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

NARCILO CAICEDO HINESTROZA, JAIRO
ANDRES DANGOND LOPEZ, JHEL VIN JHERH
RAMOS HUAMAN,

Petitioners,

v.

POLLY KAISER, Acting Field Office Director of
the San Francisco Immigration and Customs
Enforcement Office; TODD LYONS, Acting
Director of United States Immigration and Customs
Enforcement; KRISTI NOEM, Secretary of the
United States Department of Homeland Security,
PAMELA BONDI, Attorney General of the United
States, acting in their official capacities,

Respondents.

Case No. 3:25-cv-07559

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

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INTRODUCTION

Petitioners went to the San Francisco Immigration Court on September 5, 2025, expecting routine preliminary hearings in which they would discuss their cases with the immigration judge and schedule further proceedings on the merits of their applications for relief. So they were surprised when, during the hearings, the Department of Homeland Security (“DHS”) lawyer orally moved to dismiss their cases altogether. The Immigration Judge did not grant the motions to dismiss. Instead, the judge gave Petitioners time to respond and reset their hearings for another date. Minutes after each Petitioner exited the courtroom, a group of DHS agents waiting outside arrested them before they could leave the courthouse.

Nothing about Petitioners’ immigration cases justified this arrest and detention. When Petitioners entered the country, federal immigration officers released them within days on their own recognizance and with no ankle shackle or intrusive supervision conditions. The government thus necessarily determined that they did not pose a flight risk or danger to the community—let alone one warranting detention. Since then, Petitioners’ exemplary conduct has only confirmed the government’s prediction. They complied with all of their ICE and immigration court obligations and almost all of them filed applications for asylum, withholding of removal, and protection under the Convention Against Torture. None of them have a criminal history.

None of this mattered to the government. Rather than determining that Petitioners posed a flight risk or danger to the community, federal immigration agents arrested them 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 quotas.

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

9 As a result of their arrest and detention, Petitioners are suffering irreparable and ongoing
10 harm. The unconstitutional deprivation of “physical liberty” “unquestionably constitutes
11 irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
12 “[f]reedom from imprisonment—from government custody, detention, or other forms of physical
13 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*
14 *Davis*, 533 U.S. 678, 690 (2001). Petitioners also face numerous additional irreparable harms due
15 to her detention, including difficulties with vertigo and panic and being in enclosed spaces.

16 In light of this irreparable harm, and because they are likely to succeed on the merits of
17 her due process claims, Petitioners respectfully request that this Court issue an *ex parte* temporary
18 restraining order (“TRO”) immediately releasing from them custody and enjoining the
19 government from re-arresting them absent the opportunity to contest that arrest at a hearing before
20 a neutral decision maker. Since DHS started this new policy, Courts in this circuit have repeatedly
21 granted preliminary relief when confronted with substantially identical facts and legal issues. *See*
22 *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB (N.D. Cal. Sept. 3, 2025) (granting preliminary
23 injunction); *Garcia v. Kaiser*, No. 3:25-cv-06916 (N.D. Cal. Aug. 29, 2025) (granting preliminary
24 injunction); *Salazar v. Kaiser*, No. 1:25-CV-01017-JLT-SAB, 2025 WL 2456232, at *2 (E.D.
25 Cal. Aug. 26, 2025) (granting preliminary injunction); *Clavijo v. Kaiser*, 2025 WL 2419263, *25
26 (N.D. Cal. Aug. 21, 2025) (granting preliminary injunction); *Paz Hernandez v. Kaiser*, No. 1:25-
27 cv-00986 (E.D. Cal. Aug. 21, 2025) (granting preliminary injunction); *Garcia Barrera v.*
28 *Andrews*, 2025 WL 2420068, at *3 (E.D. Cal. Aug. 21, 2025); *Castellon v. Kaiser*, No. 1:25-CV-

00968 JLT EPG, 2025 WL 2373425, at *12 (E.D. Cal. Aug. 14, 2025); *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); *Jaraba Oliveros v. Kaiser*, No. 25-cv-07117 (N.D. Cal. Aug. 22, 2025) (granting *ex parte* TRO); *Salcedo Aceros v. Kaiser*, No. 1:25-cv-06924 (N.D. Cal. Aug. 16, 2025) (same); *Pineda Campos v. Kaiser*, No. 25-cv-06920 (N.D. Cal. Aug. 15, 2025) (same); *Ruiz Otero v. Kaiser*, No. 5:25-cv-06536 (N.D. Cal. Aug. 3, 2025) (same); *Pablo Sequen v. Kaiser*, No. 5:25-cv-06487 (N.D. Cal. Aug. 1, 2025) (same); *Valera Chuquillanqui v. Kaiser*, No. 3:25-cv-06320 (N.D. Cal. July 29, 2025) (same). To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Petitioners out of this District and removing them from the country until these proceedings have concluded.

