225(b), never released, and never governed by § 1226(a)'s discretionary framework. *Thuraissigiam*, 591 U.S. at 114. Petitioner's circumstances are fundamentally different: he was placed in full proceedings and affirmatively released under the § 1226(a) framework. Moreover, the petitioner in *Thuraissigiam* challenged his negative credible-fear determination and sought relief directing the government "to provide [him] with a new opportunity to apply for asylum and other applicable forms of release," but "made no mention of release from custody." *Id.* at 115 (alteration in original). Petitioner here challenges not a negative credible-fear finding, but the constitutionality of her re-detention without a neutral hearing. *Thuraissigiam* is thus inapposite.

Because the government elected to release Petitioner on her own recognizance, Petitioner is entitled to due process before any re-detention (regardless of what authority DHS purports to be exercising). At a minimum, that requires a hearing before a neutral adjudicator where the government bears the burden of proving, by clear and convincing evidence, that she is now a danger or flight risk. See *Al-Sadeai v. U.S. Immigr. & Customs Enf't*, 540 F. Supp. 3d 983, 988–99 (S.D. Cal. 2021) ("In the § 1226(a) custody hearing context, however, the Ninth Circuit has held that the Constitution requires placing the burden of proof on the Government to show, by clear and convincing evidence, that detention is justified.").

**c. The Mathews test is the applicable standard for procedural due process claims**

The government has taken the position that *Mathews v. Eldridge* does not apply to immigration detention. Opp. at 13. In *Rodriguez Diaz v. Garland*, the panel cited the Ninth Circuit's long history of applying *Mathews v. Eldridge* to procedural due process claims, including in the immigration context, but also noted that the Supreme Court had not applied *Mathews* in *Demore*. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). The *Rodriguez Diaz* panel thus "assume[d] without deciding" that the *Mathews* test applies. *Id.*

However, in a case decided a month after *Rodriguez Diaz*, the Ninth Circuit unequivocally held in a non-immigration case that the *Mathews* test is the applicable standard for procedural due process claims. *See Johnson v. Ryan*, 55 F.4th 1167, 1179–80 (9th Cir. 2022).

As the court in *Johnson* articulated: "In order to analyze a procedural due process claim, we engage in a two-step analysis: First, we determine whether the inmate was deprived of a constitutionally protected liberty or property interest. Second, we examine whether that deprivation was accompanied by sufficient procedural protections. ... In order to determine whether the procedural protections provided are sufficient at the second step, we look to (1) the private interest affected; (2) the risk of an erroneous deprivation and the probable value of any additional or substitute procedural safeguards; and (3) the government's interest. *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335(1976)).

Applying *Johnson v. Ryan*'s framework to Petitioner's case demonstrates that the *Mathews* test governs and favors release. First, Petitioner possessed a constitutionally protected liberty interest. Having been released on her own recognizance when she entered the United States, she developed reasonable reliance on her continued freedom, and diligently attended every immigration court hearing and filed an application for asylum within the one-year filing deadline. Mem. at 7. She has no criminal history anywhere in the world. Mem. at 7. Her liberty interest mirrors that recognized in *Morrissey v. Brewer*, where the Supreme Court held that parolees have "relied on at least an implicit promise that parole will be revoked only if [they] fail[] to live up to the parole conditions." 408 U.S. 471, 482 (1972). Here, Petitioner reasonably relied on her continued freedom contingent on compliance with immigration proceedings, which she scrupulously maintained.

Second, examining whether sufficient procedural protections accompanied her detention, all three *Mathews* factors overwhelmingly support Petitioner. The private interest, freedom from physical detention while suffering from Polycystic Ovary Syndrome requiring medication every eight hours, represents the most fundamental liberty interest. Mem. at 11-12. The risk of erroneous deprivation is exceptionally high: Respondents detained her as part of a coordinated operation that is aimed at dramatically accelerating deportations through courthouse arrests, not based on individualized assessment. Mem. at 11. No neutral decisionmaker evaluated whether detention served legitimate purposes of preventing flight risk or danger, determinations Respondents themselves rejected when initially releasing her, having determined that she was not a flight risk or danger to the community, Mem. at 8, and even reconfirmed that she was not a flight risk or danger at her most recent release on August 8, 2025, Dkt 16-1 at 10. Finally, the government's interest is negligible: Petitioner was arrested immediately after attend[ing] a hearing in San Francisco Immigration Court, definitively proving she poses no flight risk. Mem. at 9. She has meticulously complied with all the requirements that the government has imposed on her. Mem. at 9.

The Ninth Circuit's binding precedent in *Johnson v. Ryan* establishes that *Mathews* governs procedural due process claims, notwithstanding the government's contrary position. Applied here, *Mathews* compels Petitioner's immediate release and prohibition on re-detention absent a pre-deprivation hearing. Respondents violated clearly established law by summarily detaining someone who demonstrably poses neither flight risk nor danger, indeed, someone whose exemplary conduct has only confirmed the government's prediction that she posed no risk. Mem. at 7. The government cannot credibly claim that someone arrested at their own court hearing requires detention to ensure appearance, nor that someone with no criminal history poses danger warranting confinement Petitioner's procedural due process rights demand what numerous courts in this District have already ordered in analogous cases: release and protection from re-detention without constitutionally adequate process. See Diaz v. Kaiser, 2025 WL 1676854 (N.D. Cal. June 14, 2025); Garcia v. Bondi, 2025 WL 1676855 (N.D. Cal. June 14, 2025).

