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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

R.S.,

Petitioner-Plaintiff,

v.

ERNESTO SANTACRUZ JR., Field Office
Director of Enforcement and Removal
Operations, Adelanto Field Office, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
TODD M. LYONS, Acting Director of
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; U.S.
DEPARTMENT OF HOMELAND
SECURITY; PAMELA BONDI, U.S.
Attorney General; EXECUTIVE OFFICE
FOR IMMIGRATION REVIEW; FERETI
SEMAIA, Warden of Adelanto Detention
Facility,

Respondents-Defendants.

Case No. 5:25-cv-02594-MWC-SK

**PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION**

Hearing Date: October 15, 2025

Hearing Time: 10:00 a.m.

1 Pursuant to Federal Rule of Civil Procedure, Rule 65, Petitioner R.S. moves this
2 Court for a Preliminary Injunction enjoining Respondents from violating his Fifth
3 Amendment right to due process by detaining him indefinitely without justifying his
4 ongoing detention before a neutral judicial officer.

5 In support of this Motion, R.S. respectfully submits the following Memorandum of
6 Points and Authorities, Declaration of Jennifer G. Kahn In Support of Motion for
7 Preliminary Injunction, and Proposed Order.

8
9 Dated: October 8, 2025

Respectfully submitted,

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8 IN THE UNITED STATES DISTRICT COURT
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11 R.S.

12 Petitioner-Plaintiff,

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14 ERNESTO SANTACRUZ JR., Field Office
15 Director of Enforcement and Removal
16 Operations, Adelanto Field Office, U.S.
17 Immigration and Customs Enforcement,
18 U.S. Department of Homeland Security;
19 TODD M. LYONS, Acting Director of
20 Immigration and Customs Enforcement,
21 U.S. Department of Homeland Security;
22 KRISTI NOEM, Secretary, U.S.
23 Department of Homeland Security; U.S.
24 DEPARTMENT OF HOMELAND
25 SECURITY; PAMELA BONDI, U.S.
26 Attorney General; EXECUTIVE OFFICE
27 FOR IMMIGRATION REVIEW; FERETI
28 SEMAIA, Warden of Adelanto Detention
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**PETITIONER'S MEMORANDUM
OF LAW IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

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INTRODUCTION

Petitioner R.S. respectfully moves this Court for a preliminary injunction pending its adjudication of his Petition for Writ of Habeas Corpus (“Petition”). Specifically, R.S. requests that this Court order Respondents to immediately release him from custody.

R.S. is a 42-year-old-man who is an Iranian citizen. The Petition does not contest his pending removal proceedings or U.S. Immigration and Customs Enforcement’s (“ICE”) authority to remove him. Instead, the Petition challenges the processes ICE has employed and continues to employ to detain R.S. while his removal proceedings are pending. *See You Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 457 (S.D.N.Y. Aug. 2, 2018) (finding, as cognizable, a challenge to the manner of removal employed by the government); *see also Vasquez v. Wolf*, 830 F. App’x 556 (9th Cir. 2020) (same); *S.N.C. v. Sessions*, 2018 WL 6175902, at *5 (S.D.N.Y. Nov. 26, 2019) (“Here, the type of relief Petitioner is seeking, the right to have her [] application adjudicated will not, even if granted, nullify her removal order.”).

Because R.S. is likely to succeed on the Petition, and to avoid the significant irreparable harm R.S. would suffer if he were to continue to be detained, R.S. requests that the Court issue an order restraining the Respondents-Defendants from continuing to detain him pending a ruling on his Petition.

R.S. has a protected liberty interest in being released from, and remaining out of, custody and Respondents’ interest in upholding the immigration laws does not outweigh this significant liberty interest. Moreover, R.S. is likely to suffer irreparable harm if he is not immediately released, including the economic burden imposed on him as a result of his detention, his loss of income, the likely impact on his mental health, and his justified fear of being forced to return to Iran. All of this is in addition to the loss of liberty arising from immigration detention, which is itself irreparable harm.

