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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF
9 CALIFORNIA

9 R.D.T.M.,
10 Petitioner-Plaintiff,

11 v.

12 Minga WOFFORD, Field Office Director, Mesa
13 Verde, Office of Detention and Removal, U.S.
14 Immigrations and Customs Enforcement; U.S.
15 Department of Homeland Security;

16 POLLY KAISER, Acting Field Office Director of
17 the San Francisco Immigration and Customs
18 Enforcement Office

19 Todd M. LYONS, Acting Director, Immigration
20 and Customs Enforcement, U.S. Department of
21 Homeland Security;

22 Kristi NOEM, in her Official Capacity, Secretary,
23 U.S. Department of Homeland Security; and

24 Pam BONDI, in her Official Capacity, Attorney
25 General of the United States;

26 Respondents-Defendants.
27
28

Case No. 1:25-at-786

**PETITIONER'S
NOTICE OF MOTION
AND EX PARTE
MOTION FOR
TEMPORARY
RESTRAINING ORDER**

**POINTS AND
AUTHORITIES IN
SUPPORT OF EX
PARTE MOTION FOR
TEMPORARY
RESTRAINING ORDER
AND MOTION FOR
PRELIMINARY
INJUNCTION**

NOTICE OF MOTION

Petitioner R.D.T.M. applies to this Honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain her based on an unlawful action by ICE, (2) ordering her immediate release from immigration detention; and (3) from re-arresting Petitioner-Plaintiff R.D.T.M. until she is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that her re-incarceration would be justified because there is clear and convincing evidence establishing that she is a danger to the community or a flight risk.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: September 7, 2025

Respectfully submitted,

/s/ Natalia Vieira Santanna

Natalia Vieira Santanna

Attorney for Petitioner-Plaintiff R.D.T.M.

1 **I. INTRODUCTION**

2 1. Respondents unlawfully re-detained Petitioner-Plaintiff R.D.T.M. on September 1, 2025.
3 The Office of Refugee Resettlement (ORR) released R.D.T.M. from custody on January 26, 2025,
4 on her recognizance.

5 1. R.D.T.M. has lived in liberty for the past thirty-two months. Following her release,
6 R.D.T.M. went to live with her family in Howard Lake, MN. She established a life in Howard
7 Lake. On June 2, 2024, she graduated from Lake-Waverly-Winsted High School. School staff
8 describe R.D.T.M. as someone who worked “extremely hard” while keeping a positive attitude,
9 being a “ray of sunshine” wherever she went. Her school counselor described her as someone
10 who promoted the values of “integrity, kindness, and perseverance.” After graduating from high
11 school, and before her unlawful detention, R.D.T.M. was working as a child-care professional
12 and was recently promoted to a paraeducator position at Howard Lake-Waverly-Winsted Laker
13 Care Program, caring for young children, and also as a waitress at Maria’s Mexican Restaurant
14 in Howard Lake. Her co-workers describe her as the ideal role model for the local community
15 children.

16 2. R.D.T.M. is a member of the St. John's Lutheran Church in
17 Howard Lake. She has volunteered with church activities, and her pastor describes her as a “kind,
18 responsible, and intelligent person, not to mention a devout and earnest Christian.” R.D.T.M. has
19 maintained a clean criminal record.¹

20 3. R.D.T.M. has diligently worked on her immigration case. She retained counsel and timely
21 filed her Form I-589 (Application for Asylum and Withholding of Removal) with USCIS on
22 October 10, 2023. She attended her biometrics appointment and obtained an employment
23 authorization document, which is valid until 2029. An immigration judge in Fort Snelling, MN,
24 administratively closed her Section 240 of the Immigration and Nationality Act (INA) (section
25 240 proceedings) due to the pendency of the Form I-589 with USCIS. Her Form I-589 is currently
26 pending, awaiting an interview.

27
28

¹ A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 4. In addition, R.D.T.M. is part of the Class covered by the *J.O.P. v. U.S. Department of*
2 *Homeland Security*, Case No. 8:19-cv-01944-SAG (D. Md.) settlement (the “JOP settlement”)
3 because, on or before February 24, 2025, she was (1) determined to be an Unaccompanied Child;
4 (2) filed an asylum application that was pending with USCIS; (3) was 18 years of age or older, or
5 you had a parent or legal guardian in the United States who was available to provide care and
6 physical custody; and (4) have not received an adjudication from USCIS on the merits of her
7 asylum application. ICE is barred from removing Class Members with final orders of removal
8 from the United States while they are waiting for USCIS to decide their asylum application under
9 the J.O.P. Settlement Agreement. Furthermore, if USCIS grants a Class Member asylum and the
10 Class Member has a pending removal order, the Government lawyer representing the DHS in the
11 Class Member’s removal proceedings will generally not oppose the Class Member’s motion to
12 reopen their removal case.