**d. Petitioner has a due process right to challenge her detention.**

Noncitizens like Petitioner have due process rights to challenge detention. *Zadvydas v. Davis*, 533 U.S. 678, 693, 695 (2001) (while noncitizens outside the United States' "geographic borders" lack constitutional protections, all "persons" within them are protected by the Due Process Clause, regardless of immigration status); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1205-06 (9th Cir. 2022) (though constitutional rights of citizens and noncitizens "are not coextensive," noncitizens are entitled to due process, including to challenge detention pending proceedings)). As the Ninth Circuit has held, the Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or are "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004), abrogated on other grounds by *Wilkie v. Robbins*, 551 U.S. 537 (2007); see also *Padilla*, 704 F. Supp. 3d at 1172. The Due Process Clause allows Petitioner to challenge her detention.

Respondents fundamentally misapprehend Petitioner's due process claims, which challenge her deprivation of liberty and not the adequacy of the procedures the immigration laws afford her "regarding admission." Opp. 14. Most of the cases Respondents cite do not even analyze due process claims against detention; instead, they challenge congressional line-drawing in the substantive rules governing admission and deportation. See id. (citing *D.H.S. v. Thuraissigiam*, 591 U.S. 103, 117-18 (2020) (noncitizen sought review of constitutionality of admission procedures applied to him, but "did not ask to be released"); *Landon v. Plasencia*, 459 U.S. 21, 35-37 (1982) (due process analysis addressed only adequacy of procedures in exclusion hearing); *Kleindienst v. Mandel*, 408 US 753, 769-70 (1972) (noncitizen was abroad; no detention claim); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 211-13 (1953) (due process analysis addressed only right to admission); *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (same)).

To the extent Respondents take the extraordinary position that Petitioner has no due process rights at all, that is unsupported by law and would have gruesome practical consequences: "If excludable [noncitizens] were not protected by even the substantive component of constitutional due process, … we do not see why the United States government could not torture or summarily execute them. … [W]e

conclude that government treatment of excludable [noncitizens] must implicate the Due Process Clause of the Fifth Amendment."). *Rosales-Garcia v. Holland*, 322 F.3d 386, 412 (6th Cir. 2003) (en banc); see also *Jean v. Nelson*, 472 U.S. 846, 874 (1985) (Marshall, J., dissenting) ("[T]he principle that unadmitted [noncitizens] have no constitutionally protected rights defies rationality. Under this view, the Attorney General, for example, could invoke legitimate immigration goals to justify a decision to stop feeding all detained [noncitizens] …. Surely we would not condone mass starvation.").

**e. The government cites no facts suggesting that Petitioner poses a danger or a flight risk, and it has no other legitimate interest in detaining Petitioner.**

The only permissible legitimate justifications for immigration detention are danger and flight risk. *Zadvydas*, 533 U.S. at 690. When the government released Petitioner on her own recognizance shortly after her 2024 entry, it necessarily determined that she was neither a danger to the community nor a flight risk. See, e.g., *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); 8 C.F.R. § 1236(c)(8) ("Any [authorized] officer … may … release [a noncitizen] not described in section 236(c)(1) of the Act … provided that the [noncitizen] must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.").

In fact, the government's evidence confirms it released Petitioner on her own recognizance, Dkt. 16-1 at 5. Nothing about Petitioner's circumstances changed between that initial decision and her immigration-court appearance on August 7, 2025, to justify re-detention. If anything, Petitioner's conduct in the past year and two months—her lack of criminal history, court attendance, pursuit of a credible asylum claim, full compliance with supervision requirements, extensive medical needs, and community ties—only further confirm that she is not a danger or a flight risk. Dkt. 3-4 ("Mem.") at 11-

12; see *Padilla*, 704 F. Supp. 3d at 1173 (government could "point to no … public safety concerns or flight risk that might apply to [noncitizens] with bona fide asylum claims and who desire to remain in the United States").

Respondents have no meaningful answer to this and cite no facts suggesting Petitioner now poses a risk of flight or danger. Petitioner was arrested when she appeared at her immigration court hearing to pursue meritorious immigration claims. See *Valdez*, 2025 WL 1707737, at *3 ("[T]he present allegation by ICE that Petitioner is at risk of flight is directly at odds with [DHS's] decision to release Petitioner on her own recognizance" and "the record evidence").

**f. Petitioner's detention without a hearing violated procedural due process.**

Respondents contend that Petitioner is entitled to no procedural protections because detention is a constitutional aspect of removal proceedings. Opp. 13-17. But Petitioner does not raise a facial challenge against immigration detention—rather, she argues that her detention, as applied to her specific facts, is unconstitutional. See Mem. 11-12. Petitioner brings an as-applied due process challenge to her detention, see Mem. 13. None of the authorities Respondents rely on suggest Petitioner may not bring an as-applied challenge to her detention.. On the contrary, the Supreme Court has explicitly recognized the availability of judicial review over as-applied challenges to detention, including mandatory detention. See, e.g., *Nielsen v. Preap*, 586 U.S. 392, 420; *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

Respondents assert that because, they argue, Petitioner is "subject to expedited removal," even though she is not actually in expedited removal proceedings (see Supra at I.b), Petitioner "lack[s] any liberty interest." Opp. at 8. However, this conflates eligibility for a particular procedure with the actual deprivation of liberty. The government's own actions belie this position, by releasing Petitioner on her

own recognizance in June 2024 (Opp. at 10), Respondents necessarily determined she posed neither flight risk nor danger, thereby creating the very liberty interest they now claim does not exist. Mem. at 7-8. Moreover, Respondents cite no authority holding that individuals lawfully released from immigration custody and living in the community for over a year possess no liberty interest in their ongoing freedom. To the contrary, the Supreme Court has recognized that even individuals whose liberty is conditional or revocable maintain protected interests in that liberty. See *Morrissey*, 408 U.S. at 482. Petitioner's fourteen months of freedom in the community, during which she developed a community in the San Francisco Bay Area, including a close-knit community of family and friends, established medical care for her serious conditions, and a church she attends weekly, created precisely the "enduring attachments of normal life" that due process protects. Mem. at 12. The government cannot strip away these established liberty interests simply by invoking contradictory eligibility for expedited removal while simultaneously pursuing regular removal proceedings under Section 240.