FACTUAL BACKGROUND

R.S. is a 42 year-old native of Iran. Declaration of Jennifer G. Kahn In Support of Motion for Preliminary Injunction (“Kahn Decl.”), ¶ 3. He fled Iran after he protested the

1 current Iranian regime and was beaten and threatened with jail and execution by the
2 military and police who work for the Iranian regime. *Id.* He is currently detained by ICE
3 at the Adelanto Detention Facility in Adelanto, California. *Id.*, ¶ 14. R.S. arrived in the
4 United States around December 22, 2022, crossing the U.S.-Mexico border, entering the
5 U.S. without inspection. *Id.*, ¶ 4. Upon entering the U.S., R.S. surrendered himself to
6 U.S. immigration authorities and requested asylum. *Id.* R.S. was placed in detention for
7 about five days. *Id.* On or around December 27, 2022, R.S. was released on his own
8 recognizance and on February 22, 2023, he was served in person with a Notice to Appear.
9 *Id.*, ¶¶ 5-6. Following R.S.'s release, he obtained a legal work permit and began to work
10 as a freelance construction worker. *Id.*, ¶ 7.

11 DHS placed R.S. in removal proceedings, pursuant to 8 U.S.C. § 1229(a). *Id.*, ¶ 8.
12 ICE charged R.S. with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone
13 who entered the U.S. without inspection. *Id.* Since that time, R.S. has done everything
14 the government has asked of him. *Id.*, ¶ 9. R.S. has diligently attended every immigration
15 court hearing and filed his application for asylum within the one-year filing deadline. *Id.*

16 R.S. filed his Form I-589, Application for Asylum, Withholding of Removal, and
17 Protection Under the Convention Against Torture in October 2023 based on political
18 violence he would suffer at the hands of the Iranian regime if he were forced to return to
19 Iran. *Id.*, ¶ 10. In his asylum application, R.S. explained that he attended protests
20 following the reelection of President Mahmoud Ahmadinejad and, at these protests, he
21 was beaten and arrested. *Id.*, ¶ 11. R.S. was taken to a detention facility where he was
22 held for three days, during which he was questioned and beaten repeatedly. *Id.* Before he
23 was released, R.S. had to sign an attestation that he would not protest anymore or be in
24 gatherings of 10 or more people or he would be taken to court, sent to jail, and executed.
25 *Id.* Understandably, R.S. still suffers trauma from the events that took place in detention
26 in 2009. *Id.*

27 In or around November 2024, almost two years after he entered the United States,
28 R.S. was meeting a friend near the San Ysidro Port of Entry and accidentally crossed the

1 U.S.-Mexico border. *Id.*, ¶ 12. R.S. explained the situation to the border agents and was
2 immediately let back into the United States and allowed to return home. *Id.*

3 On June 4, 2025, R.S. began his Merits Hearing before the Honorable Joyce Bakke
4 Varzandeh, Immigration Judge. *Id.*, ¶ 13. After she began hearing testimony, Judge
5 Bakke Varzandeh continued the Merits Hearing to July 14, 2025, at 1:00 p.m. for further
6 testimony. *Id.* However, before R.S.'s continued Merits Hearing could commence, on or
7 around June 30, 2025, R.S. was detained by ICE at his home while getting ready to leave
8 for work. *Id.*, ¶ 14. R.S. was immediately taken to the Adelanto Detention Facility in
9 Adelanto, California, where he has remained since. *Id.*, Ex. 5. R.S. sought a bond hearing
10 on July 7, 2025. *Id.*, ¶ 15. The Immigration Judge issued a decision on July 11, 2025,
11 denying bond on the grounds that the IJ did not have jurisdiction, relying on *Matter of Q.*
12 *Li*, 29 I&N Dec. 66 (BIA 2025). *Id.*

13 R.S.'s continued Merits Hearing was rescheduled before the Honorable Curtis
14 White, Immigration Judge on October 2, 2025, at 8:30 a.m. *Id.*, ¶ 16. This Merits
15 Hearing took place as scheduled. *Id.* After he began hearing testimony, Judge White
16 continued the Merits Hearing to November 6, 2025, at 8:30 a.m. for further testimony. *Id.*

17 R.S. filed an Application for Temporary Restraining Order on September 30, 2025.
18 (Dkt. 3.) Respondents filed an Opposition to R.S.'s Application for Temporary
19 Restraining Order on October 2, 2025. (Dkt. 6.) On October 3, 2025, the Court issued an
20 Order granting in part and denying in part Petitioner's Application for Temporary
21 Restraining Order. (Dkt. 7.) Specifically, the Court ordered that Respondents provide
22 Petitioner with an individualized bond hearing before an Immigration Judge pursuant to 8
23 U.S.C. § 1226(a) within seven days of this Order. (*Id.*) This bond hearing is scheduled
24 for October 9, 2025, at 8:30 a.m. before Immigration Judge Curtis White.