13 5. Lastly, R.D.T.M. qualifies for additional procedural safeguards granted by Congress
14 under the amended William Wilberforce Trafficking Victims Protection Reauthorization Act of
15 2008 (TVPRA), which defines a specific class of immigrants who entered as minors and have
16 since turned 18. Federal law, specifically 8 U.S.C. § 1232(c)(2)(B), dictates that these individuals
17 “shall” be given consideration for the “least restrictive” setting and be eligible for alternatives to
18 detention programs. The use of “shall” imposes a nondiscretionary duty, making this
19 consideration a requirement.

20 6. R.D.T.M.’s summary arrest and indefinite detention flout the Constitution and violate the
21 TVPRA. The *only* legitimate interests that civil immigration detention serves are mitigating flight
22 risk and preventing danger to the community. When those interests are absent, the Fifth
23 Amendment’s Due Process Clause squarely prohibits detention. Additionally, by summarily
24 arresting and detaining R.D.T.M. without making any affirmative showing of changed
25 circumstances, the government violated R.D.T.M.’s procedural due process rights. At the very
26 least, she was constitutionally entitled to a hearing before a neutral decisionmaker at which the
27 government should have justified her detention.

1 7. As a result of her arrest and detention, R.D.T.M. is suffering irreparable and ongoing
2 harm. The unconstitutional deprivation of “physical liberty” “unquestionably constitutes
3 irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
4 “[f]reedom from imprisonment—from government custody, detention, or other forms of physical
5 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*
6 *Davis*, 533 U.S. 678, 690 (2001). R.D.T.M. also face numerous additional irreparable harms due
7 to her detention, including psychological distress, disruption of her employment, separation from
8 her family and community, and inability to practice her religion.

9 8. In light of this irreparable harm, and because she is likely to succeed on the merits of her
10 due process claims, R.D.T.M. respectfully requests that this Court issue a temporary restraining
11 order (“TRO”) immediately releasing her from custody and enjoining the government from re-
12 arresting her absent the opportunity to contest that arrest at a hearing before a neutral decision
13 maker. Confronted with similar facts and legal issues, two courts in this circuit have recently
14 granted the exact relief Petitioner seeks. *See Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D.
15 Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __, 2025 WL 2084921
16 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025)
17 (granting preliminary injunction). To maintain this Court’s jurisdiction, the Court should also
18 prohibit the government from transferring R.D.T.M. out of this District and removing her from
19 the country until these proceedings have concluded.

20 **II. STATEMENT OF FACTS AND CASE**

21 9. R.D.T.M. came into immigration custody immediately after crossing the border into the
22 United States on January 14, 2023, as a seventeen-year-old minor. R.D.T.M. had lived in the
23 United States previously, from when she was around seven years old until she was around ten
24 years old. ICE claims that R.D.T.M. has a prior deportation order stemming from that entry;
25 however, R.D.T.M. is unaware of such an order because she was only ten years old, and she
26 voluntarily left the country a few years after entering. R.D.T.M.’s immigration counsel previously
27 requested R.D.T.M.’s full file through a Freedom of Information (“FOIA”) request, and the results
28 produced no such prior deportation order.

1 10. Upon entry on January 14, 2023, R.D.T.M. was detained at the LSSS New Hope shelter
2 for minors for approximately eleven days. She was released from custody to a sponsor, her
3 mother, on January 26, 2023. DHS did not require R.D.T.M. to post a bond or wear an ankle
4 monitor.² Notwithstanding any alleged prior removal orders, on February 11, 2023, DHS sent
5 R.D.T.M. a Notice to Appear (NTA) placing her in section 240 proceedings. The NTA charged
6 R.D.T.M. with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as “an alien present in the
7 United States without being admitted or paroled, or who arrives in the United States at any time
8 or place other than as designated by the Attorney General.”

9 11. Following her release, R.D.T.M. went to live with her mother, father and siblings in
10 Howard Lake, MN. She established a life in Howard Lake. On June 2, 2024, she graduated from
11 Lake-Waverly-Winsted High School. School staff describe R.D.T.M. as someone who worked
12 “extremely hard” while keeping a positive attitude, being a “ray of sunshine” wherever she went.
13 Her school counselor described her as someone who promoted the values of “integrity, kindness,
14 and perseverance.” After graduating from high school, and before her unlawful detention,
15 R.D.T.M. was working as a child-care professional and was recently promoted to a paraeducator
16 position at Howard Lake-Waverly-Winsted Laker Care Program, caring for young children, and
17 also as a waitress at Maria’s Mexican Restaurant in Howard Lake. Her co-workers describe her
18 as the ideal role model for the local community children.

