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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

NORWIN ALEJANDRO GARCIA BARRERA,

Petitioner,

v.

TONYA ANDREWS, Facility 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;

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

Respondents.

Case No. 1:25-at-00673

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

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INTRODUCTION

1
2 Petitioner Norwin Alejandro Garcia Barrera (“Mr. Garcia” or “Petitioner”) is a 25-year-old
3 asylum-seeker from Nicaragua. He came to the United States on or about September 9, 2022, was
4 detained for 2 days, and paroled into the United States. Since then, he has established a life in the
5 United States with his partner and two U.S. citizen daughters (1-year-old and 2-year-old). He has
6 appeared for all of his scheduled court dates and filed for asylum on July 23, 2025. He is the sole
7 income provider for his family who are struggling to make ends meet since he’s been in
8 immigration detention.

9 Mr. Garcia went to his scheduled master calendar hearing on July 23, 2025, where he
10 submitted his asylum application. The Department of Homeland Security (“DHS”) orally moved
11 to dismiss his case, and, over Mr. Garcia’s objection that he wanted a date for the judge to hear his
12 asylum case, Immigration Judge (“IJ”) Nava dismissed his removal proceedings. Mr. Garcia
13 reserved appeal. On August 10, 2025, Mr. Garcia appealed the IJ grant of dismissal to the Board of
14 Immigration Appeals (“BIA”).

15 On July 23, 2025, after his case was dismissed, Mr. Garcia exited the immigration court
16 building. He was walking on the sidewalk when several masked men, armed, and in tactical gear
17 approached him and pointed their rifles at him. He asked what was happening and they told him to
18 “shut up,” that his case was closed, he had no reason to be in the United States, and he was going
19 to be deported. They did not show him any warrant to arrest him. He asked if could call his wife to
20 let her know what was happening. The men took his phone and shut it off. He said it was ok to take
21 him and asked that they not beat him up. They grabbed him and cuffed his wrists together and
22 ankles together and then chained them to his waist. They put him in a van and transported him to
23 San Francisco to be processed for detention. On July 24, 2025, Mr. Garcia was transported to
24 Golden State Annex, a detention facility in McFarland, CA.

25 Mr. Garcia entered the United States on or about September 9, 2022 and was detained by
26 immigration officials for 2 days. He was then paroled for a period of 2 months into the United
27 States and told to go to his scheduled appointments. Upon release from detention at the border, Mr.
28 Garcia went to the Immigration and Customs Enforcement (“ICE”) San Francisco Field Office

1 where he was given a phone that he used to check-in, take photos, and communicate with ICE.
2 Sometimes he was asked to check-in in-person and he complied with those requests. Ever since
3 Mr. Garcia entered the country, he has fully complied with ICE check-in and communication
4 requirements and he diligently attended all court hearings. He has no criminal convictions. He was
5 arrested once in December 2023 when someone called the police when he and his partner had a
6 verbal argument. No charges were ever filed. ICE asked him about this arrest and asked him to get
7 a document showing that no charges were filed. Mr. Garcia did so to the satisfaction of ICE.

8 Mr. Garcia is the primary income earner for his family. He and his partner have two U.S.
9 citizen daughters who are 1-years-old and 2-years-old. He takes whatever jobs he can find and
10 works hard to provide for his family. He filed his asylum application with the immigration court
11 on July 23, 2025 because he had been [REDACTED] in Nicaragua where he was regularly
12 beaten. [REDACTED]

13 [REDACTED]
14 Mr. Garcia's past harm, his responsibilities to his young family, his claim for asylum, did
15 not matter to the government. Rather than determining if he posed a flight risk or danger to the
16 community, federal immigration agents arrested him pursuant to a new, sweeping, and unlawful
17 policy targeting people for arrest at immigration courthouses for the purpose of detaining them
18 and placing them in expedited or detained proceedings. This enforcement campaign is specifically
19 intended to increase ICE arrest numbers to satisfy internal agency quotas.

20 Petitioner's summary arrest and indefinite detention flout the Constitution. The *only*
21 legitimate interests that civil immigration detention serves are mitigating flight risk and
22 preventing danger to the community. Absent those interests, the Fifth Amendment's Due Process
23 Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Mr.
24 Garcia without making any affirmative showing of changed circumstances, the government
25 violated his procedural due process rights. At the very least, he was constitutionally entitled to a
26 hearing before a neutral decision-maker where the government should have justified his detention.