Longstanding Supreme Court precedent guarantees a pre-deprivation hearing before the government may revoke a person's conditional release. See *Morrissey v. Brewer*, 408 U.S. 471, 482-83 (1972) (requiring pre-deprivation hearing before parole may be revoked); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (same, for probation); *Young v. Harper*, 520 U.S. 143, 146-47 (1997) (same, for pre-parole conditional supervision). Contrary to Respondents' assertions, Opp. 15-16, these decisions—which were decided on constitutional, not statutory grounds—control equally in the immigration context. Indeed, "decisions defining the constitutional rights of prisoners establish a floor for the constitutional rights of [noncitizens in immigration custody]," who are "most decidedly entitled to more considerate treatment than those who are criminally detained." *Unknown Parties v. Johnson*, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016) aff'd sub nom. *Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up) (emphasis added). Accordingly, multiple decisions in this Circuit—with which Respondents fail to grapple—have applied *Morrissey* and its progeny to bar immigration authorities

from re-detaining noncitizens like Petitioner, who are in removal proceedings, without a pre-deprivation hearing. See Mem. 18; *Garro Pinchi*, 2025 WL 1853763, at *1 (granting TRO and ordering immediate release).[3]

Here, Petitioner invokes "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). In comparison to Petitioner's weighty interest in liberty, Respondents' interest in detaining him is minimal. They proffer no evidence that Petitioner is either a flight risk or danger, because there is none: prior to her surprise arrest, Petitioner was living with her family, had significant ties to the community, attending church every week, attending to her medical needs, pursuing an asylum, and diligently complying with every instruction Respondents had imposed upon her. See Mem. 11-12; see also *Garro Pinchi*, 2025 WL 1853763, at *2; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Jorge M. F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021).

The risk of erroneous deprivation of liberty, without any procedural safeguards, is high. See Mem. 11-12. The cost to Respondents of providing Petitioner a pre-deprivation custody hearing would have been minimal. Faced with substantially similar facts, other courts have held that immediate release and prohibition of re-detention without a pre-deprivation hearing is the proper remedy. See, e.g., *Garro Pinchi*, at *2 (ordering "immediate[] release" of noncitizen detained without notice or pre-detention hearing); *Valdez*, 2025 WL 1707737, at *4-5 (same, and finding ICE's conduct toward the petitioner to be "an abuse of process"). Because the Constitution cannot tolerate Petitioner's continued detention, this Court should do the same.[4]

**II. The remaining equitable factors weigh strongly in Petitioner's favor.**

[3]Respondents cite no authority suggesting that *Morrissey* and its progeny do not apply here.

[4]

Petitioner's unlawful detention is irreparable injury of the highest order. Although Respondents passingly contend that "detention […] [is] a constitutionally valid aspect of the deportation process," Opp. 16, courts in this Circuit have repeatedly recognized the "irreparable harms imposed on anyone subject to immigration detention." *Hernandez*, 872 F.3d at 995 (emphasis added); see, e.g., *Garro Pinchi*, 2025 WL 1853763, at *3; *Ortega*, 2025 WL 1771438, at *5; *Diaz*, 2025 WL 1676854, at *3; *Lewis*, 2023 WL 8898601, at *4; *Singh*, 2023 WL 5836048, at *9; Order at 11-12, *Singh v. Andrews*, 1:25-cv-00801-KES-SKO (E.D. Cal. July 11, 2025) ("*Singh* Order") (attached as Exhibit A). That irreparable harm is compounded when the detention is likely unconstitutional, for "the deprivation of constitutional rights unquestionably constitutes irreparable injury." *United Farm Workers v. Noem*, -- F. Supp. 3d --, 2025 WL 1235525, at *51 (E.D. Cal. Apr. 29, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Nor do Respondents address the additional irreparable harm that Petitioner faces, including her inability to continue necessary medical treatment for her significant health issues, or practice her religious faith. Mem. at 11-12.

The balance of the hardships and public interest also strongly support grant of a PI. The only harm to the government that Respondents identify is interference with its " compelling interest in the steady enforcement of its immigration laws." Opp. at 16. But the government has no interest in wielding that authority to unconstitutionally detain Petitioner, and others like her, without any due process. The government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983); see *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (the government "cannot suffer harm from an injunction that merely ends an unlawful practice" implicating "constitutional concerns"). Conversely, "the public has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, 2020 WL 5074312, at *4 (N.D. Cal 2020). And that interest is always served by ensuring

that such "procedures comply with the Constitution," *Hernandez*, 872 F.3d at 996; see also *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005).

Because "the balance of hardships tips sharply in [her] favor," Petitioner need only show "serious questions going to the merits" under the Ninth Circuit's "sliding scale test." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); see *UFW*, 2025 WL 1235525, at *44. Yet, as described above, she has done far more than that: she has established a strong likelihood of success on the merits of her due process claims.

**CONCLUSION**

The Court should grant Petitioner's motion for a preliminary injunction and enjoin Respondents from re-detaining her absent a pre-deprivation hearing before a neutral decisionmaker, where the government bears the burden of proving, by clear and convincing evidence, that changed circumstances render her a danger to the community or a flight risk.