19 12. R.D.T.M. is a member of the St. John's Lutheran Church in
20 Howard Lake. She has volunteered with church activities, and her pastor describes her as a “kind,
21 responsible, and intelligent person, not to mention a devout and earnest Christian.” R.D.T.M. has
22 maintained a clean criminal record.³

23 13. R.D.T.M. has diligently worked on her immigration case. She retained counsel and timely
24 filed her Form I-589 (Application for Asylum and Withholding of Removal) with USCIS on
25 October 10, 2023. She attended her biometrics appointment and obtained an employment
26 authorization document, which is valid until 2029. An immigration judge in Fort Snelling, MN,
27

28 ² A true and correct copy of Petitioner’s release documentation is attached hereto as Exhibit 1.

³ A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 administratively closed her section 240 proceedings due to the pendency of the Form I-589 with
2 USCIS. Her Form I-589 is currently pending, awaiting an interview.

3 14. In addition, R.D.T.M. is part of the Class covered by the J.O.P. Settlement Agreement
4 because, on or before February 24, 2025, she was (1) determined to be a UC; (2) filed an asylum
5 application that was pending with USCIS; (3) was 18 years of age or older, or you had a parent
6 or legal guardian in the United States who was available to provide care and physical custody;
7 and (4) have not received an adjudication from USCIS on the merits of her asylum application.
8 ICE is barred from removing Class Members with final orders of removal from the United States
9 while they are waiting for USCIS to decide their asylum application under the J.O.P. Settlement
10 Agreement. Furthermore, if USCIS grants a Class Member asylum and the Class Member has a
11 pending removal order, the Government lawyer representing the DHS in the Class Member's
12 removal proceedings will generally not oppose the Class Member's motion to reopen their
13 removal case.

14 15. Despite the fact that R.D.T.M. (1) has pending section 240 proceedings; (2) has a pending
15 Form I-589 with USCIS; and (3) is a class member of the J.O.P. settlement, ICE officers arrested
16 her as she was boarding a flight in San Francisco to go home to her family and community in
17 Minnesota after visiting her boyfriend in the San Francisco's bay area.

18 16. In recent months, ICE has engaged in highly publicized arrests of individuals who
19 presented no flight risk or danger, often with no prior notice that anything regarding their status
20 was amiss or problematic, whisking them away to faraway detention centers without warning.⁴

21 17. ICE officers arrested R.D.T.M. without any prior notice as she was ready to board a flight
22 back home to Minnesota at the San Francisco International Airport on September 1, 2025, at
23 around 6:00 a.m.. The officers seemed to be waiting for her at the gate. They requested to see her

24 ⁴ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
25 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
(Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University
26 PhD student detained by federal agents," CNN (Mar. 28, 2025), [https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html)
[detained-what-we-know/index.html](https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html) (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney
27 & Josh Gerstein, *Trump is sais the officers did ntseeking to deport another academic who is legally in the country,*
lawsuit says, Politico (Mar. 19, 2025), available at [https://www.politico.com/news/2025/03/19/trump-](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754)
28 [deportationgeorgetown-graduate-student-00239754](https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754) (Badar Khan Suri, arrested in Arlington, Virginia and transferred
to Texas).

1 identification documents, to which she complied and showed them her passport and her work
2 permit, which is connected to her pending asylum application and is valid until 2029. The officers
3 asked R.D.T.M. to follow them. R.D.T.M. was concerned because the officers had civilian
4 clothes, and she worried that they could be impostors, but she decided to follow because she
5 wanted to comply with their authority.

6 18. Once they arrived at a deserted place within the airport, the officers handcuffed R.D.T.M.
7 and took her property. They would not tell R.D.T.M. why they were arresting her, and they did
8 not give her or show her a warrant.

9 19. The officers took R.D.T.M. to a car and drove her to an immigration office in San
10 Francisco, where she was held for approximately 30 hours in substandard conditions. She was
11 kept in a room with only a yoga mat to sleep on. She did not have a sweater for most of the time
12 and became extremely cold. The officers interviewed R.D.T.M. and accused her of having a
13 deportation order from when she was a child. R.D.T.M. was unaware of the deportation order and
14 explained to the officers that her asylum case was pending with immigration and that she was
15 expected to be at her workplace the next morning to start her position as a paraeducator and care
16 for small children in Howard Lake, MN. R.D.T.M. said the officers did not listen to her.

17 20. On September 2, 2025, around 4:00 p.m., after approximately 30 hours of being held in a
18 substandard room at the San Francisco local ICE office, officers handcuffed R.D.T.M.'s hands,
19 waist, and feet. They took her out in a van with other detained individuals who were all male. The
20 van was heading to Fresno, CA, which is five hours away from San Francisco. R.D.T.M. learned
21 that ICE had arrested those detained individuals as they attended their court hearings that
22 morning. R.D.T.M. had nothing to eat and no access to water from the morning of September 2,
23 2025, until she arrived in Fresno at around 9:00 pm that night. When R.D.T.M. asked for water,
24 an officer who was in the van said she had to wait.