27 As a result of his arrest and detention, Petitioner is suffering irreparable and ongoing harm.
28 The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable

1 injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, “[f]reedom from
2 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
3 the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678,
4 690 (2001). Petitioner also faces numerous additional irreparable harms due to his detention,
5 including the inability to work so that he can support his partner and children who solely rely on
6 him for their basic needs and harm to his physical and mental health as he is experiencing pain in
7 his shoulders and eyes and his detention brings back memories of the fear and anxiety from his
8 past imprisonment in Nicaragua.

9 In light of this irreparable harm, and because he is likely to succeed on the merits of his
10 due process claims, Petitioner respectfully requests that this Court issue a temporary restraining
11 order (“TRO”) immediately releasing him from custody and enjoining the government from re-
12 arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision
13 maker. Confronted with substantially identical facts and legal issues, two courts in this circuit
14 have recently granted the exact relief Petitioner seeks. *See Garro Pinchi v. Noem*, 2025 WL
15 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __,
16 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D.
17 Cal. July 11, 2025) (granting preliminary injunction); *Ortiz Calderon v. Kaiser*, 2025 WL
18 2294914, at *3 (N.D. Cal. Aug. 8, 2025) (granting temporary restraining order); *Pablo Sequen v.*
19 *Kaiser*, 2025 WL 2203419, at *4 (N.D. Cal., 2025). To maintain this Court’s jurisdiction, the
20 Court should also prohibit the government from transferring Petitioner out of this District and
21 removing him from the country until these proceedings have concluded.

22 BACKGROUND

23 Mr. Garcia is an asylum seeker who fled Nicaragua because [REDACTED]

24 [REDACTED] *See* Petition for Writ of Habeas Corpus (hereinafter
25 “Pet.”) (Dkt. No. 1); Declaration of Norwin Garcia Barrera (hereinafter, “Garcia dec.”). He was
26 [REDACTED] beaten and suffered injuries that affect him to this day. Garcia
27 dec. ¶ 14. [REDACTED]

28 [REDACTED] *Id.* There was nowhere he could go in

1 Nicaragua to be safe.

2 Mr. Garcia was briefly detained by federal agents after entering the United States on or
3 about September 9, 2022. *Id.* ¶ 9. Determining that he was not a flight risk or a danger to the
4 community, the agents released Petitioner on parole and told him to go to his scheduled
5 appointments. *Id.* He reported to Customs and Immigration Enforcement (“ICE”) in San Francisco
6 and did everything that was asked of him, including taking photos on the phone they provided
7 and in-person check-ins. *Id.*

8 Petitioner has lived in the United States since September 2022. *Id.* ¶ 9. He is the primary
9 income earner for his family as his partner is the primary caretaker for their daughters who are 1
10 and 2 years old. *Id.* ¶ 11. They are struggling to pay their bills, rent, and basic necessities while
11 Mr. Garcia has been in detention. *Id.*

12 On July 23, 2025, Mr. Garcia applied for asylum, withholding of removal, and relief under
13 the Convention Against Torture. *Id.* ¶ 3. He has complied with all of requirements for ICE check-
14 ins and communication and attended all of his court dates. *Id.* ¶ 9-10.

15 On July 23, 2025, after his case was dismissed, Mr. Garcia exited the immigration court
16 building. Garcia dec. ¶ 5. He was walking on the sidewalk when several masked men, armed, and
17 in tactical gear approached him and pointed their rifles at him. *Id.* He asked what was happening
18 and they told him to “shut up,” that his case was closed, he had no reason to be in the United
19 States, and he was going to be deported. *Id.* He asked if could call his wife to let her know what
20 was happening because they have two young daughters together. *Id.* The men took his phone and
21 shut it off. *Id.* He said it was ok to take him and asked that they not beat him up. *Id.* They grabbed
22 him and shackled his wrists together and feet together and then to his waist. *Id.* ¶ 6. They put him
23 in a van and transported him to San Francisco to be processed for detention. *Id.* On July 24, 2025,
24 Mr. Garcia was transported to Golden State Annex, a detention facility in McFarland, CA. *Id.*

25 Mr. Garcia’s arrest did not have anything to do with his individual case. Instead, it is part
26 of a new, nationwide DHS strategy of sweeping up people who attend their immigration court
27
28

1 hearings, detaining them, and seeking to re-route them to fast-track deportations.¹ Since mid-May,
2 DHS has implemented a coordinated practice of immigration detention to strip people like
3 Petitioner of their substantive and procedural rights and pressure them into deportation. DHS is
4 aggressively pursuing this arrest and detention campaign at courthouses throughout the country,
5 including Northern California. At the Concord Immigration Court, where Petitioner was arrested,
6 several people have been arrested since June 2025 after attending their routine immigration
7 hearings.²

8 This “coordinated operation” is “aimed at dramatically accelerating deportations” by
9 arresting people at the courthouse and placing them into expedited removal.³ The first step of the
10 operation typically takes place inside the immigration court. When people arrive in court for their
11 master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without
12 any notice to the affected individual. Although DHS regulations do not permit such motions to
13 dismiss absent a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. §
14 239.2(a)(7), (c), DHS attorneys are not conducting any case-specific analysis of changed
15 circumstances before filing these motions to dismiss.

