

LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
OF THE SAN FRANCISCO BAY AREA  
Jordan Wells (SBN 326491)  
jwells@lccrsf.org  
Victoria Petty (SBN 338689)  
vpetty@lccrsf.org  
131 Steuart Street # 400  
San Francisco, CA 94105  
Telephone: 415 543 9444

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEX RIVERA GORGES and SOKHA KHAN,

Petitioners-Plaintiffs,

v.

POLLY KAISER, in her official capacity, Acting  
San Francisco Field Office Director, U.S.  
Immigration and Customs Enforcement;

TODD M. LYONS, in his official capacity, Acting  
Director, U.S. Immigration and Customs  
Enforcement;

KRISTI NOEM, in her official Capacity, Secretary  
of the U.S. Department of Homeland Security; and

PAMELA BONDI, in her official capacity,  
Attorney General of the United States,

Respondents-Defendants.

Case No. 25-7598

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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

Challenge to Unlawful Incarceration  
Under Color of Immigration Detention  
Statutes; Request for Declaratory and  
Injunctive Relief

IMMIGRATION HABEAS CASE

MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS'  
MOTION FOR EX PARTE TRO/PI

**NOTICE OF MOTION**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioners-Plaintiffs (“Petitioners”), Sokha Khan (“Mr. Khan”) and Alex Rivera Giorges (“Mr. Rivera”), hereby move this Court to enjoin Respondents from re-arresting Petitioners unless and until they are afforded notice and a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether clear and convincing evidence demonstrates that they currently pose a flight risk or danger to the community such that his re-incarceration would be legally justified.

The reasons in support of this Motion are set forth in the Verified Petition (ECF 1) and the accompanying Memorandum of Points and Authorities.

Petitioners warrant a temporary restraining order due to their weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing imminent unconstitutional detention absent a constitutionally-compliant pre-deprivation hearing before a neutral adjudicator.

Petitioners were both released from ICE custody in 2020 pursuant to District Judge Vince Chhabria’s orders in the class action *Zepeda Rivas v. Jennings*, No. 3:20-cv-02731-VC, (N.D. Cal.) (hereafter “*Zepeda Rivas*”). The case resolved in a settlement agreement that prohibited Respondents from re-arresting class members, including Petitioners, unless they violated the terms of their release from ICE custody. *Zepeda Rivas*, Dkt. 1205, Ex. A. Since the June 9, 2025 expiry of the settlement, Respondents have engaged a pattern of re-detaining former class members without pre-deprivation hearings and regardless of whether any circumstances have changed since their original release. *See, e.g., Duong v. Kaiser*, No. 25-CV-7598, 2025 WL 2578275 (N.D. Cal. Sept. 6, 2025) (ordering release of former *Zepeda Rivas* class member who was re-detained after his ICE check-in); *Carballo v. Andrews*, No. 1:25-CV-00978-KES-EPG

MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS’  
MOTION FOR EX PARTE TRO/PI

(HC), 2025 WL 2381464 (E.D. Cal. Aug. 15, 2025) (ordering bond hearing for former *Zepeda Rivas* class member re-detained at his ICE check-in). Petitioners both have upcoming check-ins at ICE's San Francisco Field Office, where they are very likely to be detained. **Mr. Khan is required to appear on September 10, 2025 at 9:00 a.m., and Mr. Rivera is required to appear on September 15, 2025.** Absent immediate relief from this Court, Petitioners will be detained without notice and a hearing on whether such re-detention is justified in violation of Petitioners' constitutional due process rights. Only yesterday, ICE abruptly instructed Mr. Khan to come in for an unscheduled check-in. Mr. Khan's immigration counsel contacted undersigned counsel with great concern that her client would be detained. At 3:02 PM today, undersigned counsel sent an email to Pamela Johann, Chief of the Civil Division of the United States Attorney's Office for the Northern District of California, informing her of Petitioners' names and the forthcoming petition and TRO application.

WHEREFORE, Petitioners pray that this Court grant their request for a temporary restraining order and a preliminary injunction enjoining Respondents from re-detaining them unless and until they are afforded a constitutionally compliant hearing before a neutral adjudicator on the question of whether re-detention is justified.