BACKGROUND

Petitioners left their home countries and separately entered the United States between 2023 and 2024. Petitioner's Habeas Petition ("Pet.") ¶¶ 51–58. They were apprehended by immigration officials at the border. *Id.* The immigration officials determined that they posed little if any flight or danger to the community and released them into the community to wait for their immigration court dates. *Id.* They all moved to California. *Id.* They also complied with all of their ICE and immigration court requirements. None of them have any criminal history. *Id.*

Petitioners were all scheduled for an immigration court hearing in San Francisco on September 5, 2025 before Immigration Judge Joseph Park. *Id.* During their hearings, the government orally made a motion to dismiss. Declaration of Brittney Rezaei, ¶ 5. The Immigration Judge did not rule on the motions at those hearings. *Id.* ¶ 6. Instead, he gave Mr. Dangond Lopez and Mr. Ramos Huaman time to respond and reset their hearings for December. *Id.* He also granted Mr. Caicedo Hinestroza's request for voluntary departure. *Id.* ¶ 7.

Upon leaving the courtroom, ICE agents immediately arrested Petitioners and took them into custody at 630 Sansome. *Id.* ¶ 8.

Petitioners' arrests did not have anything to do with their individual cases. Instead, they are

1 part of a new, nationwide DHS strategy of sweeping up people who attend their immigration court
 2 hearings, detaining them, and seeking to re-route them to fast-track deportations.¹ Since mid-May,
 3 DHS has implemented a coordinated practice of immigration detention to strip people like
 4 Petitioner of their substantive and procedural rights and pressure them into deportation. DHS is
 5 aggressively pursuing this arrest and detention campaign at courthouses throughout the country,
 6 including Northern California. At the San Francisco Immigration Court, where Petitioners were
 7 arrested, dozens of people have been arrested in the last month after attending their routine
 8 immigration hearings.²

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

17 The next step takes place outside the courtroom. ICE officers, in consultation with DHS
 18 attorneys and officials, station themselves in courthouse waiting rooms, hallways, and elevator
 19

20 ¹ Joshua Goodman and Gisela Saloman, *ICE Agents Wait in Hallways of Immigration Court as*
 21 *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>.

22 ² Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron.,
 23 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/>.

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

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 Petitioners here.

Petitioners suffer serious and ongoing harm every day they remains in detention. Prior to their detention, Petitioners were living peacefully with their families and in their communities.

ARGUMENT

To warrant a TRO, a movant must show (1) they are “likely to succeed on the merits,” (2) 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. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS.

A. Petitioners’ detention violates substantive due process because they are neither flight risks nor dangers 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

1 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
2 that Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

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

25 Petitioners, who have no criminal record and who are diligently pursuing their immigration
26 cases, are neither dangers nor flight risks. Therefore, their detention is both punitive and not
27 justified by a legitimate purpose, violating their substantive due process rights. Indeed, when
28 Respondents chose to release Petitioners from custody, that decision represented their finding that

1 they were neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176
2 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)
3 (“Release reflects a determination by the government that the noncitizen is not a danger to the
4 community or a flight risk.”). Nothing has transpired since to disturb that finding.

5 *First*, because Petitioners have no criminal history, and have had no intervening criminal
6 history or arrests since their releases, there is no credible argument that they are dangers to the
7 community.

8 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
9 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
10 F.3d at 990-91. There is no basis to argue that Petitioners, who were arrested by Respondents *while*
11 *appearing in immigration court* for master calendar hearings, are flight risks. Petitioners have
12 attended all of their immigration court hearings and ICE check-ins. Moreover, Petitioners have a
13 viable path toward immigration relief and a pathway to lawful permanent residence, further
14 mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163,
15 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where
16 plaintiffs have bona fide asylum claims and desire to remain in the United States). At the time of
17 their arrests, almost all Petitioners had filed applications for asylum, withholding of removal, and
18 protection under the Convention Against Torture. They have every intention of continuing to pursue
19 their applications for immigration relief.

20 In sum, Petitioners’ actions since Respondents first released them confirm that they are
21 neither danger nor flight risks. Indeed, their ongoing compliance and community ties compel the
22 conclusion that they are even *less* of a danger or flight risk than when they were originally released.
23 Accordingly, Petitioners’ ongoing detention is unconstitutional, and substantive due process
24 principles require their immediate release.

25 **B. The government violated procedural due process by depriving Petitioners the**
26 **opportunity to contest their arrest and detention before a neutral**
27 **decisionmaker.**

28 Noncitizens living in the United States like Petitioners have a protected liberty interest in

1 their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court
2 “usually has held that the Constitution requires some kind of a hearing *before* the State deprives
3 a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
4 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671, 683 (D.C.
5 Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-
6 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
7 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482
8 (1972) (same, in parole context).

9 Accordingly, the Supreme Court has repeatedly held that individuals released from
10 custody on bond, parole, or other forms of conditional release have a protected interest in their
11 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
12 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
13 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
14 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
15 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
16 963, 970 (N.D. Cal. 2019). Petitioners thus have a protected liberty interest in their freedom from
17 physical custody.