25 ARGUMENT

26 "A plaintiff seeking a preliminary injunction must establish that he is likely to
27 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
28 preliminary relief, that the balance of equities in his favor, and that an injunction is in the

1 public interest.” *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008).
2 “[I]f a plaintiff can only show that there are ‘serious questions going to the merits’—a
3 lesser showing than likelihood of success on the merits—then a preliminary injunction
4 may still issue if the ‘balance of hardships tips sharply in the plaintiff’s favor and the other
5 two *Winter* factors are satisfied.’” *All. For the Wild Rockies v. Peña*, 865 F.3d 1211, 1217
6 (9th Cir. 2017) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291
7 (9th Cir. 2013)). The final two factors “merge when the Government is the opposing
8 party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, because R.S. meets both the
9 irreparable harm and the likelihood of success prongs and because the requested relief is
10 not overly burdensome on Respondents, he merits such relief.

11 To the extent that Respondents-Defendants argues that there is a question regarding
12 the Court’s jurisdiction, it does not preclude this Court from exercising its inherent
13 authority to issue emergent relief pending further briefing. “[A] federal court always has
14 jurisdiction to determine its own jurisdiction.” *U.S. v. Ruiz*, 536 U.S. 622, 628 (2002).

15 **R.S. Is Likely To Succeed On The Merits Of His Due Process Claim, Or At Least**
16 **Raises Serious Questions**

17 The first factor “is the most important” under *Winter*, and “is especially important
18 when a plaintiff alleges a constitutional violation and injury.” *Baird v. Bonta*, 81 F.4th
19 1036, 1041 (9th Cir. 2023). When an immigrant is placed into parole status after having
20 been detained, a protected liberty interest may arise. *Young v. Harper*, 520 U.S. 143, 147-
21 149 (1997). The Due Process Clause may protect this liberty interest even where a statute
22 allows the immigrant’s arrest and detention and does not provide for procedural
23 protections. *Id.* The Due Process Clause protects all persons within the United States
24 from being “deprived of life, liberty, or property, without due process of law.” U.S.
25 Const. amend. V. It is settled law that the Due Process clause applies to noncitizens
26 within the United States “whether their presence here is lawful, unlawful, temporary, or
27 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Trump v. J. G. G.*, — U.S. —
28

—, 145 S. Ct. 1003, 1006 (2025) (“It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.”).

“Once it is determined that due process applies, the question remains what process is due.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). The Constitution typically “requires some kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is particularly true when the interest is in liberty, the loss of which cannot fully be compensated after the fact. *Aceros v. Kaiser*, 2025 U.S. Dist. LEXIS 179594, at *14 (N.D. Cal. Sept. 12, 2025).

To determine what procedures are required, courts apply the three-part test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Ninth Circuit has “assume[d] without deciding” that *Mathews* applies in the immigration detention context. *Diaz*, 53 F.4th at 1206-07; *see also Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 142213, at n.2 (N.D. Cal. July 24, 2025) (collecting cases where the Ninth Circuit has applied *Mathews* in due process challenges to removal proceedings). Moreover, many courts in this district have applied the *Mathews* test to noncitizens in circumstances similar or identical to those here. *See e.g., Rodriques v. Garland*, Case No. EDCV 23-0216-JPR, 2025 U.S. Dist. LEXIS 84802 (C.D. Cal. May 8, 2024); *Jensen v. Garland*, No. 5:21-cv-01195-CAS (AFM), 2023 U.S. Dist. LEXIS 78505, 2023 WL 3246522, at *4 (C.D. Cal. May 3, 2023); *Lewis v. Garland*, No. EDCV 22-296 JGB (AGRx), 2023 U.S. Dist. LEXIS 231037, 2023 WL 8898601, at *3-4 (C.D. Cal. July 31, 2023).

Those in R.S.’s position, a noncitizen granted the liberty of release pending removal proceedings, have due process rights. The breadth of those rights turns on the application of the *Mathews* test. *Mathews* requires consideration of three factors: (1) the private interest affected; (2) the risk of an erroneous deprivation; and (3) the Government’s interest. *Mathews*, 424 U.S. at 335. Here, all three factors suggest that R.S. has a right to a pre-detention hearing before a neutral arbiter.