Dated: September 9, 2025 By: Jordan Wells

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JORDAN WELLS (SBN 326491)  
jwells@lccrsf.org  
VICTORIA PETTY (SBN 338689)  
vpetty@lccrsf.org  
131 Steuart Street # 400  
San Francisco, CA 94105  
Telephone: 415 543 9444  
*Attorneys for Petitioner*

MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS'  
MOTION FOR EX PARTE TRO/PI

## INTRODUCTION

In the interest of expedition and in light of imminent irreparable harm, Petitioners-Plaintiffs hereby incorporate and respectfully refer the Court to their Verified Petition-Complaint for a full statement of the facts giving rise to this motion. In sum, this case presents facts like recent cases in which courts have provided swift interim relief: ICE is going to unilaterally and arbitrarily re-detain two individuals despite that no circumstances have changed to indicate they are either a flight risks or dangers to the community: *Jorge M. F. v. Wilkinson*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021) (granting preliminary injunction that prevented Respondents from re-detaining individual previously released from ICE custody); *Guillermo M.R. v. Kaiser*, No. 25-cv-05436, 2025 WL 1983677 (N.D. Cal. July 17, 2025) (same); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018) (same); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at \*3-4 (N.D. Cal. May 6, 2022) (same); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at \*3 (N.D. Cal. May 12, 2025) (same); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020) (same); *see also Duong v. Kaiser*, No. 25-CV-7598, 2025 WL 2578275 (N.D. Cal. Sept. 6, 2025) (ordering release of former *Zepeda Rivas* class member who was re-detained after his ICE check-in); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179 (N.D. Cal. July 14, 2025) (enjoining re-detention of individual originally detained under 8 U.S.C. § 1226(c), but subsequently released from ICE custody on bond).

Petitioners' imminent re-detention violates their due process rights and irreparable, ongoing harm is likely to result. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from imprisonment—from government custody, detention, or

MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS'  
MOTION FOR EX PARTE TRO/PI



1 other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause  
 2 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In addition to harming Petitioners’  
 3 physical liberty, re-detention would jeopardize Mr. Khan’s ability to care for his elderly mother,  
 4 Mr. Rivera’s employment, and both Petitioners’ ability to seek post-conviction relief that would  
 5 favorably resolve their immigration cases.  
 6

7 Respondents appear poised to remove Petitioners from their communities and needlessly  
 8 shunt them into detention. Indeed, in recent days ICE has abruptly re-arrested several *Zepeda*  
 9 *Rivas* class members, ostensibly without any precipitating event. *See, e.g., Duong v. Kaiser*, No.  
 10 25-CV-7598, 2025 WL 2578275 (N.D. Cal. Sept. 6, 2025) (ordering release of *Zepeda Rivas*  
 11 class member who was re-detained within days of his ICE check-in); *Carballo v. Andrews*, No.  
 12 1:25-CV-00978, 2025 WL 2381464 (E.D. Cal. Aug. 15, 2025) (ordering bond hearing for  
 13 *Zepeda Rivas* class member re-detained at his ICE check-in). Petitioners thus request that the  
 14 Court enter a TRO enjoining Respondents from re-detaining them.  
 15

### 16 ARGUMENT

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 18 To warrant a TRO, Petitioners need only show that (1) they are “likely to succeed on the  
 19 merits,” (2) “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the  
 20 balance of equities tips in [their] favor,” and that (4) “an injunction is in the public interest.” *All.*  
 21 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res.*  
 22 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*,  
 23 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary restraining  
 24 order and a preliminary injunction is substantially the same). Even if Petitioners were to only  
 25 raise “serious questions” as to the merits of their claims, the Court can still grant relief because  
 26 the balance of hardships tips “sharply” in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135.  
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MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS’  
 MOTION FOR EX PARTE TRO/PI

As this Court has found in similar circumstances, all factors here weigh decisively in Petitioners' favor. *See, e.g., Jorge M. F.*, 534 F. Supp. at (emphasizing the “the irreparable harms imposed on anyone subject to immigration detention”).