25 21. After stopping in Fresno, the officers took R.D.T.M. to the Mesa Verde ICE Processing
26 Center in Bakersfield, CA, which is approximately two hours away from Fresno by car and
27 twenty-eight hours from Lake Howard, MN.
28

1 22. R.D.T.M.'s arrest and detention have caused her tremendous and ongoing harm. Since
2 being detained, R.D.T.M. reports feeling desperation and despair. She was unable to start her new
3 position as a paraeducator at the Howard Lake-Waverly-Winsted Laker Care Program. She is
4 unable to practice her religion fully. She is away from her friends, family, co-workers, and
5 community, who are also suffering in her absence. Every additional day R.D.T.M. spends in
6 unlawful detention subjects her to further irreparable harm.

7 23. This case has substantial factual and legal support to be granted, resulting in R.D.T.M.'s
8 release from custody, and enjoining DHS from detaining R.D.T.M. pending a hearing before a
9 neutral adjudicator, to substantiate a material change in circumstances indicating that she is either
10 a flight risk or a danger to the community.

11 24. Intervention from this Court is therefore required to ensure that R.D.T.M. is released from
12 her current custody based her unlawful arrest, returned to her home in Howard Lake, MN, where
13 ICE can then provide her with a hearing before determining to re-arrest her pursuant to the Due
14 Process Clause of the Fifth Amendment and the TVPRA.

15 **III. LEGAL STANDARD**

16 25. R.D.T.M. is entitled to a temporary restraining order if he establishes that she is “likely to
17 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
18 that the balance of equities tips in [his] favor, and that an injunction is in the public interest.”
19 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D.*
20 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
21 temporary restraining order standards are “substantially identical”). Even if R.D.T.M. does not
22 show a likelihood of success on the merits, the Court may still grant a temporary restraining order
23 if she raises “serious questions” as to the merits of her claims, the balance of hardships tips
24 “sharply” in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild*
25 *Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As outlined in more detail below, R.D.T.M.
26 Hernandez overwhelmingly satisfies both standards.

27 **ARGUMENT**

28 **A. R.D.T.M. WARRANTS A TEMPORARY RESTRAINING ORDER**

1 26. A temporary restraining order should be issued if “immediate and irreparable injury, loss,
2 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
3 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
4 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
5 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). R.D.T.M. is likely
6 to remain in unlawful custody in violation of her due process rights and the TVPRA without
7 intervention by this Court. R.D.T.M. will continue to suffer irreparable injury if she continues to
8 be detained without due process.

9
10 **1. R.D.T.M. ’s detention violates substantive due process because he is**
11 **neither a flight risk nor a danger to the community.**

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

20 28. To comply with substantive due process, the government’s deprivation of an individual’s
21 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil,
22 not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
23 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
24 (“[T]he government has no legitimate interest in detaining individuals who have been determined
25 not to be a danger to the community and whose appearance at future immigration proceedings can
26 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
27 absent, immigration detention serves no legitimate government purpose and becomes
28

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

7 29. The Supreme Court has recognized that noncitizens may bring as-applied challenges to
8 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
9 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing
10 and completing deportation proceedings, it could become necessary then to inquire whether the
11 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but
12 to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision
13 today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,
14 constitutional challenges to applications of the statute as we have now read it.”).

15 30. R.D.T.M., who has no criminal record and who is diligently pursuing her immigration
16 case with the assistance of an attorney, is neither a danger nor a flight risk. Therefore, her detention
17 is both punitive and not justified by a legitimate purpose, violating her substantive due process
18 rights. Indeed, when Respondents chose to release R.D.T.M. from custody in 2023, that decision
19 represented their finding that she was neither dangerous nor a flight risk. *See Saravia v. Sessions*,
20 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
21 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen
22 is not a danger to the community or a flight risk.”). Nothing has transpired since to disturb that
23 finding.
24

25 31. *First*, because R.D.T.M. had no criminal history, and has had no intervening criminal
26 history or arrests since her release, there is no credible argument that she is a danger to the
27 community. *Second*, as to flight risk, the question is whether custody is reasonably necessary to
28

1 secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*,
2 872 F.3d at 990-91. There is no basis to argue that R.D.T.M. is a flight risk. Moreover, R.D.T.M.
3 has a viable path toward immigration relief and a pathway to lawful permanent residence, further
4 mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163,
5 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where
6 plaintiffs have bona fide asylum claims and desire to remain in the United States). At the time of
7 her arrest, R.D.T.M. had filed her Form I-589, Application for Asylum and Withholding of
8 Removal, and she has every intention of continuing to pursue her applications for immigration
9 relief.

10
11 32. In sum, R.D.T.M.'s actions since Respondents first released her confirm that she is neither
12 a danger nor flight risk. Indeed, her ongoing compliance and community ties compel the
13 conclusion that she is even *less* of a danger or flight risk than when she was originally released.
14 Accordingly, R.D.T.M.'s ongoing detention is unconstitutional, and substantive due process
15 principles require her immediate release.

