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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Ibrakhim Bolotkanov

Petitioner,

v.

John Cantu, *et al.*,

Respondents.

Case No.: 2:25-cv-03025-KML-JZB

**Petitioner's Ex Parte  
Application for a Temporary  
Restraining Order and Order  
to Show Cause; Points and  
Authorities in Support of  
Motion for Temporary  
Restraining Order**

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioner hereby moves the Court for emergency relief in the form of a temporary restraining order directing Respondents to release Petitioner from their custody or to provide Petitioner with individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of issuance of an Order. Petitioner has now been detained without a bond hearing for nearly 7 months.

Petitioner also seeks a temporary restraining order enjoining the

Respondents from relocating Petitioner outside of the District of Arizona pending final resolution of this case. Petitioner further moves for the issuance of an order to show cause as to why a preliminary injunction should not issue. This application is supported by the Memorandum of Points and Authorities.

## INTRODUCTION

In the interest of expedition and in light of the ongoing irreparable harm, Petitioner hereby incorporates and respectfully refers the Court to his Verified Petition for a full statement of the facts giving rise to this motion. In sum, this case presents facts like recent cases in which courts have provided swift interim relief: ICE detained Petitioner while he was driving to work on or around May 13, 2025, not because he presents a danger or flight risk (he does not, and Respondents know this: they released him on parole from immigration custody over eight years ago on that basis), but rather pursuant to a new, unlawful policy targeting people for arrest at immigration court for the purpose of re-routing them through expedited removal procedures. *See, e.g., Garcia v. Andrews*, No. 25-cv-01884-TLN, 2025 WL 1927596, at \*4 (E.D. Cal. July 14, 2025) (Chief Judge Nunley 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 13 \*10 (E.D. Cal. July 11, 2025) (granting preliminary injunction); *Garro Pinchi v. Noem*, No. 5:25-14 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) (same). This re-detention violates Petitioner's due process rights and causes his irreparable, 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 thus respectfully requests that this Court issue a temporary restraining order (1) prohibiting the government from transferring or removing Petitioner pending these proceedings; and (2) provide him with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

### **ARGUMENT**

To warrant a TRO, Petitioner need only show that (1) he is "likely to succeed on the merits," (2) he is "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [his] 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 *Stuhlberg 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 Petitioner were to only raise "serious questions" as to the merits of his claims, the Court can still grant relief because the balance of hardships tips "sharply" in his favor. *All. for the Wild Rockies*, 632 F.3d at 1135.

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

### **A. Petitioner's detention violates substantive due process.**

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, Respondents' 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").

Petitioner here, who has no criminal record and who is diligently pursuing his immigration case, is neither a danger nor a flight risk. Therefore, his re-detention is not justified by a legitimate purpose. Indeed, Respondents chose to release Petitioner from custody in 2017 indicating that Respondents determined that he 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 to disturb that finding.

First, because Petitioner had no criminal history at the time of his 2017 release from CBP custody, with no intervening criminal history or arrests since his release, there is no credible argument that he 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 has previously appeared in immigration court for a master calendar hearing, is a flight risk. Moreover, Petitioner has viable paths toward immigration relief, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enft.*, 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). Petitioner has filed an application for asylum. He has every intention of continuing with his case and attending court. Respondents have no evidence to suggest otherwise.

In sum, Petitioner's actions since Respondents first released him confirm that he is neither a danger nor flight risk. Indeed, his ongoing compliance compels the conclusion that he is even less of a danger or flight risk than when he was

originally released. Accordingly, Petitioner's ongoing detention is unconstitutional, and due process principles require his release.

**B. Petitioner's detention of nearly 7 months without the opportunity to contest his detention before a neutral decision-maker violates procedural due process.**

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." *Zinerman 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); *Garcia*, 2025 WL 1927596, at \*4 (agreeing with petitioner that release on immigration bond "create[d] a powerful interest for Petitioner in his continued liberty."). 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 his 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. Haus*.

*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 has lived a law-abiding, fully employed, and honorable life, has already faced prolonged detention of over 6 months, denying him 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"—including his ability to be with family and enjoy the peace and safety he could not find in Kyrgyzstan—creates a "grievous loss." *Id.* Moreover, because Petitioner faces civil detention, his liberty interest "is arguably greater than the interest of the parolees in *Morrissey*." *See Ortega*, 415 F. Supp. 3d at 970. It therefore "stands to reason that [he] is entitled to protections at least as great as those afforded to a[n] ... individual ... accused but not convicted of a crime." *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 when he was driving his car, detaining him 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 he now poses a flight risk or danger to the community. His re-detention instead appears to be motivated by Respondents' arrest and removal quotas. 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 negligible. 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 a record of compliance, and there is no reason to believe that will change between the date of his release and his custody hearing. 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 have ruled that re-detaining noncitizens without a pre-deprivation hearing in which the government bears the burden of proof violates due process and have granted the emergency relief Petitioner seeks here. *See, e.g., Garcia v. Andrews*, No. 25-cv-01884-TLN, 2025 WL 1927596, at \*4 (E.D. Cal. July 14, 2025) (Chief Judge Nunley 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); *Ruiz Otero v. Kaiser*, No. 3:25-cv-06536, ECF 4 (E.D. Cal. Aug. 3, 2025) (ordering release for individual released from DHS custody less than two years prior to filing); *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) (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. Kafaer*, 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 him without notice and without a custody hearing before a neutral arbiter. Here, only an order releasing Petitioner and enjoining re-detention-unless

Respondents provide him 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).

## **II. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.**

In the absence of a TRO, Petitioner will continue to be unlawfully detained by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ. Petitioner has now been detained without a bond hearing for nearly 7 months. “Freedom 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). Detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418

F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the government’s current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm.”).

**III. The Balance of Equities Tips in Petitioner’s Favor and a TRO is in the Public Interest.**

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs in his favor because his claims assert that the new policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing Petitioner from obtaining bond “is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction issued in *Moreno II* and quoting approvingly district judge’s declaration that “it is clear that neither equity nor the public’s interest are furthered by allowing

violations of federal law to continue”). This is because “it would not be equitable or in the public’s interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

### CONCLUSION

For the foregoing reasons, the Court should grant Petitioner’s Application for a Temporary Restraining Order and Order to Show Cause.

Dated: December 11, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 11, 2025, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Arizona by using the CM/ECF system, which will send notice of such filing to all parties that have appeared in this case.

Counsel in the case are registered CM/ECF users and thus service will be accomplished by the CM/ECF system.

*/s/ Eli Goldmann*

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