Respectfully submitted,

Date: August 20, 2025

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# EXHIBIT A

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HARMAN SINGH,

Petitioner,

v.

TONYA ANDREWS, Administrator of Golden State Annex Detention Facility, 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,

Respondents.

No. 1:25-cv-00801-KES-SKO (HC)

ORDER GRANTING PRELIMINARY INJUNCTION

Doc. 5

Petitioner Harman Singh is a 19-year old asylum seeker who has been in immigration removal proceedings since January 2024. He remained out of custody for over seventeen months after the Department of Homeland Security ("DHS") determined that he did not pose a danger to the community and was not a flight risk. *See* Doc. 11-1, Ex. 1 at 6–7; 8 C.F.R. § 1236.1(c)(8). During that time, petitioner established ties in his community, was employed as a warehouse worker pursuant to a valid work authorization, volunteered at his temple, and appears to have checked in with immigration authorities as requested.

On May 27, 2025, petitioner appeared at the San Francisco Immigration Court for a scheduled hearing in his immigration case. At the hearing, the government orally moved to

dismiss petitioner's pending removal case; the government indicates that it did so with the intent of placing petitioner in expedited removal proceedings. The Immigration Judge did not grant the government's oral motion to dismiss petitioner's case and, instead, set a schedule for the government to file a written motion to dismiss and for petitioner to respond. However, when petitioner walked out of the Immigration Court on May 27, Immigration and Customs Enforcement ("ICE") agents arrested him. The record indicates that the agents did not present petitioner with a warrant or inform him of the reason for his arrest, nor did the government bring petitioner before the San Francisco Immigration Judge for a bond hearing on the detention. Instead, agents transported petitioner later that day to a detention facility in Kern County, in the Eastern District of California, where he has been held since May 27.

Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, Doc. 1, and a Motion for Temporary Restraining Order ("Motion"), Doc. 5, seeking his release from detention. The Court set a briefing schedule on the Motion. Doc. 10. The government filed an opposition, Doc. 11, and petitioner filed a reply, Doc. 13. The Court held a hearing on July 10, 2025. The Court indicated at the hearing that it intended to convert petitioner's Motion into a motion for preliminary injunction, given the parties' extensive briefing of the issues, and no party objected. The standard is the same, and the government had notice and opportunity to respond through a written opposition and through oral argument at the July 10, 2025 hearing. *See* Docs. 10, 11. As there is no benefit in additional briefing, petitioner's Motion is converted to a motion for preliminary injunction.

For the reasons stated below, and as ordered at the July 10 hearing, the Court grants petitioner's Motion and orders that the government release petitioner immediately and not re-detain him unless it proves by clear and convincing evidence at a bond hearing before the San Francisco Immigration Court that petitioner is a flight risk or danger to the community.

## I. Background

Petitioner is a nineteen-year-old citizen of India and identifies as a devout Sikh. Pet. ¶¶ 55, 77; Doc. 5-2 at ¶¶ 2, 6. He sought asylum based on his belief that, due to his political activism in India on behalf of the Sikh community, he was in danger should he return to his

country of origin. Pet. ¶¶ 55, 77; *see* Doc. 5-2 at ¶ 3.

Petitioner arrived in the United States in January 2024. Pet. ¶ 56; Doc. 5-2 at ¶ 3. After entry, he was briefly detained by DHS agents and then released after agents determined that he had no criminal history, was not a danger to the community, and did not pose a flight risk.[1] Pet. ¶ 56; Doc. 5-2 at ¶ 4; Doc. 11-1, Ex. 1 at 6–7; 8 C.F.R. § 1236.1(c)(8). DHS did not require him to post a bond or wear an ankle monitor. Pet. ¶ 56. DHS provided petitioner with a notice to appear for removal proceedings. *Id.*

In May 2024, petitioner applied for asylum and withholding of removal under the Convention Against Torture. *Id.* ¶ 59; *see* Doc. 5-2 at ¶¶ 5, 6. He also initiated the process for obtaining special immigrant juvenile status ("SIJS"), which if obtained, would exempt him from removability under 8 U.S.C. § 1182(a)(6)(A)(i) and allow him to apply for lawful permanent residency. Pet. ¶ 60. Petitioner indicates that, since January 2024, he has attended every immigration check-in and hearing. Doc. 5-2 at ¶ 4; Pet. ¶¶ 57–58. Petitioner has also maintained a clean criminal record. Doc. 5-2 at ¶ 2; *see* Doc. 11-1, Ex. 1 at 6; Doc. 11-1, Ex. 4 at 21–22. Pursuant to a valid work authorization, petitioner has worked full-time at a warehouse. Doc. 5-2 at ¶ 5; Pet. ¶¶ 62, 76. Petitioner states that, since his arrival, he has also participated actively in the Sikh temple in his community. Doc. 5-2 at ¶ 6; Pet. ¶ 77.

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[1] As petitioner argues, by releasing him, DHS necessarily determined under 8 C.F.R. § 1236.1(c)(8) that he was not a flight risk. Doc. 5-2 at ¶ 4; Doc. 5-1 at 7; Pet. ¶¶ 1, 56. The government argues that DHS never affirmatively made such a finding, *see* Doc. 11 at 21, but that argument is inconsistent with the terms of § 1236.1(c)(8) and petitioner's release. "Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him. *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025) ("[T]he present allegation by ICE that Petitioner is at risk of flight is directly at odds with the contrary Department of Homeland Security ("DHS") decision to release Petitioner on his own recognizance . . . . Respondents' [argument that] Petitioner was [only] released because DHS had no place to incarcerate him . . . has no basis in law."). Additionally, as discussed below, the government does not cite any new facts indicating that petitioner, who was arrested *immediately after appearing in immigration court* for a hearing on his case, should now be considered a flight risk. *See* Pet. ¶¶ 57–59, 61, 75.

