TALIA HOUSMAN (SBN 360341)
thousman@sfbar.org
THE JUSTICE AND DIVERSITY CENTER
50 Fremont St. Ste. 1700
San Francisco, California 94105
Telephone: (415)989-1616

Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

Britney Xiomara PRIETO SALAZAR,

Petitioner,

v.

MINGA WOFFORD, Mesa Verde ICE Processing Center Facility Administrator; 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 0688

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Regulations

Other Authorities

INTRODUCTION

Britney Prieto Salazar (Petitioner or Britney) is an asylum seeker from Colombia. Quickly after she entered the United States in January 2024, Customs and Border Patrol ("CBP") released her into the interior to proceed with her asylum application before the San Francisco Immigration Court. Until about five days ago, Petitioner was an active member of the community and united with family. She has no criminal record in any country and attended her immigration court hearing without delay. On Friday, August 8, 2025, Britney joined the ranks of the victims of the government's unprecedented weaponization of immigration court hearings as traps for immigrants who show up in reliance on the Amer ican promise of a fair process before a judge but are instead met with handcuffs.

Petitioner respectfully seeks a writ of habeas corpus ordering Respondents to immediately release her from ongoing, unlawful detention, and prohibiting her re-arrest without a hearing to contest that re-arrest before a neutral decision-maker. In addition, to preserve this Court's jurisdiction, Petitioner also requests that this Court order Respondents not to transfer Petitioner outside of the District, or deport her, for the duration of this proceeding. None of this mattered to the government. Rather than determining that Petitioner posed a flight risk or danger to the community, federal immigration agents arrested her pursuant to a new, sweeping, and unlawful policy targeting people for arrest at immigration courthouses for the purpose of placing them in expedited-removal proceedings. This enforcement campaign is specifically intended to increase ICE arrest numbers to satisfy internal agency quot as.

Petitioner's summary arrest and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without making any affirmative showing of changed circumstances, the government violated Petitioner's procedural due process rights. At the very least, she was constitutionally entitled to a hearing before a neutral decisionmaker at which the government should have justified her detention.

As a result of her arrest and detention, Petitioner is suffering irreparable and ongoing harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner also faces numerous additional irreparable harms due to her detention, including disruption of her employment, separation from her community, and exasperation of her past trauma.

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

BACKGROUND

Petitioner is an asylum seeker who came to the United States in January 2024. Petitioner was briefly detained by federal agents after entering the United States. Petition for Writ of Habeas Corpus at 8. Determining that she was not a flight risk or a danger to the community, the agents released Petitioner on her own recognizance with a notice to appear for removal proceedings in immigration court.

Petitioner has lived in San Francisco, California, USA since 2024. Petition for Writ of Habeas Corpus at 8. She has reunited with family and started working as a rideshare driver. She has been working through the trauma that she experienced while in Colombia based on her

sexuality and started to form ties and friendships to the Bay Area beyond her family.

In September 2024, Petitioner submitted her application for asylum based on the trauma, harassment, and cruelty that she faced in Colombia based on her sexuality. This is in line with immigration requirements that an asylum application be submitted within one year of entering the country.

On August 8, 2025, Britney attended her "master calendar" hearing at the San Francisco Immigration Court. As Britney has been actively pursuing asylum, she had already filed her asylum application in September 2024 and requested to have a hearing on the merits of her case, known as an "individual calendar hearing." The immigration judge granted this request and set a hearing in February 2028 with the caveat that she needed to remedy a portion of the asylum application by December 2025. After this request, the government counsel then orally moved to dismiss her case which until recently was a very unusual motion and very unusual way to bring a motion. This is being done without obtaining the noncitizen's position or affording them time to respond before court is in session. The immigration judge did not grant the motion. Instead, the immigration judge gave Petitioner 10 days to reply in writing and to have the ability to consult with a lawyer. Thus, her proceedings remained pending before the San Francisco Immigration Court.