1 **A. R.S. Has A Liberty Interest.**

2 R.S. has a protected liberty in remaining on release rather than being detained.
3 “Freedom from imprisonment—from government custody, detention, or other forms of
4 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
5 *Zadvydas*, 533 U.S. at 690. “A protected liberty interest may arise from a conditional
6 release from physical restraint.” *Rodriguez v. Kaiser*, 2025 U.S. Dist. LEXIS 172756, at
7 *8 (E.D. Cal. Sep. 4, 2025) (citing *Young v. Harper*, 520 U.S. 143, 147-49 (1997)).
8 “[E]ven when an initial decision to detain or release an individual is discretionary, the
9 government’s subsequent release of the individual from custody creates ‘an implicit
10 promise’ that the individual’s liberty will be revoked only if they fail to abide by the
11 conditions of their release.” *Calderon v. Kaiser*, 2025 U.S. Dist. LEXIS 163975, at *5
12 (N.D. Cal. Aug. 22, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). “The
13 fact that a decision-making process involves discretion does not prevent an individual
14 from having a protectable liberty interest.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970
15 (N.D. Cal. 2019). Accordingly, a noncitizen released from custody pending removal
16 proceedings has a protected liberty interest in remaining out of custody. *See e.g., Ramirez*
17 *Clavijo v. Kaiser*, 25-cv-06248-BLF, 2025 U.S. Dist. LEXIS 163056, at *13 (N.D. Cal.
18 Aug. 21, 2025) (collecting cases); *Castellon v. Kaiser*, Case No. 1:25-cv-00968 JLT EPG,
19 2025 U.S. Dist. LEXIS 157841, at *16-17 (E.D. Cal. Aug. 14, 2025); *Rosado v. Figueroa*,
20 No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *35 (D. Ariz.
21 Aug. 11, 2025).

22 Here, R.S. has a protected liberty interest in remaining out of custody, as he has
23 since December 2022. From the time R.S. was released in December 2022 until he was
24 detained by ICE in June 2025, R.S. obtained a work permit, got a steady job, and
25 supported himself. Kahn Decl., ¶ 17. During his time on release, he has established ties
26 to his community and regularly attends church. *Id.*, ¶ 18. These relationships of support
27 and interdependence underscore the high stakes of his liberty. *See Alva v. Kaiser*, 2025
28 U.S. Dist. LEXIS 163060, at *10 (N.D. Cal. Aug. 21, 2015). R.S.’s detention denies him

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1 the freedom to continue to work and make money for himself. R.S. has a substantial
2 interest in remaining in his home and maintaining his relationships in his community.

3 R.S. gained a liberty interest in his continued freedom when DHS elected to release
4 him on his own recognizance. Under *Morrissey*, this release implied a promise that he
5 would not be re-detained so long as he abided by the terms of his release. *See e.g.*,
6 *Calderon*, 2025 U.S. Dist. LEXIS 163975, at *5. That promise accords with the
7 protections afforded by statute.

8 R.S. was released pursuant to the authority contained in section 236 [§1226] of the
9 Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations.
10 Kahn Decl., Ex. 1. Under federal regulation, DHS was authorized to release R.S. under
11 § 1226 only upon a determination that “such release would not pose a danger to property
12 or persons” and that he was “likely to appear for any future proceeding.” 8 C.F.R. §
13 1236.1(c)(8). DHS’s decisions to release R.S. thus reflected “a determination by the
14 government that the noncitizen is not a danger to the community or a flight risk.” *Saravia*
15 *v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H.*
16 *v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). R.S. has complied with the obligations set
17 forth in his Notice to Appear, including by appearing for all of his immigration hearings.

18 ICE was not authorized to release R.S. if he was a danger to the community or a
19 flight risk. As such, the Court should infer from R.S.’s release that ICE determined he
20 was neither. Therefore, R.S.’s release from ICE custody constituted an implied promise
21 that his liberty would not be revoked unless he failed to live up to the conditions of his
22 release. *Morrissey*, 408 U.S. at 482. R.S. justifiably relied on that implied promise in
23 obtaining employment, developing community relationships, appearing at his immigration
24 court hearings, and following the law. The almost three years that he has spent out of
25 custody since ICE initially released him have only heightened his liberty interest in
26 remaining out of detention. Accordingly, R.S.’s private interest in retaining his liberty is
27 significant.