On May 27, 2025, petitioner appeared for a master calendar hearing before an immigration judge at the San Francisco Immigration Court. Doc. 5-2 at ¶ 7. Without prior notice to petitioner, the government orally moved to dismiss petitioner's case. *Id.* ¶ 7; Pet. ¶ 64. The government's subsequent filings indicate that, upon the dismissal of the petitioner's immigration case, the government intended to put him into expedited removal proceedings. *See, e.g.*, Doc. 11-1, Ex. 3 at 13–14. Petitioner's attorney objected to the government's oral motion, and the immigration judge did not grant it. Doc. 5-2 at ¶ 7. The immigration judge directed the government to file a written motion to which petitioner would have ten days to respond. *Id.*; Pet. ¶ 65. Petitioner states that the immigration judge further noted that petitioner had filed an asylum application that reasonably stated eligibility for relief. Pet. ¶ 65.

Notwithstanding the immigration judge having just set a briefing schedule on the government's motion to dismiss the case, ICE agents approached petitioner when he exited the courtroom, and, after confirming his identity, arrested him. Doc. 5-2 at ¶¶ 8–9. The present record indicates that the ICE agents did not have a warrant and did not tell him why he was being arrested. *Id.* The agents took him to the San Francisco ICE office, and later that day, to a detention facility located in Kern County, in the Eastern District of California. *Id.*; Pet. ¶¶ 67–68.

On May 28, 2025, the government filed a written motion to dismiss petitioner's immigration case, along with a motion to transfer venue to the Adelanto Immigration Court. Pet. ¶ 69; Doc. 1-4, Ex. 4. The motion stated that the government sought to dismiss the proceedings "because the circumstances of [petitioner's] case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the Government." Doc. 1-4, Ex. 4 at 2–3 (quoting 8 C.F.R. § 239.2(a)(7)). The motion contained no explanation of how the circumstances had changed but stated that the government intended to pursue expedited removal. *See id.*

On May 30, 2025, the San Francisco immigration judge denied the motion to dismiss because he had "reviewed [petitioner's] application and [found] a 'reasonable possibility that [petitioner] may be eligible for [asylum].'" Doc. 1-5, Ex. 5 at 3 (quoting *C.J.L.G. v. Barr*, 923 F.3d 622, 626 (9th Cir. 2019)). The immigration judge also found that "it would be an inefficient

use of judicial resources to dismiss these proceedings in order to place [petitioner] in expedited removal[,] [where petitioner could then] make a credible fear claim (that he has already made, and the Court has already reviewed) to then be placed back in these proceedings." *Id.* The government indicates that the San Francisco immigration judge no longer had jurisdiction to issue that ruling, as petitioner's case had been transferred to the Adelanto Immigration Court. On June 11, 2025, at a hearing before an immigration judge at the Adelanto Immigration Court, the government again orally moved to dismiss petitioner's case, which was granted. Pet. ¶ 72; Doc. 1-6, Ex. 6.

In his Motion, petitioner asserts that he should be immediately released from custody and the government should be enjoined from re-detaining him unless and until this Court orders otherwise, or alternatively, unless the government demonstrates at a pre-deprivation bond hearing before the San Francisco Immigration Court that he is a flight risk or danger to the community. Doc. 5-1 at 21.

## II. Statutory Framework

Petitioner's removal proceedings before the San Francisco Immigration Judge were governed by section 240 of the Immigration and Nationality Act ("section 240 proceedings"). Pet. ¶ 29. Section 240 proceedings provide important statutory protections, including hearings before an Immigration Judge. *See* 8 U.S.C. § 1229a(a)(1), (a)(4). The government apparently now intends to pursue expedited removal of petitioner pursuant to 8 U.S.C. § 1225(b)(1). *See* Doc. 1-4, Ex. 4 at 2–3. In contrast to section 240 proceedings, expedited removal takes place outside of the immigration court. Noncitizens in expedited removal proceedings can be removed by an immigration officer "without further hearing or review . . . ." 8 U.S.C. § 1225(b)(1)(A)(i).[2]

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[2] However, if a noncitizen in expedited removal expresses a fear of persecution or intent to seek asylum, the immigration officer must refer the noncitizen to an asylum officer for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii). If the asylum officer determines that a noncitizen has a credible fear of persecution, then the noncitizen will receive "full consideration" of his asylum claim in section 240 proceedings. 8 C.F.R. § 208.30(f). The noncitizen "shall be detained for further consideration of the application for asylum." 8 U.S.C. § 1225(b)(1)(B)(ii).

**III. Legal Standard**

The standards for issuing a temporary restraining order and a preliminary injunction are "substantially identical." *See Stuhlbarg Int'l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citing *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008)). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is 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." *Id.* at 20 (citing *Munaf*, 553 U.S. at 689–90; *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 542 (1987); *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311–12 (1982)). "Likelihood of success on the merits is a threshold inquiry and is the most important factor." *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (quoting *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020)).