Upon leaving the courtroom, Britney was suddenly arrested by ICE agents in the hallway. She was not told why she was being arrested, but her arrest fits with a recent government policy and practice of attempting to cancel noncitizens' immigration court proceedings, arrest them at immigration court hearings regardless of the outcome of the motion, place them instead in expedited removal proceedings, and detain them in long term for-profit detention facilities. This is a cursory and abrupt process by design, and it is overseen by ICE agents without procedural due protections. As noted, however, Britney remains in immigration court proceedings, and no apparent lawful basis exists for using expedited removal procedures against her.

By arresting and detaining Britney, ICE also unlawfully revoked the release that Britney has enjoyed since January 2024 without any neutral evaluation of the supposed justifications. That is unconstitutional. In recent days, this District has ordered ICE to release individuals that it

arrested like Britney, who were previously granted parole or some other form of release from immigration custody, and to not re-arrest them without first providing a pre-detention bond hearing. See, e.g., *Garcia v. Andrews*, No. 25-cv-01884-TLN, 2025 WL 1927596, at *4 (E.D. Cal. July 14, 2025) (granting preliminary injunction and ordering ICE to release recently detained individual for whom, two years prior, an immigration judge had granted bond); *Singh v. Andrews*, No. 1:25-CV-801, 2025 WL 1918679, at *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction and ordering release for individual previously released from CBP custody); *Doe v. Becerra*, No. 2:25-cv-647-DJC, __ F. Supp. 3d __, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering release and a bond hearing for individual previously released on bond); see also *Garro Pinchi v. Noem*, No. 5:25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025), converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (ordering ICE to free a woman previously released from CBP custody). Petitioner's arrest did not have anything to do with her individual case. Instead, it is part of a new, nationwide DHS strategy of sweeping up people who attend their immigration court hearings, detaining them, and seeking to re-route them to fast-track deportations.[1] Since mid-May, DHS has implemented a coordinated practice of immigration detention to strip people like Petitioner of their substantive and procedural rights and pressure them into deportation. DHS is aggressively pursuing this arrest and detention campaign at courthouses throughout the country, including Northern California. At the San Francisco Immigration Court, where Petitioner was arrested, dozens of people have been arrested in the last month after attending their routine immigration hearings.[2]

This "coordinated operation" is "aimed at dramatically accelerating deportations" by

---

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

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

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

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

Petitioner suffers serious and ongoing harm every day she remains in detention. Prior to her detention, Petitioner was working as a rideshare driver and was an integral part of her family's life. She was an integral part to her family's life in San Francisco and provided much needed care to her pregnant sister-in-law. Declaration of Yuli Liliana Zavala Gonzalez at ¶ 3. Her sister-in-law was recently hospitalized due to a high risk pregnancy and Petitioner is her main care giver. *Id.* at ¶5-6. She is not a flight risk and is actively working on her asylum case while building her life in San Francisco, California.

ARGUMENT

To warrant a TRO, a movant must show (1) they are "likely to succeed on the merits," (2)

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

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

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. Petitioner's detention violates substantive due process because she is neither a flight risk nor a danger to the community.

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. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes

impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him").

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

Petitioner, who has no criminal record and who is diligently pursuing her immigration case with the assistance of an attorney, is neither a danger nor a flight risk. Therefore, her detention is both punitive and not justified by a legitimate purpose, violating her substantive due process rights. Indeed, when Respondents chose to release Petitioner from custody in 2024, that decision represented their finding that she was neither dangerous nor 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."). Nothing has transpired since disturbing that finding.

First, because Petitioner had no criminal history, and has had no intervening criminal history or arrests since her release, there is no credible argument that she is a danger to the community.