28

1 R.S. was rightfully released via humanitarian parole under Section 1182(d)(5), and
2 he was entitled to maintain his freedom while removal proceedings were ongoing absent a
3 change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176.

4 **B. Risk Of Erroneous Deprivation**

5 The second factor, the risk of erroneous deprivation, also weighs in R.S.'s favor.
6 Once a liberty interest is established, the question is whether process – a hearing – would
7 lessen the risk of an erroneous detention. Where an individual has not received a bond or
8 redetermination hearing, “the risk of an erroneous deprivation [of liberty] is high.” *Singh*
9 *v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 U.S. Dist. LEXIS 132500, at *18
10 (E.D. Cal. July 11, 2025). This is because neither the government nor Petitioner has had
11 an opportunity to determine whether there is any valid basis for his detention. *Alva*, 2025
12 U.S. Dist. LEXIS 163060, at *14. Civil immigration detention, which is nonpunitive in
13 purpose and effect, is justified when a noncitizen presents a risk of flight or danger to the
14 community. *Guzman v. Andrews*, 2025 U.S. Dist. LEXIS 176145, at *16-17 (E.D. Cal.
15 Sept. 9, 2025). However, Respondents have offered no evidence that R.S.'s detention
16 would serve either purpose. The evidence before this Court suggests that Respondents
17 will have difficulty establishing such a basis because R.S. has attended every required
18 immigration hearing¹ and has no criminal history beyond his unlawful entry into the
19 United States in or around December 2022.² Under these circumstances, there is a
20 significant risk that the months-long curtailment of liberty that R.S. has already suffered

21
22 ¹ Note that R.S. was purportedly sent a Notice of Appear on December 27, 2022, to an
23 address at 6611 Broad Creek Overlook Fredericksburg, Virginia 22407-3326, ordering
24 him to appear before an Immigration Judge at 21400 Ridgetop Circle, Suite 2200 in
25 Sterling Virginia. Kahn Decl., ¶ 19, Ex. 1. However, as R.S. has only ever resided in Los
26 Angeles, he never received this Notice and therefore never appeared before an
27 Immigration Judge in Virginia. *Id.* DHS presumably was made aware of their mistake
28 because they later served R.S. – in person – with a Notice to Appear, addressed to his
home in Los Angeles, requiring him to appear before a Los Angeles Immigration Judge.
Id.

² R.S. also accidentally crossed the U.S.-Mexico border in November 2024, when he was
meeting up with a friend near the San Ysidro Port of Entry. Kahn Decl., ¶ 12. He
explained the situation to the border agents and was immediately let back into the United
States and allowed to return home. *Id.*

1 upon his re-detention by ICE was not justified by any valid interest. Because R.S.'s
2 substantial liberty interest is at stake, due process requires the government to prove by
3 clear and convincing evidence that petitioner is a flight risk or danger to the community
4 *before* depriving him of that liberty, even though Petitioner already has other procedures
5 available to him. *Id.* (citing *Ramirez Clavijo*, 2025 U.S. Dist. LEXIS 163056, at *17).

6 Here, the risk of erroneous deprivation is high because a hearing will likely reveal
7 R.S. presents no risk to public safety and no risk of non-appearance. Indeed, given his
8 performance on release, Respondents cannot argue otherwise. The second factor therefore
9 favors R.S.

10 **C. The Government's Interest**

11 Finally, the Government cannot show any countervailing interest against releasing
12 R.S. *Pinchi, supra*, is directly on point here:

13 [T]he public has a strong interest in upholding procedural
14 protections against unlawful detention, and the Ninth Circuit
15 has recognized that the costs to the public of immigration
16 detention are staggering.” *Jorge M. F.*, 2021 WL 783561, at
17 *3 (cleaned up) (quoting *Ortiz Vargas*, 2020 WL 5074312, at
18 *4, and then quoting *Hernandez*, 872 F.3d at 996); *see also*
19 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
20 (“Generally, public interest concerns are implicated when a
21 constitutional right has been violated, because all citizens have
22 a stake in upholding the Constitution.”) . . . Yet the
23 comparative harm potentially imposed on Respondents-
24 Defendants is minimal—a mere short delay in detaining
25 Petitioner-Plaintiff, should the government ultimately show
26 that detention is intended and warranted. Moreover, a party
27 “cannot reasonably assert that it is harmed in any legally
28 cognizable sense by being enjoined from constitutional
violations.” *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d
719, 727 (9th Cir. 1983).