**IV. Discussion**

**a. Administrative Exhaustion**

As an initial matter, the government argues that petitioner failed to exhaust his administrative remedies because he could have, according to the Government, sought a bond hearing before the Immigration Court pursuant to 8 U.S.C. § 1226(a) after he was detained. Doc. 11 at 16–17. It is not clear that the Immigration Court would find petitioner entitled to a § 1226(a) bond hearing, given the uncertain basis for the government's arrest and detention of petitioner on May 27. Although the government obtained the dismissal of petitioner's section 240 proceedings only on June 11, 2025, *see* Doc. 1-4, Ex. 4 at 2–3, it asserted at the July 10 hearing that it placed petitioner into expedited removal proceedings as of May 27, 2025. The government also states that petitioner nonetheless currently remains in section 240 proceedings because he has appealed the Adelanto Immigration Judge's order granting the motion to dismiss to the Board of Immigration Appeals, and that he remains eligible for a bond hearing pursuant to § 1226(a) pending that appeal. Doc. 11 at 16–17.

While the parties seem to agree that petitioner is not *currently* in expedited removal

proceedings, *see* Doc. 11 at 10, 14; Doc. 13 at 7, the government nonetheless argues that he was in expedited removal proceedings after it arrested him on May 27 (which would not authorize a § 1226(a) bond hearing). The government appears to point to 8 C.F.R. § 239.2(a) as authority for cancelling petitioner's notice to appear, *see* Doc. 11 at 13 & n.4, but that regulation states that an officer may cancel the notice to appear only "prior to jurisdiction vesting with the Immigration Court." 8 U.S.C. § 239.2(a). Yet, as the government acknowledged at the July 10 hearing, here jurisdiction *had* already vested with the Immigration Court. In fact, petitioner had just left his Immigration Court hearing when agents arrested him. While a separate subsection of the regulation, 8 C.F.R. § 239.2(c), authorizes government counsel to move to dismiss a pending immigration proceeding, the government made such a motion in petitioner's case but did not wait for the San Francisco Immigration Judge's ruling. It arrested petitioner on May 27 while its motion to change petitioner's status was pending with the immigration judge.

It also appears likely that an immigration judge evaluating a request for a bond hearing under § 1226(a) would consider any such request to be subject to the decision in *Matter of Q. Li*, 29 I & N Dec. 66 (B.I.A. 2025). There, the Board of Immigration Appeals held that a noncitizen, like petitioner, "who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings, is detained under [8 U.S.C. § 1225(b)], and is ineligible for any subsequent release on bond under [8 U.S.C. § 1226(a)]." *Id.* at 69. This appears to be the case even when the noncitizen was paroled into the United States and released by DHS. *See id.* The Court need not decide whether petitioner's detention is under § 1225(b) or § 1226(a), because given *Matter of Q. Li*, the Immigration Court might well conclude that petitioner is detained pursuant to § 1225(b). And because, as a statutory matter, § 1225(b) "mandate[s] detention" and does not allow for release on bond, *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), any bond request pursuant to that statute would be futile. *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541–42 (9th Cir. 2004) ("Exhaustion of remedies is not required when resort to such remedies would be futile."). The

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Court therefore waives any exhaustion requirement.[3]

**b. Preliminary Injunction**

The government argues that petitioner's requested relief would constitute a mandatory injunction, which is subject to a higher standard than a prohibitory injunction. *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). "A prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Id.* at 879 (internal citations omitted). In other words, a prohibitory injunction "freezes the positions of the parties until the court can hear the case on the merits." *Heckler v. Lopez,* 463 U.S. 1328, 1333 (1983). A mandatory injunction, on the other hand, "orders a responsible party to 'take action.'" *Marlyn Nutraceuticals*, 571 F.3d at 879 (quoting *Meghrig v. KFC W., Inc.,* 516 U.S. 479, 484 (1996)). Although subject to a higher standard, a mandatory injunction is permissible when "extreme or very serious damage will result" that is "not capable of compensation in damages," and the merits of the case are not "doubtful." *Id.* (internal citations and quotation marks omitted).

The requested relief does not appear to be a mandatory injunction, as it can be understood as merely prohibiting the government from disrupting the status quo ante, which is "the last, uncontested status which preceded the pending controversy." *Id.* (quoting *Regents of the Univ. of Cal. v. Am. Broad. Cos.,* 747 F.2d 511, 514 (9th Cir. 1984)). In similar detention cases, other courts have considered the last uncontested status to be the moment prior to an unlawful detention. *See Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025); *Kuzmenko v. Phillips*, No. 2:25-CV-00663-DJC-AC, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025); *see also Doe v. Noem*, No. 2:25-CV-01103-DAD-AC, 2025 WL 1134977, at *3 (E.D. Cal. Apr. 17, 2025) (last uncontested status was the moment prior to unlawful termination of international student's SEVIS record). Nevertheless, the Court will

[3] The government also argues that petitioner failed to exhaust because he appealed the Adelanto Immigration Judge's order granting the motion to dismiss the section 240 proceedings. *See* Doc. 11 at 17. But petitioner's Motion—the only matter currently under consideration—challenges his detention, not the merits of the removal proceedings. *See* Doc. 5 at 21. It thus appears that there are no administrative remedies that he could have exhausted prior to filing the petition.

assume, without deciding, that the relief requested is a mandatory injunction, as it would not change the result. *See Hernandez v. Sessions*, 872 F.3d 796, 999 (9th Cir. 2017) ("Because the nature of [the requested relief] is subject to [some dispute], we assume without deciding that the requirement is mandatory."); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025).

The higher standard for a mandatory injunction is met. "First, unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." *Hernandez*, 872 F.3d at 999. Second, as discussed below, the result reached here is not doubtful, given the facts of petitioner's case. Other district courts in this circuit have similarly barred the government from detaining without a bond hearing noncitizens who have already been released from custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855 (N.D. Cal. June 14, 2025); *Pinchi*, 2025 WL 1853763, at *3. The Court therefore turns to the *Winter* factors.