16 **2. R.D.T.M. is Likely to Succeed on the Merits of Her Claim That in This**
17 **Case the Constitution Requires a Hearing Before a Neutral Adjudicator**
18 **Prior to Any Re-Incarceration by ICE**

19 33. R.D.T.M. is likely to succeed on her claim that, in her particular circumstances, her
20 current detention is unlawful because the Due Process Clause of the Constitution prevents
21 Respondents from re-arresting her without first providing a pre-deprivation hearing before a
22 neutral adjudicator where the government demonstrates by clear and convincing evidence that
23 there has been a material change in circumstances such that she is now a danger or a flight risk.

24 34. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
25 release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).
26 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
27 immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640
28 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens.

1 There, the BIA held that “where a previous bond determination has been made by an immigration
2 judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice,
3 DHS “requires a showing of changed circumstances both where the prior bond determination was
4 made by an immigration judge *and* where the previous release decision was made by a DHS
5 officer.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia*
6 *for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also
7 assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent
8 changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus,
9 absent changed circumstances ... ICE cannot redetain Panosyan.”).

10 35. ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests
11 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*, 280 F.
12 Supp. 3d at 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
13 (9th Cir. 2018) (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under
14 BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released
15 from custody only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176;
16 *Matter of Sugay*, 17 I&N Dec. at 640.

17 36. ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is
18 also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981
19 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by
20 the requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that
21 ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect
22 R.D.T.M.’s weighty interest in her freedom from unlawful detention.

23 37. Federal district courts in California have repeatedly recognized that the demands of due
24 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in
25 DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
26 on bond, like R.D.T.M. , *before* ICE re-detains her. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d
27 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D.
28 Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2

1 (N.D. Cal. Mar. 1, 2021);); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-
2 4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required
3 notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW,
4 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing
5 re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See*
6 *also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3,
7 2025) (holding the Constitution requires a hearing before any re-arrest).

8 38. Additionally, R.D.T.M. is protected by the TVPRA and is part of the Class covered by the
9 J.O.P. Settlement Agreement because, on or before February 24, 2025, she was (1) determined to
10 be an Unaccompanied Child; (2) filed an asylum application that was pending with USCIS; (3)
11 was 18 years of age or older, or you had a parent or legal guardian in the United States who was
12 available to provide care and physical custody; and (4) have not received an adjudication from
13 USCIS on the merits of her asylum application. ICE is barred from removing Class Members with
14 final orders of removal from the United States while they are waiting for USCIS to decide their
15 asylum application under the J.O.P. Settlement Agreement. Furthermore, if USCIS grants a Class
16 Member asylum and the Class Member has a pending removal order, the Government lawyer
17 representing the DHS in the Class Member's removal proceedings will generally not oppose the
18 Class Member's motion to reopen their removal case. This means that ICE cannot remove
19 R.D.T.M. nor re-calendar her removal proceedings. Finally, because the TVPRA protects
20 R.D.T.M., it is DHS's obligation to place her in the least restrictive setting. 8 U.S.C. § 1261.

21 39. Courts analyze procedural due process claims such as this one in two steps: the first asks
22 whether there exists a protected liberty interest under the Due Process Clause, and the second
23 examines the procedures necessary to ensure any deprivation of that protected liberty interest
24 accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454,
25 460 (1989).

26 **a. R.D.T.M. Has a Protected Liberty Interest in Her Conditional**
27 **Release**
28

1 40. R.D.T.M. 's liberty from immigration custody is protected by the Due Process Clause:
2 “Freedom from imprisonment—from government custody, detention, or other forms of physical
3 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*
4 *Davis*, 533 U.S. 678, 690 (2001).

5 41. Since January of 2023, R.D.T.M. exercised that freedom under the IJ’s order granting her
6 release from custody. Accordingly, she retains a weighty liberty interest under the Due Process
7 Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520
8 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*,
9 408 U.S. 471, 482-483 (1972).

10 42. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
11 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of
12 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
13 form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the
14 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live
15 up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
16 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
17 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
18 valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S.
19 at 482.

20 43. This basic principle—that individuals have a liberty interest in their conditional release—
21 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
22 *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
23 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
24 deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released
25 on felony probation have a protected liberty interest requiring pre-deprivation process). As the
26 First Circuit has explained, when analyzing the issue of whether a specific conditional release
27 rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the
28 specific conditional release in the case before them with the liberty interest in parole as

1 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
2 (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864
3 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
4 that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
5 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
6 and *Morrissey*, 408 U.S. at 482).

7 44. In fact, it is well-established that an individual maintains a protectable liberty interest even
8 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
9 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
10 considerations support the notion that an inmate released on parole by mistake, because he was
11 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
12 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
13 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
14 (internal quotation marks and citation omitted).