16 The next step takes place outside the courtroom. ICE officers, in consultation with DHS
17

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

21 ² Declaration of Ali John Saidi, dated August 12, 2025 (Dkt. No. 1, Exhibit 1); Velena Jones,
22 *ICE detentions at Concord court trigger protests*, NBC Bay Area, June 26, 2025,
23 <https://www.nbcbayarea.com/news/local/ice-detainments-concord-court/3902275/>; Kevin Ko,
24 *ICE agents at Concord immigration courthouse confronted by protesters*, CBS News., June 10,
25 2025, <https://www.cbsnews.com/sanfrancisco/news/ice-agents-concord-immigration-courthouse-protests/>;
26 Tony Hicks, *Protesters clash with federal agents detaining people at immigration*
27 *hearings in East Bay*, ABC 7 News, June 10, 2025, <https://abc7news.com/post/ice-arrests-protesters-clash-federal-agents-trying-detain-people-immigration-hearings-concord/16719162/>;
28 Thomas Lyons, *Mood is tense at Concord Immigration Court following ICE arrests*,
Berkeleyside, June 12, 2025, <https://www.berkeleyside.org/2025/06/12/concord-immigration-court-tension-after-ice-arrests>.

29 ³ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in*
30 *Trump’s Deportation Push*, Wash. Post, May 23, 2025,
31 <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>;
32 *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up*
33 *Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
34 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html> (updated June 1,
35 2025).

1 attorneys and officials, station themselves either in courthouse waiting rooms, hallways, and
2 elevator banks, or outside the courthouse. When an individual exits their immigration hearings,
3 masked ICE officers immediately arrests the person and detains them. Or, individuals are
4 approached on the street or even pulled over in their cars. The officers execute these arrests
5 regardless of how the IJ rules on the government's motion to dismiss. That is what happened to
6 Petitioner here. Mr. Garcia's case was dismissed, he exited the court building and walking on the
7 street when he was approached by masked and armed men who pointed rifles at him. They
8 presented no documents for his arrest. They handcuffed his wrists and ankles and chained them to
9 his waist. They put him in a van and transported him to San Francisco ICE Field Office to process
10 him for detention.

11 Petitioner suffers serious and ongoing harm every day he remains in detention. Prior to his
12 detention, Mr. Garcia was working to support his partner and children. He has daughters who are
13 1 years old and 2 years old and he enjoys taking them to the park and walking around the
14 neighborhood. He will draw or paint with them and play ball with them. Now he constantly worries
15 about their well-being because without his income, they cannot afford to pay their bills, pay rent,
16 or for food and diapers.

17 ARGUMENT

18 To warrant a TRO, a movant must show (1) they are "likely to succeed on the merits," (2)
19 they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance
20 of equities tips in [their] favor," and that (4) "an injunction is in the public interest." *All. for the*
21 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def.*
22 *Council, Inc.*, 555 U.S. 7, 20 (2008)); see *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240
23 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary restraining order
24 and a preliminary injunction is substantially the same). Even if the movant raises only "serious
25 questions" as to the merits of their claims, the court can grant relief if the balance of hardships
26 tips "sharply" in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. All factors here weigh
27 decisively in Petitioner's favor.
28

1 **I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.**

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

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

12 To comply with substantive due process, the government’s deprivation of an individual’s
13 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil,
14 not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
15 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
16 (“[T]he government has no legitimate interest in detaining individuals who have been determined
17 not to be a danger to the community and whose appearance at future immigration proceedings can
18 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
19 absent, immigration detention serves no legitimate government purpose and becomes
20 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v. Indiana*,
21 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the government’s interests
22 in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL
23 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may
24 “succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with
25 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 (2003)
28 (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing and

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

6 Petitioner, who has no criminal convictions and who is diligently pursuing his immigration
7 case with the assistance of an attorney, is neither a danger nor a flight risk. Therefore, his detention
8 is both punitive and not justified by a legitimate purpose, violating his substantive due process
9 rights. Indeed, when Respondents chose to parole Petitioner in September 2022, that decision
10 represented their finding that he was neither dangerous nor a flight risk. *See Saravia v. Sessions*,
11 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d
12 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is
13 not a danger to the community or a flight risk.”). Nothing has transpired since to disturb that finding.