**1. Likelihood of Success on the Merits**

Petitioner is likely to succeed on the merits. The Due Process Clause of the Fifth Amendment prohibits governmental deprivation of life, liberty, or property without due process of law. U.S. Const. amend. V. While noncitizens are not entitled to all the protections of the Constitution, they are entitled to the protections of the Due Process Clause. *Zadvydas*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."). The Due Process Clause thus applies to petitioner, a noncitizen who has been present in the United States for seventeen months and has established numerous ties to the community.

The government seems to dispute this conclusion. It argues that petitioner is an applicant for admission to the United States and "has only those rights regarding admission that Congress has provided by statute." Doc. 11 at 19 (quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 139–40 (2020)). This is because Congress possesses "plenary power to make rules for the admission of" noncitizens. *Id.* (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972)). Therefore, the government argues, petitioner's "due process rights are limited to whatever statutory rights

Congress provides." *Id.*

*Thuraissigiam* held that a petitioner who was stopped at the border did not have any due process rights *regarding admission into* the United States. *Thuraissigiam*, 591 U.S. at 107. However, petitioner's Motion does not challenge any determination regarding his admissibility into the United States; the Motion concerns only a challenge to his detention pending removal proceedings. *See Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170–72 (W.D. Wash. 2023) (discussing *Thuraissigiam* and explaining the distinction between a challenge to admission and a challenge to detention). "Although the Supreme Court has described Congress's power over the 'policies and rules for exclusion of aliens' as 'plenary,' and held that this court must generally 'defer to Executive and Legislative Branch decisionmaking in that area,' it is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority"—through detention or otherwise. *Hernandez*, 872 F.3d at 990 n.17 (citing *Kleindienst*, 408 U.S. at 769; *Zadvydas*, 533 U.S. at 695). The Due Process Clause protects petitioner, a person inside the United States, from unlawful detention. *See Zadvydas*, 533 U.S. at 693.

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690. The government argues that the federal immigration statutes provide it with discretionary authority to detain and release noncitizens during removal proceedings, *see* Doc. 11 at 23, but "governmental actions may [also] create a liberty interest entitled to the protections of the Due Process Clause." *Doe*, 2025 WL 691664, at *5 (citing *Bd. of Pardons v. Allen,* 482 U.S. 369, 371 (1987)). Furthermore, the Supreme Court has held that, even when a statute authorizes revocation of an individual's freedom, the individual may retain a protected liberty interest under the Due Process Clause. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due Process requires pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). Petitioner's release from custody in January 2024 and ties to his community provide him with a protected liberty interest. *See Ortega*, 415 F. Supp. 3d at 970. The Court must therefore determine what process is due.

Due process "is a flexible concept that varies with the particular situation." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Id.* (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); *see Hernandez*, 872 F.3d at 993 (applying *Mathews* factors in immigration detention context). "Applying this test, the [Supreme] Court usually has held that the Constitution requires some kind of a hearing *before* the [Government] deprives a person of liberty or property." *Zinermon*, 494 U.S. at 127.

First, petitioner has a substantial private interest in remaining free from detention. He has been out of custody for nearly a year-and-a-half, and during that time, has lawfully worked full-time, has become an active member of his community, and regularly volunteers at his temple. Doc. 5-2 at ¶¶ 2, 5–6. His detention denies him that freedom. *Morrissey*, 408 U.S. at 482 (explaining that private interests include the freedom to "be gainfully employed and . . . to be with family and friends and to form the . . . enduring attachments of normal life").

Second, "the risk of an erroneous deprivation [of liberty] is high" where, as here, "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention, which is "nonpunitive in purpose and effect[,]" is justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla*, 704 F. Supp. 3d at 1172. Petitioner has no criminal history and indicates that he has attended every check-in and court hearing since he arrived in the United States. Doc. 5-2 at ¶¶ 2, 4, 12. Nonetheless, ICE agents arrested petitioner without a warrant as he exited a courtroom following his regularly scheduled immigration hearing. *Id.* ¶¶ 7–9. Petitioner has not since been provided any procedural safeguards to determine whether his detention is justified. Thus, "the

probable value of additional procedural safeguards, i.e., a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5.

The government makes the general argument that petitioner and others are flight risks because recent updates to DHS guidance that modify its enforcement priorities are "widely known and publicized" and create "an incentive to flee or resort to desperate, dangerous conduct." Doc. 11 at 20–21. This argument is unpersuasive as it does not address facts specific to petitioner. "The law requires a change in relevant facts, not just a change in [the government's] attitude." *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 n.6 (S.D.N.Y. June 18, 2025). The government's argument disregards the fact that petitioner was arrested immediately after having appeared for his immigration court hearing. Nor has the government identified any new information specific to petitioner's circumstances to undermine its own prior determination that petitioner did not pose a danger or a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."); *Valdez*, at *3 & n.6 (S.D.N.Y. June 18, 2025) ("[T]he present allegation by ICE that Petitioner is at risk of flight is directly at odds with the contrary Department of Homeland Security ("DHS") decision to release Petitioner on his own recognizance . . . ."). To the extent the government argues that the changed circumstances is the new availability of more bed space in detention facilities, that does not in any way address petitioner's individual circumstances. The government's argument disregards the principle that civil detention comports with due process only when a "special justification" outweighs the "*individual's* constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (emphasis added). The risk of erroneous deprivation is therefore significant in this case.