This Court therefore joins a series of other district courts that
have recently granted temporary restraining orders barring the
government from detaining noncitizens who have been on
longstanding release in their immigration proceedings, without
first holding a pre-deprivation hearing before a neutral
decisionmaker. *See, e.g., Diaz v. Kaiser*, No. 25-cv-05071,

1 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *Garcia v.*
2 *Bondi*, No. 25-cv-05070, 2025 WL 1676855, at *3 (N.D. Cal.
3 June 14, 2025). Although Petitioner filed her motion shortly
4 after being detained, rather than immediately beforehand, the
5 same reasoning applies to her situation. Her liberty interest is
6 equally serious, the risk of erroneous deprivation is likewise
7 high, and the government's interest in continuing to detain her
8 without the required hearing is low. *See Doe v. Becerra*, No.
9 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal.
10 Mar. 3, 2025) (granting a TRO as to an individual who had
11 been detained over a month earlier).

12 2025 U.S. Dist. LEXIS 142213, at *20.

13 There is no concern with a hearing delaying Respondents-Defendants' efforts to
14 remove R.S. either. Any such delay would be minimal, and in any case, R.S. is currently
15 subject to full removal proceedings and scheduled for a continued asylum hearing later
16 this week. A pre-deprivation bond hearing will not interfere with the proceedings.
17 Whether Respondents-Defendants conduct a pre-detention hearing – or, indeed, whether
18 R.S. is in detention or not – will not obstruct the removal process. And detention for its
19 own sake is not a legitimate governmental interest. *Pinchi*, 2025 U.S. Dist. LEXIS
20 142213, at *16-17 (“Detention for its own sake, to meet an administrative quota, or
21 because the government has not yet established constitutionally required pre-detention
22 procedures is not a legitimate government interest.”). In addition, there appears to be no
23 dispute that there is no evidence that R.S. poses a risk of flight or a danger to the
24 community.

25 As each *Mathew* factor favors R.S., he has shown a likelihood of success on the
26 merits that due process entitles him to a bond hearing before a neutral arbiter prior to any
27 re-arrest. Given that, as discussed below, the balance of equities tips sharply in R.S.'s
28 favor, he also satisfies this factor even if he has only raised serious questions as to the
merits of his claim.

R.S. Faces Irreparable Harm

R.S. is likely to suffer irreparable harm in the absence of preliminary injunctive relief. “Deprivation of physical liberty by detention constitutes irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018); *see also Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (same). “When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“[I]njuries to constitutional rights are considered irreparable for even minimal periods of time.”); *Goldie’s Bookstore, Inc. v. Super. Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) (“An alleged constitutional infringement will often alone constitute irreparable harm.”); *Junior Sports Mags, Inc. v. Bonta*, 80 F.4th 1109, 1120 (9th Cir. 2023) (explaining that when a party shows a likelihood of success on the merits of a constitutional claim, “the remaining *Winter* factors favor enjoining the likely unconstitutional law”); *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (“If a plaintiff bringing [a constitutional] claim shows he is likely to prevail on the merits, that showing will almost always demonstrate he is suffering irreparable harm as well.”); *see also Yuhua Yang v. Kaiser*, 2025 U.S. Dist. LEXIS 196161, at *28 (E.D. Cal. Aug. 20, 2025) (“[T]he court has concluded above that petitioner will likely succeed on his claim that his continued detention is unlawful. The court therefore also concludes that petitioner has demonstrated irreparable harm as to that detention.”); *Singh v. Garland*, 2023 U.S. Dist. LEXIS 159808, at *24 (E.D. Cal. Sept. 8, 2023) (“[T]he Court has concluded that Petitioner is likely to succeed on the merits of his due process claim, and thus, Petitioner has ‘established a likelihood of irreparable harm by virtue of the fact that [he is] likely to be unconstitutionally detained for an indeterminate period of time’ in the absence of preliminary relief.”).