14 *First*, Mr. Garcia has no criminal convictions. He has one arrest in 2023 when someone
15 called the police because of a verbal argument he had with his partner. There were no charges ever
16 filed against him. ICE asked him about the arrest at one of his check-ins and requested that he
17 provide documentation that no charges were filed. Mr. Garcia did so to the satisfaction of ICE and
18 the incident did not deem him to be a danger to the community. He has no intervening criminal
19 history since his release to argue that he is a danger to the community.

20 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
21 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
22 F.3d at 990-91. There is no basis to argue that Petitioner, who was arrested by Respondents *while*
23 *appearing in immigration court* for a master calendar hearing, is a flight risk. Mr. Garcia complied
24 with all the requirements by ICE to check in, take photos, carry the phone they provided, and he
25 attended all of his court dates. Moreover, Petitioner has a viable path toward immigration relief and
26 a pathway to lawful permanent residence, further mitigating any risk of flight. *See Padilla v. U.S.*
27 *Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is
28 not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to

1 remain in the United States). At the time of his arrest, Petitioner had filed his application for asylum,
2 withholding of removal, and relief under the Convention Against Torture. With the assistance of
3 counsel, he has filed his appeal with the Board of Immigration Appeals and has every intention of
4 continuing to pursue his applications for immigration relief. And, until his unlawful arrest and
5 detention, Petitioner was working whatever jobs that were available to him to support his partner
6 and children.

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

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

14 Noncitizens living in the United States like Petitioner have a protected liberty interest in
15 their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court
16 “usually has held that the Constitution requires some kind of a hearing *before* the State deprives
17 a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
18 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C.
19 Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-
20 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
21 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482
22 (1972) (same, in parole context).

23 Accordingly, the Supreme Court has repeatedly held that individuals released from
24 custody on bond, parole, or other forms of conditional release have a protected interest in their
25 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
26 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
27 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
28 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have

1 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
2 963, 970 (N.D. Cal. 2019). Petitioner thus has a protected liberty interest in his freedom from
3 physical custody.

4 Once a petitioner has established a protected liberty interest, as Petitioner has done here,
5 courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See*
6 *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S.
7 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk
8 of erroneous deprivation and probable value of procedural safeguards; and (3) the government’s
9 interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioner and prohibiting
10 his re-detention without a custody hearing at which the government bears the burden of proof.

11 *First*, the private interest affected in this case is profound. When considering this factor,
12 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
13 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
14 here is high. Petitioner, who is a responsible and caring father to a 1-year-old and 2-year-old, has
15 been completely deprived of his physical liberty and locked in a former state prison operated by
16 a private, for-profit prison company, that has repeatedly been cited by government watchdogs for
17 failing to meet safety requirements and other standards.⁴ Petitioner’s detention has ripped from
18 him the “free[dom] to be with family and friends and to form the . . . enduring attachments of
19 normal life.” *Morrissey*, 408 U.S. at 482. Cutting someone off from the “core values of
20 unqualified liberty”—for Petitioner, he is forced to be apart from his partner and daughters, unable
21 to go on walks with them or take them to the park, and unable to work or go to church—creating
22 a “grievous loss.” *Id.* Moreover, because Petitioner faces *civil detention*, “his liberty interest is
23 arguably greater than the interest of the parolees in *Morrissey*.” *See Ortega*, 415 F. Supp. 3d at
24

25 ⁴ *See, e.g.*, In re Geo Group, Inc., Cal. Occupational Safety and Health Appeals Bd., Inspection
26 No. 1609228, *Decision After Reconsideration*, Jan. 10, 2025,
27 <https://www.dir.ca.gov/oshab/Decisions/DAR/1609228-Geo-Group.pdf> (upholding levy of fines
28 on GEO Group for imposing unsafe working conditions on detained laborers at Golden State
Annex); U.S. Dep’t of Homeland Sec. Off. of Inspector Gen., OIG 24-23, *Final Report: Results
of an Unannounced Inspection of ICE’s Golden State Annex in McFarland, California* (Apr. 18,
2024), <https://www.oig.dhs.gov/sites/default/files/assets/2024-04/OIG-24-23-Apr24.pdf> (finding
that ICE failed to meet certain minimum detention standards at Golden State Annex).