**I. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS THAT THE CONSTITUTION REQUIRES A HEARING PRIOR TO ANY RE-DETENTION BY ICE.**

**A. Petitioners Have a Protected Liberty Interest in Their Conditional Release.**

Both Petitioners were released from ICE custody in 2020 based upon Judge Chhabria's finding that they did not pose a danger or flight risk. *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36, 40 (N.D. Cal. 2020) (“[C]are will be taken both to avoid releasing detainees who are a danger to the community and to minimize the possibility that released detainees will fail to appear for their removal proceedings.”). They have both honored the conditions of that release – they have not incurred any new arrests or convictions, and they have dutifully complied with all immigration monitoring check-ins. They thus possess protected interests in their freedom that Respondents cannot intrude upon arbitrarily.

“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For over five years, Petitioners have exercised that liberty interest. While that freedom *may* ultimately be revocable should circumstances materially change, *see Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) and *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196-97 (N. D. Cal. 2017), they nonetheless retain a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-83 (1972); *see also Ortega v. Bonnar*, 415 F.Supp.3d

MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS' MOTION FOR EX PARTE TRO/PI

1 963, 969-70 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in  
2 remaining out of custody following an IJ's bond determination).

3 In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has  
4 in "his continued liberty." 408 U.S. at 481-82. The Court observed that subject to parole  
5 conditions, "[a parolee] can be gainfully employed and is free to be with family and friends and  
6 to form the other enduring attachments of normal life." *Id.* at 482. The Court reasoned that "the  
7 liberty of a parolee, although indeterminate, includes many of the core values of unqualified  
8 liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y  
9 whatever name, the liberty is valuable and *must* be seen within the protection of the [Constitution]."  
10 *Id.* (emphasis added).

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13 *Morrissey's* basic principle—that individuals have a liberty interest in their conditional  
14 release—has been reinforced by both the Supreme Court and circuit courts on numerous  
15 occasions. *See Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole program  
16 created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation  
17 process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation have  
18 a protected liberty interest requiring pre-deprivation process); *Zadvydas*, 533 U.S. at 690 (holding  
19 that due process protects "all 'persons' within the United States . . . whether their presence here  
20 is lawful, unlawful, temporary or permanent" who face immigration detention). As the First  
21 Circuit has explained, when analyzing the issue of whether a specific conditional release rises to  
22 the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific  
23 conditional release in the case before them with the liberty interest in parole as characterized by  
24 *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation  
25 marks and citation omitted); *see also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C.  
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MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS'  
MOTION FOR EX PARTE TRO/PI



1 Cir. 2017) (noting that “a person who is in fact free of physical confinement—even if that freedom  
2 is lawfully revocable—has a liberty interest that entitles him to constitutional due process before  
3 he is re-incarcerated) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,  
4 408 U.S. at 482).

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6 Here, when this Court “compar[es] the specific conditional release in [Petitioners’ cases],  
7 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are on all  
8 fours. See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioners’ release “enables  
9 [the]m to do a wide range of things open to persons” who have never been in custody or convicted  
10 of any crime, including to live at home, work, attend church, and “be with family and friends and  
11 to form the enduring attachments of normal life.” See *Morrissey*, 408 U.S. at 482. Since release  
12 from immigration custody over five years ago, Mr. Rivera has been employed at a nonprofit  
13 organization doing meaningful work to support himself and the unhoused community in the Bay  
14 Area. He also has made meaningful friendships. Similarly, Mr. Khan became the primary  
15 caretaker for his elderly mother, who suffers from high cholesterol, diabetes, and high blood  
16 pressure. Neither Petitioner has had any new contacts with the criminal legal system since their  
17 release. Instead, their overall behavior post-release has bolstered Judge Chhabria’s finding that  
18 they are neither a present danger or flight risk.

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21 Petitioners have protected liberty interest in the release that they have enjoyed since  
22 being released pursuant to court order in *Zepeda Rivas* over five years ago. To deprive them of  
23 that liberty, as the following section makes clear, they are entitled to due process *prior* to any re-  
24 detention.  
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**B. Petitioners' Liberty Interests Require that They Receive a Hearing Before Any Re-Arrest.**

The Supreme Court “usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). This is so even in cases where that freedom is lawfully revocable. See *Hurd*, 864 F.3d at 683 (emphasis added) (citing *Young*, 520 U.S. at 152 (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*, 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding the same, in context of parole). Only in a “special case,” where post-deprivation remedies are “the only remedies the State could be expected to provide,” can post-deprivation process satisfy the requirements of due process. *Zinerman*, 494 U.S. at 128.