15 45. Here, when this Court “compar[es] the release in [R.D.T.M.’s case], with the liberty
16 interest in parole as characterized by *Morrissey*,” they bear similar features in liberty interests.
17 *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, R.D.T.M.’s release “enables her to
18 do a wide range of things open to persons,” including to live at home, work, care for his family,
19 for whom he is the financial provider, and “be with family and friends and to form the other
20 enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

21 46. R.D.T.M. established a life in Howard Lake. On June 2, 2024, she graduated from Lake-
22 Waverly-Winsted High School. School staff describe R.D.T.M. as someone who worked
23 “extremely hard” while keeping a positive attitude, being a “ray of sunshine” wherever she went.
24 Her school counselor described her as someone who promoted the values of “integrity, kindness,
25 and perseverance.” After graduating from high school, and before her unlawful detention,
26 R.D.T.M. was working as a child-care professional and was recently promoted to a paraeducator
27 position at Howard Lake-Waverly-Winsted Laker Care Program, caring for young children, and
28 also as a waitress at Maria’s Mexican Restaurant in Howard Lake. Her co-workers describe her

1 as the ideal role model for the local community children. R.D.T.M. is a member of the St. John's
2 Lutheran Church in
3 Howard Lake. She has volunteered with church activities, and her pastor describes her as a “kind,
4 responsible, and intelligent person, not to mention a devout and earnest Christian.” R.D.T.M. has
5 maintained a clean criminal record.⁵

6 47. R.D.T.M. has diligently worked on her immigration case. She retained counsel and timely
7 filed her Form I-589 (Application for Asylum and Withholding of Removal) with USCIS on
8 October 10, 2023. She attended her biometrics appointment and obtained an employment
9 authorization document, which is valid until 2029. An immigration judge in Fort Snelling, MN,
10 administratively closed her section 240 proceedings due to the pendency of the Form I-589 with
11 USCIS. Her Form I-589 is currently pending, awaiting an interview. She is protected by the
12 TVPRA and the J.O.P. Settlement.

13
14 **b. R.D.T.M.’s Liberty Interest Mandates Her Release from Unlawful
Custody And A Hearing Before any Re-Arrest**

15 48. R.D.T.M. asserts that, here, (1) where her detention would be civil; (2) where she has been
16 at liberty for over 30 months, during which time she has appeared at all of his immigration
17 appointments; (3) where she has a viable asylum claim (4) where no change in circumstances
18 exist that would justify her lawful detention; and (5) where the only circumstance that has changed
19 was ICE’s move to arrest as many people as possible under the new administration’s initiative,
20 due process mandates that she be released from his unlawful custody and receive notice and a
21 hearing before a neutral adjudicator *prior* to any re-arrest or revocation of her custody release.

22 49. “Adequate, or due, process depends upon the nature of the interest affected. The more
23 important the interest and the greater the effect of its impairment, the greater the procedural
24 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
25 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
26 “balance [R.D.T.M.’s] liberty interest against the [government’s] interest in the efficient
27

28 ⁵ A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 administration of” its immigration laws to determine what process he is owed to ensure that ICE
2 does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in
3 *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: “first,
4 the private interest that will be affected by the official action; second, the risk of an erroneous
5 deprivation of such interest through the procedures used, and the probative value, if any, of
6 additional or substitute procedural safeguards; and finally the government’s interest, including
7 the function involved and the fiscal and administrative burdens that the additional or substitute
8 procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,
9 424 U.S. 319, 335 (1976)).

10 50. The Supreme Court has held that the Constitution requires some kind of a hearing *before*
11 the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990)
12 (emphasis in original). Only in a “special case” where post-deprivation remedies are “the only
13 remedies the State could be expected to provide” can post-deprivation process satisfy the
14 requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one of the
15 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
16 preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally
17 to do the impossible by providing predeprivation process,” can the government avoid providing
18 pre-deprivation process. *Id.*

19 51. Because, in this case, the provision of a pre-deprivation hearing is both possible and
20 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide R.D.T.M.
21 with notice and a hearing *prior* to any re-incarceration. *See Morrissey*, 408 U.S. at 481-82;
22 *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; *see also*
23 *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.
24 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not
25 constitutionally be held in jail pending the determination as to whether they can ultimately be
26 recommitted). Under *Mathews*, “the balance weighs heavily in favor of [R.D.T.M.’s] liberty” and
27 requires a pre-deprivation hearing before a neutral adjudicator.

28 **i. R.D.T.M.’s Private Interest in Her Liberty is Profound**

1 52. Under *Morrissey* and its progeny, individuals conditionally released from serving a
2 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
3 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
4 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
5 constitutional due process before he is re-incarcerated—apply with even greater force to
6 individuals like R.D.T.M., who have been released pending civil removal proceedings, rather than
7 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
8 conviction. Parolees and probationers have a diminished liberty interest given their underlying
9 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
10 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
11 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
12 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
13 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, R.D.T.M. retains a truly weighty liberty interest
14 even though she is under conditional release.