1 970. As someone in civil detention, therefore, “it stands to reason that [Petitioner] is entitled to
2 protections at least as great as those afforded to a[n] . . . individual . . . accused but not convicted
3 of a crime.” *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

4 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
5 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
6 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.
7 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*,
8 No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents approached
9 Mr. Garcia on the street with their rifles pointed at him as he was leaving the court building. They
10 detained him with no notice and no opportunity to contest his re-detention before a neutral arbiter.
11 They told him that he had no right to be in the United States and he would be deported. In such
12 circumstances, when Respondents have provided *no* procedural safeguards, “the probable value
13 of additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5.
14 This is especially true here, where there is no change in Petitioner’s circumstances suggesting that
15 Petitioner now poses a flight risk or danger to the community. His re-detention instead appears to
16 be motivated instead by Respondents’ new arrest quotas and practice of leveraging detention to
17 secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality
18 Act, to initiate expedited removal. Pet. ¶ 34. Neither constitutes a lawful justification to re-detain
19 a person who does not pose a flight risk or danger to the community.

20 *Because* the private interest in freedom from immigration detention is substantial, due
21 process also requires that in cases like this one, the government bears the burden of proving “by
22 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community.”
23 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775,
24 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing
25 evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025
26 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which
27 government bears burden by clear and convincing evidence).

28 *Third*, the government’s interest in detaining Petitioner without first providing notice and

1 submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
2 hearings, which impose a “minimal” cost to the government. *See Doe*, 2025 WL 691664, at *6;
3 *A.E.*, 2025 WL 1424382, at *5. Petitioner is now represented by counsel and has attended all of
4 his immigration proceedings even when he was not represented; there is no reason to believe that
5 between the date of his release and his custody hearing, his compliance will change. Indeed, courts
6 regularly hold that the government’s interest in re-detention without a custody hearing is low
7 when the petitioner “has long complied with his reporting requirements.” *Diaz v. Kaiser*, No.
8 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D. Cal. June 14, 2025) (granting TRO
9 prohibiting re-detention of noncitizen without a pre-deprivation bond hearing); *Jorge M. F. v.*
10 *Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021) (same);
11 *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition ordering the same); *see also Valdez v.*
12 *Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025) (granting
13 habeas petition and immediately releasing petitioner who had been detained without process, who
14 had “voluntarily attended his scheduled immigration court proceedings” and “established ties”
15 through his work and volunteering with the church).

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

28 In short, Respondents violated Petitioner’s due process rights when they detained him

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

8 * * * * *

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

14 **II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE**
15 **INJURY ABSENT A TRO.**

16 Without a temporary restraining order, Petitioner will suffer immense irreparable injury.
17 Indeed, he faces such injury every day 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 involved,
21 most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v.*
22 *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 As a result of his arrest and detention, Petitioner is also suffering additional ongoing
2 irreparable harms. He is missing out on the daily lives of his very young daughters, his partner
3 cannot pay their bills and they are at risk of losing their housing, he is experiencing pain in his
4 shoulders and eyes for which he is taking pain medication several times a day, and he cannot work
5 or go to church.

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

8 When the government is the party opposing the request for emergency relief, the balance
9 of the equities and the public interest merge. *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991
10 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance
11 of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing
12 constitutional violations and continued additional suffering if the TRO is not granted. *See* Section
13 II, *supra*; *Hernandez*, 872 F.3d at 996 (when “[f]aced with ... preventable human suffering, ...
14 the balance of hardships tips decidedly in plaintiffs’ favor”) (internal citation omitted).

15 The public interest likewise weighs strongly in Petitioner’s favor. As another California
16 district court recently concluded, “[t]he public has a strong interest in upholding procedural
17 protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the
18 public of immigration detention are staggering.” *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M.*
19 *F.*, 2021 WL 783561, at *3). More fundamentally, “[i]t is always in the public interest to prevent
20 the violation of a party’s constitutional rights.” *Index Newspapers LLC v. U.S. Marshals Serv.*,
21 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf’t*, 953 F.3d 1134,
22 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

23 **SECURITY**

24 No security is necessary here. Courts “may dispense with the filing of a bond when,” as
25 here, “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”
26 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
27 requirement in cases raising constitutional claims, because “to require a bond would have a negative
28 impact on plaintiff’s constitutional rights, as well as the constitutional rights of other members of

1 the public.” *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996).
2 Finally, Plaintiff’s showing of a high likelihood of success on the merits supports the court’s
3 waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l*
4 *Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

5 **CONCLUSION**

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

14
15 Respectfully submitted,

16 Date: August 13, 2025

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