Second, as to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872

F.3d at 990-91. There is no basis to argue that Petitioner, who was arrested by Respondents *while appearing in immigration court* for a master calendar hearing, is a flight risk. The Petitioner dutifully appeared at her first master calendar hearing and had appropriately filed her asylum application within the required time frame. Moreover, Petitioner has a viable path toward immigration relief and a pathway to lawful permanent residence, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). At the time of her arrest, Petitioner had filed an asylum application with the court and had requested her merits hearing on the application. She has every intention of continuing to pursue her applications for immigration relief.

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

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

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

Accordingly, the Supreme Court has repeatedly held that individuals released from custody on bond, parole, or other forms of conditional release have a protected interest in their

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

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

First, the private interest affected in this case is profound. When considering this factor, courts look to "the degree of potential deprivation." *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation here is high. Petitioner, who is 23 years old has been completely deprived of her physical liberty and locked in a former state prison operated by a private, for-profit prison company, that has repeatedly been cited by government watchdogs for failing to meet safety requirements and other standards.[4] Petitioner's detention has ripped from her the "free[dom] to be with family and friends and to form the . . . enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Cutting someone off from the "core values of unqualified liberty"—for Petitioner creates a "grievous

[4] *See, e.g.*, In re Geo Group, Inc., Cal. Occupational Safety and Health Appeals Bd., Inspection No. 1609228, *Decision After Reconsideration*, Jan. 10, 2025, https://www.dir.ca.gov/oshab/Decisions/DAR/1609228-Geo-Group.pdf (upholding levy of fines 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).

loss." *Id.* Moreover, because Petitioner faces *civil detention*, her "liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *See Ortega*, 415 F. Supp. 3d at 970. As someone in civil detention, therefore, "it stands to reason that [Petitioner] is entitled to protections at least as great as those afforded to a[n] . . . individual . . . accused but not convicted of a crime." *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

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, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents grabbed Petitioner by surprise as she left her immigration court hearing, detaining her with no notice and no opportunity to contest her re-detention before a neutral arbiter. In such circumstances, when Respondents have provided *no* procedural safeguards, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5. This is especially true here, where there is no change in Petitioner's circumstances suggesting that Petitioner now poses a flight risk or danger to the community. Her re-detention instead appears to be motivated instead by Respondents' new arrest quotas and practice of leveraging detention to secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality Act, to initiate expedited removal. Petition for Writ of Habeas Corpus at 8. Neither constitutes a lawful justification to re-detain a person who does not pose a flight risk or danger to the community.

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

government bears burden by clear and convincing evidence).

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

In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without a pre-deprivation hearing in which the government bears the burden of proof violates due process, and grant the emergency relief Petitioner seeks here. *See Garro Pinchi v. Noem*, __ F. Supp. 3d __, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her immigration court hearing into preliminary injunction prohibiting the government from re-detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO over one month after petitioner's initial detention); *see also, e.g.*, *Diaz*, 2025 WL 1676854, at *3-*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at *4; *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).

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

* * * * *

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

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

Without a temporary restraining order, Petitioner will suffer immense irreparable injury. Indeed, she faces such injury every day she remains in detention in violation of her Fifth Amendment rights. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez*, 872 F.3d at 994-95 (citing *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) (internal quotation marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed "by virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time"); *see also, e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that "[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the

incarcerated individual" (cleaned up)).

As a result of her arrest and detention, Petitioner is also suffering additional ongoing irreparable harms.

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

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

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

SECURITY

No security is necessary here. Courts "may dispense with the filing of a bond when," as here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond requirement in cases raising constitutional claims, because "to require a bond would have a negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996). Finally, Plaintiff's showing of a high likelihood of success on the merits supports the court's

waiving of bond in this case. *See, e.g.*, *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

CONCLUSION

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

Respectfully submitted,

Date: August 13, 2025

/s/ *Talia C. Housman*

TALIA HOUSMAN (SBN 360341)
thousman@sfbar.org
THE JUSTICE AND DIVERSITY CENTER
50 Fremont St. Ste. 1700
San Francisco, California 94105
Telephone: (415)989-1616
Attorney for Petitioner