15 53. What is at stake in this case for R.D.T.M. is one of the most profound individual interests
16 recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing a
17 non-citizen from custody and be able to take away his physical freedom, i.e., his “constitutionally
18 protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir.
19 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of
20 the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
21 *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody,
22 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
23 Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

24 54. Thus, it is clear that there is a profound private interest at stake in this case, which must
25 be weighed heavily when determining what process he is owed under the Constitution. *See*
26 *Mathews*, 424 U.S. at 334-35.
27
28

1 to his mere anticipation or hope of freedom””) (quoting *United States ex rel. Bey v. Connecticut*
2 *Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

3 58. It is difficult to see how the government’s interest in detaining R.D.T.M. has materially
4 changed since she was released in January of 2023, absent any circumstances indicating she is a
5 danger to the community or a flight risk. The government’s interest in detaining R.D.T.M. at this
6 time is extremely low. That ICE has a new policy to make a minimum number of arrests each day
7 under the new administration does not constitute a material change in circumstances or increase
8 the government’s interest in detaining her.⁶

9 59. Moreover, the “fiscal and administrative burdens” that his immediate release and a lawful
10 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
11 R.D.T.M. does not seek a unique or expensive form of process, but rather a routine hearing
12 regarding whether his bond should be revoked and whether he should be re-incarcerated.

13 60. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of
14 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
15 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

16 61. In the alternative, providing R.D.T.M. with a hearing before this Court (or a neutral
17 decisionmaker) regarding release from custody is a routine procedure that the government
18 provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
19 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
20 But there is no justifiable reason to re-incarcerate R.D.T.M. prior to such a hearing taking place.
21 As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest

22 _____
23 ⁶ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January
24 26, 2025), available at: [https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/)
25 [raids-trump-quota/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/); “Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,”
26 *Forbes* (June 9, 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
27 [order-likely-sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) (“At the end of May 2025, ‘Stephen
28 Miller, a senior White House official, told Fox News that the White House was looking for ICE to
arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than
66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a
day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests
in a calendar year.”).

1 in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
2 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
3 revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

4 62. Releasing R.D.T.M. from unlawful custody and enjoining R.D.T.M.’s re-arrest until ICE
5 (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing
6 evidence that R.D.T.M. is a flight risk or danger to the community is far *less* costly and
7 burdensome for the government than keeping her detained. *Hernandez*, 872 F.3d at 996

8
9 **iii. Without a Due Process Hearing Prior to Any Re-Arrest, the**
10 **Risk of an Erroneous Deprivation of Liberty is High, and**
11 **Process in the Form of a Constitutionally Compliant**
12 **Hearing Where ICE Carries the Burden Would Decrease**
13 **That Risk**

14 63. Releasing R.D.T.M. from unlawful custody and providing R.D.T.M. a pre-deprivation
15 hearing would decrease the risk of her being erroneously deprived of her liberty. Before R.D.T.M.
16 can be lawfully detained, she must be provided with a hearing before a neutral adjudicator at
17 which the government is held to show that there has been sufficiently changed circumstances;
18 such circumstances that ORR’s January 23, 2023 release should be altered or revoked because
19 clear and convincing evidence exists to establish that R.D.T.M. is a danger to the community or
20 a flight risk.

21 64. The procedure R.D.T.M. seeks—a hearing in front of a neutral adjudicator at which the
22 government must prove by clear and convincing evidence that circumstances have changed to
23 justify his detention *before* any re-arrest—is much more likely to produce accurate determinations
24 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
25 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when
26 “delicate judgments depending on credibility of witnesses and assessment of conditions not
27 subject to measurement” are at issue, the “risk of error is considerable when just determinations
28 are made after hearing only one side”). “A neutral judge is one of the most basic due process
protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other*

1 grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that
2 the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
3 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf*
4 *II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

5 65. Due process also requires consideration of alternatives to detention at any custody
6 redetermination hearing that may occur. The primary purpose of immigration detention is to
7 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
8 Detention is not reasonably related to this purpose if there are alternatives to detention that could
9 mitigate risk of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). In addition, the TVPRA
10 requires the DHS to place R.D.T.M. in the least restrictive setting. 8 U.S.C. § 1232(c)(2)(B).
11 Accordingly, alternatives to detention must be considered in determining whether R.D.T.M.’s
12 re-incarceration is warranted

13 66. As the above-cited authorities show, R.D.T.M. is likely to succeed on her claim that the
14 current arrest and detention that ICE effectuated on September 1, 2025, is unlawful. The Due
15 Process Clause require notice and a hearing before a neutral decisionmaker *prior to any* re-
16 incarceration by ICE. And, at the very minimum, she clearly raises serious questions regarding
17 this issue, thus also meriting a TRO. See *Alliance for the Wild Rockies*, 632 F.3d at 1135.