18 Once a petitioner has established a protected liberty interest, as Petitioners have done here,
19 courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See*
20 *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S.
21 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk
22 of erroneous deprivation and probable value of procedural safeguards; and (3) the government’s
23 interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioners and prohibiting
24 their re-detention without a custody hearing at which the government bears the burden of proof.

25 *First*, the private interest affected in this case is profound. When considering this factor,
26 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
27 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
28 here is high. Petitioner, who is an asylum seeker who suffered harm in Colombia, has been

1 completely deprived of her physical liberty. Petitioners' detention has ripped from them the
2 "free[dom] to be with family and friends and to form the . . . enduring attachments of normal life."
3 *Morrissey*, 408 U.S. at 482. Cutting someone off from the "core values of unqualified liberty"—
4 for Petitioners creates a "grievous loss." *Id.* Moreover, because Petitioner faces *civil detention*,
5 "his liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *See Ortega*,
6 415 F. Supp. 3d at 970. As someone in civil detention, therefore, "it stands to reason that
7 [Petitioner] is entitled to protections at least as great as those afforded to a[n] . . . individual . . .
8 accused but not convicted of a crime." *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

9 *Second*, "the risk of an erroneous deprivation [of liberty] is high" where, as here, "[the
10 petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No.
11 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.
12 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*,
13 No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents grabbed
14 Petitioners by surprise as they left their immigration court hearings, detaining them with no notice
15 and no opportunity to contest their re-detention before a neutral arbiter. In such circumstances,
16 when Respondents have provided *no* procedural safeguards, "the probable value of additional
17 procedural safeguards, i.e., a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5. This is
18 especially true here, where there is no change in Petitioners' circumstances suggesting that
19 Petitioners now pose a flight risk or danger to the community. Their re-detention instead appears
20 to be motivated instead by Respondents' new arrest quotas and practice of leveraging detention
21 to secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality
22 Act, to initiate expedited removal. Pet. ¶¶ 35–46. Neither constitutes a lawful justification to re-
23 detain a person who does not pose a flight risk or danger to the community.

24 Because the private interest in freedom from immigration detention is substantial, due
25 process also requires that in cases like this one, the government bears the burden of proving "by
26 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community."
27 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775,
28 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing

1 evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025
2 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which
3 government bears burden by clear and convincing evidence).

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

20 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without
21 a pre-deprivation hearing in which the government bears the burden of proof violates due process,
22 and grants the emergency relief Petitioners seek here. *See Garro Pinchi v. Noem*, ___ F. Supp. 3d
23 ___, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her
24 immigration court hearing into preliminary injunction prohibiting the government from re-
25 detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11,
26 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO
27 over one month after petitioner's initial detention); *see also, e.g., Diaz*, 2025 WL 1676854, at *3-
28 *4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025);

1 *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL
 2 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
 3 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

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

12 * * * * *

13 For the foregoing reasons, Petitioners are likely to succeed on the merits of their claims.
 14 But even if the Court disagrees, they present at least “serious question[s] going to the merits,”
 15 alongside a “balance of hardships” tipping decidedly in their favor. *All. for the Wild Rockies*, 632
 16 F.3d at 1135. Indeed, the constitutional concerns delineated above are of the weightiest order and
 17 beyond colorable. This Court should therefore enter the requested TRO.

18 **II. PETITIONERS WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE**
 19 **INJURY ABSENT A TRO.**

20 Without a temporary restraining order, Petitioners will suffer immense irreparable injury.
 21 Indeed, they face such injury every day they remain in detention in violation of their Fifth
 22 Amendment rights. “It is well established that the deprivation of constitutional rights
 23 ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres*
 24 *v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional
 25 right is involved, most courts hold that no further showing of irreparable injury is necessary.”
 26 *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks
 27 omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm.
 28 *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)).

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONERS’ 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 Petitioners, who face 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 Petitioners’ 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. Cassidy*, 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).

1 Finally, Plaintiff's showing of a high likelihood of success on the merits supports the court's
2 waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l*
3 *Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

4 CONCLUSION

5 For the foregoing reasons, Petitioners respectfully requests the Court grant a TRO to
6 restore the *status quo ante* that (1) immediately releases them from Respondents' custody without
7 electronic monitoring and enjoins Respondents from re-detaining them absent further order of this
8 Court; (2) in the alternative, immediately releases them from Respondents' custody and enjoins
9 Respondents from re-detaining them unless they demonstrate at a pre-deprivation bond hearing,
10 by clear and convincing evidence, that Petitioners are a flight risk or danger to the community
11 such that their physical custody is required; and (3) prohibits the government from transferring
12 them out of this District and/or removing them from the country until these habeas proceedings
13 have concluded.

14
15
16 Date: September 5, 2025

Respectfully submitted,

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