Because in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, Petitioners must be provided with both notice and a hearing prior to any re-incarceration. See *Morrissey*, 408 U.S. at 481-82; *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) *cert. denied*, 546 U.S. 820 (2005); *Zinerman*, 494 U.S. at 985; See also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail unless and until there has been a determination as to whether they can ultimately be recommitted). Petitioners have protected interests in their freedom, and before Respondents may deprive them of that, the Fifth Amendment requires that Respondents first prove that they have a lawful basis to do so.

As detailed above, Petitioners' *Zepeda Rivas* bail grants “include[] many of the core values of unqualified liberty,” such as the ability to wake up in their own homes, to live with  
MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS'  
MOTION FOR EX PARTE TRO/PI

1 family, and to work. *See Morrissey*, 408 U.S. at 482. Moreover, because Petitioners face *civil*  
2 *detention*, their “liberty interest is arguably greater than the interest of the parolees in *Morrissey*.”  
3 *See Ortega v. Bonnar*, 415 F.Supp.3d 963, 970 (N.D. Cal. 2019). As people at risk of civil  
4 detention, therefore, “it stands to reason that [Petitioners are] entitled to protections at least as  
5 great as those afforded to an individual . . . accused but not convicted of a crime.” *See Jones*, 393  
6 F.3d 932.  
7

8 Thus, before the Respondents may again deprive Petitioners of their liberty, Petitioners  
9 are entitled to a hearing at which they can argue why such detention would be unlawful.  
10

11 Petitioners herein highlight at least three courts in this district that have found that due  
12 process requires granting a hearing before DHS may re-detain a noncitizen whom they have  
13 previously freed. Recently, in *Guillermo M.R.*, the court ordered that a petitioner was entitled to  
14 a pre-deprivation hearing despite a recent arrest that occurred after his initial release from ICE  
15 custody. 2025 WL 1983677, at \*3, 10. Similar to Petitioners here, Mr. M.R. was originally  
16 detained by ICE following completion of a criminal sentence for attempted murder. *See id.* at \*2.  
17 ICE detained Mr. M.R. for over one year, then an immigration judge ordered Mr. M.R.’s release  
18 on bond. *Id.* at \*3. But unlike Petitioners here, who have no recent arrests since their release, Mr.  
19 M.R. was arrested for robbery and vandalism about two years after his release from ICE custody.  
20 *See id.* The court nonetheless held that absent neutral review, there was a risk of erroneous  
21 deprivation of liberty if ICE were allowed to unilaterally re-detain Mr. M.R. *Id.* at \*8.  
22

23 In *Ortega v. Bonnar*, the court held that a petitioner was entitled to a pre-deprivation  
24 hearing in front of an IJ prior to being re-detained. In *Ortega*, the petitioner was released on a  
25 \$35,000 bond, and after the Board of Immigration Appeals affirmed his removal order, the DHS  
26 claimed that this constituted a material change in circumstances such that they could unilaterally  
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MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS’  
MOTION FOR EX PARTE TRO/PI

1 re-detain him without any process. 415 F. Supp. 3d 963, 971 (N.D. Cal. 2019). The court in  
2 *Ortega* disagreed, explaining that “just as people on preparole, parole, and probation status have  
3 a liberty interest, so too does [petitioner] have a liberty interest in remaining out of custody on  
4 bond.” *Id.* at 969 (citing *Morrissey*, 408 U.S. at 482; *Gagnon*, 411 U.S. at 782). As a result, having  
5 already granted a preliminary injunction, the court permanently enjoined ICE from re-arresting  
6 the petitioner “unless and until a hearing, with adequate notice, is held in Immigration Court to  
7 determine whether his bond should be revoked or altered.” *Id.* at 970.