18 3. R.D.T.M. Will Suffer Irreparable Harm Absent Injunctive Relief

19 67. R.D.T.M. will suffer irreparable harm if she remains detained after being deprived of her
20 liberty and subjected to unlawful incarceration by immigration authorities without being provided
21 the constitutionally adequate process that this motion for a temporary restraining order seeks.
22 Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193,
23 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial
24 has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and
25 it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for*
26 *Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth
27 Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to
28 immigration detention” including “subpar medical and psychiatric care in ICE detention facilities,

1 the economic burdens imposed on detainees and their families as a result of detention, and the
2 collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at
3 995. The government itself has documented alarmingly poor conditions in ICE detention centers.
4 *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE
5 Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental
6 health and safety standards; staffing shortages affecting the level of care detainees received for
7 suicide watch, and detainees being held in administrative segregation in unauthorized restraints,
8 without being allowed time outside their cell, and with no documentation that they were provided
9 health care or three meals a day).⁷

10 68. R.D.T.M. has been out of ICE custody for more than 30 months. During that time, she
11 established a life in Howard Lake. On June 2, 2024, she graduated from Lake-Waverly-Winsted
12 High School. School staff describe R.D.T.M. as someone who worked “extremely hard” while
13 keeping a positive attitude, being a “ray of sunshine” wherever she went. Her school counselor
14 described her as someone who promoted the values of “integrity, kindness, and perseverance.”
15 After graduating from high school, and before her unlawful detention, R.D.T.M. was working as
16 a child-care professional and was recently promoted to a paraeducator position at Howard Lake-
17 Waverly-Winsted Laker Care Program, caring for young children, and also as a waitress at
18 Maria’s Mexican Restaurant in Howard Lake. Her co-workers describe her as the ideal role model
19 for the local community children.

20 69. R.D.T.M. is a member of the St. John’s Lutheran Church in
21 Howard Lake. She has volunteered with church activities, and her pastor describes her as a “kind,
22 responsible, and intelligent person, not to mention a devout and earnest Christian.” R.D.T.M. has
23 maintained a clean criminal record.⁸

24 70. R.D.T.M.’s arrest and detention have caused her tremendous and ongoing harm. Since
25 being detained, R.D.T.M. reports feeling desperation and despair. She was unable to start her new
26

27 ⁷ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
28 (last accessed Feb. 6, 2024).

⁸ A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 position as a paraeducator at the Howard Lake-Waverly-Winsted Laker Care Program. She is
2 unable to practice her religion fully. She is away from her friends, family, co-workers, and
3 community, who are also suffering in her absence. Every additional day R.D.T.M. spends in
4 unlawful detention subjects her to further irreparable harm.

5 71. Furtehr, as detailed *supra*, R.D.T.M. contends that her re-arrest absent a hearing before a
6 neutral adjudicator violates her due process rights under the Constitution. It is clear that “the
7 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*
8 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
9 Thus, a temporary restraining order is necessary to prevent R.D.T.M. from suffering irreparable
10 harm by being subject to unlawful and unjust detention.

11 **4. The Balance of Equities and the Public Interest Favor Granting the**
12 **Temporary Restraining Order**

13 72. The balance of equities and the public interest undoubtedly favor granting this temporary
14 restraining order.

15 73. First, the balance of hardships strongly favors R.D.T.M.. The government cannot suffer
16 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*
17 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed
18 in any legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the
19 government cannot allege harm arising from a temporary restraining order or preliminary
20 injunction ordering it to comply with the Constitution.

21 74. Further, any burden imposed by requiring the ICE to release R.D.T.M. from unlawful
22 custody and refrain from re-arrest unless and until he is provided a hearing before a neutral is
23 both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained.
24 *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of
25 affording fair procedures to all persons, even though the expenditure of governmental funds is
26 required.”).

27 75. A temporary restraining order is in the public interest. First and most importantly, “it
28 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements

1 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
2 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
3 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
4 effectively be granted permission to detain R.D.T.M. in violation of the requirements of Due
5 Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a
6 party’s constitutional rights.” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695
7 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an
8 injunction that ensures that individuals are not deprived of their liberty and held in immigration
9 detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v.*
10 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated
11 when a constitutional right has been violated, because all citizens have a stake in upholding the
12 Constitution.”).

13 76. Therefore, the public interest overwhelmingly favors entering a temporary restraining
14 order and preliminary injunction.

15 **IV. CONCLUSION**

16 For all the above reasons, this Court should find that R.D.T.M. warrants a temporary
17 restraining order and a preliminary injunction ordering that Respondents (1) release her from her
18 unlawful custody; (2) refrain from re-arresting her unless and until she is afforded a hearing
19 before a neutral adjudicator on whether a change in custody is justified by clear and convincing
20 evidence that she is a danger to the community or a flight risk; and (3) refrain from sending her
21 to any place outside of the United States.

22 Dated: September 7, 2025

Respectfully submitted,

23 /s/ Natalia Santanna

24 Natalia Vieira Santanna
25 Attorney for Petitioner-Plaintiff
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