Third, the government's interest in detaining petitioner without a hearing is "low." *Ortega*, 415 F. Supp. 3d at 970; *Doe*, 2025 WL 691664, at *6. In immigration court, custody hearings are routine and impose a "minimal" cost. *Doe*, 2025 WL 691664, at *6. The government's interest is further diminished where a person "has consistently appeared for [his]

immigration hearings . . . and [] does not have a criminal record." *Pinchi*, 2025 WL 1853763, at *2.

On balance, the *Mathews* factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained. "'[T]he root requirement' of the Due Process Clause" is "'that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest.'" *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut,* 401 U.S. 371, 379 (1971)); *see Zinermon*, 494 U.S. at 127 ("Applying [the *Mathews*] test, the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty . . . ."). The Supreme Court has held that Due Process required a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. *See Morrissey*, 408 U.S. at 480–86. The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

The government argues that *Morrissey* permits the arrest of someone pending the final revocation of parole. But "decisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody]," who are "most decidedly entitled to *more* considerate treatment than those who are criminally detained." *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016) *aff'd sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up) (emphasis added); *see Ortega*, 415 F. Supp. 3d at 970 ("Given the civil context [of immigration detention], [petitioner's] liberty interest is arguably greater than the interest of parolees in *Morrissey*."); *see also Zadvydas*, 533 U.S. at 690 ("[G]overnment detention violates [the Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections or, in certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." (internal citations and quotations omitted)). As numerous other courts have concluded, petitioner is entitled to pre-deprivation process because he is faced with grave harm that could be guarded with minimal cost to the government. *See, e.g.*, *Ortega*, 415 F.

Supp. 3d at 970.

The Ninth Circuit has also held that, when there is a substantial liberty interest at stake, the government should have the burden of proof by clear and convincing evidence that an individual is a flight risk or danger before depriving the individual of that liberty. *See Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011).

Considering the substantial private interest at stake, the risk of erroneous deprivation through the procedures used, and the government's relatively lesser interest in this case, the Court finds that the Due Process Clause requires a pre-deprivation bond hearing where the government bears the burden of proving by clear and convincing evidence that petitioner is a flight risk or danger to the community. Numerous district courts have reached a similar conclusion. *Pinchi*, 2025 WL 1853763, at *3–4; *Ortega*, 415 F. Supp. 3d at 970; *Doe*, 2025 WL 691664, at *6; *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *Garcia*, 2025 WL 1676855, at *3; *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, 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).

With these considerations in mind, petitioner is likely to succeed on the merits.

**2. Irreparable Harm**

Petitioner will suffer irreparable harm without injunctive relief. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury." *Hernandez*, 872 F.3d at 994 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)). Unconstitutional detention isolates petitioner from his community and deprives him of the ability to work and worship. Doc. 5-2 at ¶¶ 6, 11–12. "Inhibition of religious practice is a clear example of such constitutional injury that cannot be adequately remedied through damages." *Rouser v. White*, 707 F. Supp. 2d 1055, 1070 (E.D. Cal. 2010); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal

periods of time, unquestionably constitutes irreparable injury.").

**3. Balance of Equities and Public Interest**

When the government is the nonmoving party, "the last two *Winter* factors merge." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (internal citations omitted). Faced with a choice "between [minimally costly procedures] and preventable human suffering," as discussed above, the Court concludes "that the balance of hardships tips decidedly in [petitioner's] favor." *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

The public interest also weighs in petitioner's favor. "The 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. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3) (N.D. Cal. Mar. 1, 2021); *see also Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a party's constitutional rights.") (citing *Padilla*, 953 F.3d at 1147–48).

In conclusion, a preliminary injunction is warranted.

**c. Security**

Federal Rule of Civil Procedure Rule 65(c) provides that a district court may grant a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). A district court retains discretion "as to the amount of security required, *if any*." *Johnson v. Couturier,* 572 F.3d 1067, 1086 (9th Cir. 2009) (internal quotation marks and citations omitted) (emphasis in the original). Courts regularly waive security in cases like this one. *See Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011); *Garcia*, 2025 WL 1676855, at *3; *Pinchi*, 2025 WL 1853763, at *4. The government provides no evidence that it will incur costs due to petitioner's release. *See Zest Anchors, LLC v. Geryon Ventures, LLC*, 2022 WL 16838806, at *4 (S.D. Cal. Nov. 9, 2022) ("[T]he party affected by the injunction bears the obligation of presenting evidence that a bond is needed."). No security is required here.

**V. Conclusion and Order**

Accordingly, petitioner's Motion for Temporary Restraining Order, Doc. 5, is converted to a Motion for Preliminary Injunction and is GRANTED.

Petitioner's immediate release is required to return him to the status quo ante—"the last uncontested status which preceded the pending controversy." *Pinchi*, 2025 WL 1853763, at *3; *Kuzmenko*, 2025 WL 779743, at *2; *see also Valdez*, 2025 WL 1707737, at *5 (ordering immediate release of unlawfully detained noncitizen); *Ercelik v. Hyde*, No. 1:25-CV-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025) (same); *Günaydın v. Trump*, No. 25-CV-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025) (same). The government must immediately release petitioner from custody and, during the pendency of these proceedings, may not re-detain him without a pre-deprivation bond hearing before the San Francisco Immigration Court. Petitioner shall not be detained unless the government demonstrates, by clear and convincing evidence at any such bond hearing, that petitioner is a flight risk or danger to the community such that his physical custody is required.

The Court's prior order to maintain the status quo pending the July 10 hearing, Doc. 10, is VACATED.

IT IS SO ORDERED.

Dated: July 11, 2025

UNITED STATES DISTRICT JUDGE