9 Finally, in *Ortiz Vargas*, the court considered the case of a petitioner who initially was  
10 released on a \$10,000 bond by an IJ. *Ortiz Vargas v. Jennings*, 2020 WL 5074312, at \*1 (N.D.  
11 Cal. 2020) (order granting temporary restraining order). A month after being released on the bond,  
12 the IJ *sua sponte* issued an order reconsidering her decision and revoking bond, concluding that  
13 she had erred in concluding that the petitioner was not subject to mandatory custody. *Id.* Mr. Ortiz  
14 sought injunctive relief to prevent his re-arrest, and the court granted a preliminary injunction on  
15 behalf of the petitioner finding that there were “serious questions going to the merits of his claim  
16 that he has a protectable liberty interest in his conditional release under *Morrissey* and that he  
17 must be afforded a pre-deprivation hearing if respondents seek to re-arrest him.” *Ortiz Vargas v.*  
18 *Jennings*, 2020 WL 5517277, at \*2 (N.D. Cal. 2020) (order granting preliminary injunction). As  
19 a result, the court enjoined Respondents from “re-arresting or re-detaining petitioner . . . unless  
20 and until an administrative hearing, with adequate notice, is held to determine whether petitioner  
21 is subject to mandatory detention.” *Id.* at \*3.

22 Just as in *Guillermo M.R.*, *Ortega*, and *Ortiz Vargas*, Petitioners are entitled to a hearing  
23 before an immigration judge *prior to* any re-detention by ICE.  
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MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS’  
MOTION FOR EX PARTE TRO/PI



1 **II. PETITIONERS WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE**  
2 **RELIEF.**

3 Imminent re-detention without a hearing will irreparably harm Petitioners. Given ICE's  
4 recent moves to re-detain former *Zepeda Rivas* class members, *see, e.g., Duong*, 2025 WL  
5 2578275; *Carballo*, 2025 WL 2381464, ICE is likely to re-detain Mr. Khan at his check-in  
6 tomorrow morning on September 10, 2025 and Mr. Rivera thereafter on September 15, 2025.  
7 Thus, a TRO is necessary to prevent irreparable harm.

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9 As the Supreme Court has recognized, incarceration "has a detrimental impact on the  
10 individual" because "it often means loss of a job" and "disrupts family life." *Barker v. Wingo*,  
11 407 U.S. 514, 532-33 (1972). And as the Ninth Circuit has further explained, the "irreparable  
12 harms" of immigration detention include the "economic burdens imposed on detainees and their  
13 families as a result of detention, and the collateral harms to children of detainees whose parents  
14 are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

15  
16 For Mr. Khan, arbitrary re-detention will separate him from his mother. Mr. Khan is his 66-  
17 year-old mother's sole care provider. His mother suffers from high cholesterol, diabetes, and high  
18 blood pressure. These conditions require her to take medications three times a day, attend regular  
19 medical appointments, and monitors her symptoms closely, all of which Mr. Khan provides for  
20 her. Mr. Khan also has a hearing before the Superior Court of California, County of San Joaquin  
21 on September 18, 2025, regarding a motion to vacate his criminal convictions. If the state court  
22 vacates Mr. Khan's convictions, he could move to terminate his removal proceedings and return  
23 to being a lawful permanent resident. Arbitrary re-detention would disrupt Mr. Khan's ability to  
24 participate at his vacatur hearing, which has collateral consequences on his ability to restore his  
25 immigration status and remain living in the United States, the only home he has ever known.  
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1 For Mr. Rivera, arbitrary re-detention will separate him from his employment and his friends.  
2 Mr. Rivera provides valuable help to unhoused people who lack sufficient resources to meet their  
3 basic needs. For example, through the nonprofit where Mr. Rivera works, he drives unhoused  
4 people to medical appointments that they otherwise would struggle to attend due to lack of  
5 transportation. Mr. Rivera also is preparing to file a gubernatorial pardon application, which, if  
6 granted, would provide Mr. Rivera grounds to terminate his removal proceedings and restore his  
7 permanent residence status. He is working with his *pro bono* attorney, Ms. Kavanagh, to gather  
8 the appropriate documentation and follow the required procedure. Being arbitrarily re-detained in  
9 ICE custody, where he would either have to pay for monitored calls or wait for the detention  
10 facility to allot him a confidential attorney visitation time slot, would isolate him from his lawyer  
11 and impede his ability to seek a pardon.  
12

13  
14 Finally, “the deprivation of constitutional rights ‘unquestionably constitutes irreparable  
15 injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427  
16 U.S. 347, 373 (1976)). As detailed above, Petitioners’ re-arrest without a constitutionally  
17 compliant custody hearing would violate their due process rights.  
18

19 **III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR**  
20 **GRANTING A TRO.**

21 Where the government is the opposing party, balancing of the harm and the public interest  
22 merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioners face grave hardships  
23 absent a TRO, and the public has strong interests in ensuring that the executive branch follows  
24 the law, avoiding collateral hardship to Mr. Khan’s family, and benefiting from Mr. Rivera’s  
25 continued productive membership in his community—all of which resoundingly outweigh any  
26 government interests.  
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MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS’  
MOTION FOR EX PARTE TRO/PI

1 For Petitioners, the hardships could not be more serious. Absent injunctive relief, they  
2 face arrest and detention in violation of their constitutional rights. Mr. Khan can be separated  
3 from his mother, who depends upon him exclusively to take care of her and take her to medical  
4 appointments. Mr. Rivera would similarly suffer, being taken away from his place of employment,  
5 where he not only earns income to be able to pay for his housing and basic needs, but where he  
6 also does valuable work providing resources to the unhoused population. Faced with “preventable  
7 human suffering, [the Ninth Circuit has] little difficulty concluding that the balance of hardships  
8 tips decidedly in plaintiffs’ favor.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713  
9 F.2d 1432, 1437 (9th Cir. 1983). This Court should find the same.  
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11  
12 The public likewise has a strong interest in ensuring that Petitioners are not arbitrarily re-  
13 detained and in ensuring that they are provided a pre-deprivation hearing, as “it would not be  
14 equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal  
15 law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*,  
16 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029  
17 (9th Cir. 2013)). Without an injunction, Respondents would effectively be granted permission to  
18 detain Petitioners in violation of the Constitution, as argued throughout this motion. Like all other  
19 individuals, the government is not simply free to ignore the law.  
20

21 Moreover, a TRO serves the public interest by avoiding “indirect hardship to [Mr. Khan’s]  
22 family members,” along with Mr. Rivera’s community members, which here would be substantial.  
23 See also *Golden Gate Rest. Ass’n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir.  
24 2008) (finding that courts may consider hardship to families when determining public interest).  
25

26 In addition, a TRO favors the public interest because it allows Mr. Rivera to continue  
27 contributing productively to his community by supporting people who lack housing. See *Hurd*,  
28

MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS’  
MOTION FOR EX PARTE TRO/PI

1 864 F.3d at 683 (citing *Morrissey*, 408 U.S. at 484) (finding that for released prisoners and parolees,  
2 “society has a stake in whatever may be the chance of restoring the individual to normal and  
3 useful life” and that society thus “has an interest in not having parole revoked” erroneously  
4 (internal brackets omitted)).

5  
6 Respondents, on the other hand, cannot suffer harm from an injunction that simply  
7 requires them to follow the law. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he  
8 INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined  
9 from constitutional violations.”). Here, specifically, the government cannot claim harm from a  
10 TRO that enjoins it from re-arresting Petitioners and orders a hearing required by the Constitution  
11 and existing precedent.

12  
13 Finally, any administrative burden imposed on the government in requiring a new bond  
14 hearing before the IJ is both *de minimis* and clearly outweighed by the substantial harms  
15 Petitioners and the public face if ICE is allowed to re-detain them without a hearing. *See Lopez v.*  
16 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair  
17 procedures to all persons, even though the expenditure of governmental funds is required.”). For  
18 these reasons, the balance of equities and the public interest weigh strongly in favor of a TRO.  
19

## 20 CONCLUSION

21 For the foregoing reasons, Petitioners respectfully requests that the Court enter a TRO  
22 enjoining ICE from re-arresting them unless and until they are afforded a pre-deprivation hearing  
23 before an immigration judge at which Respondents must bear the burden of establishing detention  
24 is justified by clear and convincing evidence.  
25

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By: Jordan Wells

2 LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
3 OF THE SAN FRANCISCO BAY AREA  
4 JORDAN WELLS (SBN 326491)  
5 jwells@lccrsf.org  
6 VICTORIA PETTY (SBN 338689)  
7 vpetty@lccrsf.org  
8 131 Steuart Street # 400  
9 San Francisco, CA 94105  
10 Telephone: 415 543 9444

11 *Attorneys for Petitioner*

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MOTION FOR TRO; POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS'  
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