1 R.S. is likely to suffer the kind of “harms imposed on anyone subject to
2 immigration detention,” which the Ninth Circuit has recognized constitute irreparable
3 harm. *Diaz*, 2025 U.S. Dist. LEXIS 113566, at *9. These irreparable harms include “the
4 economic burdens imposed on detainees and their families as a result of detention.” *Id.*
5 R.S. has suffered harms from his continued detention, including loss of income.
6 Continued detention may cause – if it has not already – R.S. to lose his job. *See R.D.T.M.*
7 *v. Wofford*, 2025 U.S. Dist. LEXIS 183995, at *18 (E.D. Cal. Sept. 18, 2025) (finding
8 irreparable harm when “Petitioner’s detention took her from her family, her community,
9 and the job she had pursuant to her employment authorization”). R.S. suffered multiple
10 beatings from Iranian authorities while being arrested and in custody in Iran in 2009,
11 which underlies his asylum claim before the immigration court. Forcing R.S. to remain in
12 ICE custody could impact R.S.’s mental health and cause him severe emotional distress.
13 Further, the fear of returning to Iran has reasonably caused him distress. Kahn Decl.,
14 ¶ 20; *see Doe v. Noem*, 781 F. Supp. 3d 1055, 1070 (E.D. Cal. Apr. 17, 2025) (finding that
15 “[i]n the absence of a temporary restraining order, plaintiff may experience detention and
16 deportation, including to a third country, and the risk has left plaintiff ‘very distressed’”
17 which constitutes a “risk of irreparable harm for which an award of monetary damages
18 would not be sufficient”). R.S.’s detention causes further irreparable harm by separating
19 him from his community.

20 Moreover, many courts have concluded that the “loss of liberty” arising from
21 immigration detention is a “severe form of irreparable injury.” *See Guzman v. Andrews*,
22 2025 U.S. Dist. LEXIS 176145, at *20 (E.D. Cal. Sept. 9, 2025); *see also Leiva-Perez v.*
23 *Holder*, 640 F.3d 962, 969-970 (9th Cir. 2011) (the inability to pursue a petition for
24 review may constitute irreparable harm).

25 **The Balance Of Equities And Public Interest Favor R.S.**

26 “[T]he public has a strong interest in upholding procedural protections against
27 unlawful detention, and the Ninth Circuit has recognized that the costs to the public of
28 immigration detention are staggering.” *Jorge M.F.*, 2021 U.S. Dist. LEXIS 40823, at *9

1 (cleaned up); *see also Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838
2 (9th Cir. 2020) (quoting *Padilla v. Immigration & Customs Enforcement*, 953 F.3d 1134,
3 1147–48 (9th Cir. 2020)) (“It is always in the public interest to prevent the violation of a
4 party’s constitutional rights.”); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
5 (“Generally, public interest concerns are implicated when a constitutional right has been
6 violated, because all citizens have a stake in upholding the Constitution.”). Further, the
7 government “cannot reasonably assert that it is harmed in any legally cognizable sense by
8 being enjoined from constitutional violations.” *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753
9 F.2d 719, 727 (9th Cir. 1983). “Faced with . . . a conflict between minimally costly
10 procedures and preventable human suffering, [the Court has] little difficulty concluding
11 that the balance of hardships tips decidedly in plaintiffs’ favor.” *Singh*, 2025 WL
12 1918679, at *9 (quoting *Hernandez*, 872 F.3d at 996).

13 The only potential injury the government faces is a short delay in detaining R.S. if
14 it ultimately demonstrates to a neutral decisionmaker by the preponderance of the
15 evidence that his detention is necessary to prevent danger to the community or flight. *See*
16 *Pinchi*, 2025 U.S. Dist. LEXIS 142213, at *20-21 (N.D. Cal. July 24, 2025); *See Jorge M.*
17 *F.*, 2021 U.S. Dist. LEXIS 40823; *Diaz v. Kaiser*, 2025 U.S. Dist. LEXIS 113566 (N.D.
18 Cal. June 14, 2025). In fact, the procedures undertaken by DHS of detaining noncitizens
19 who dutifully appear at immigration courts undermines legitimate government interests.
20 Given that Respondents-Defendants face no real injury from abiding by the Constitution,
21 the balance of equities tips sharply in R.S. favor.

22 CONCLUSION

23 As such, R.S. requests that this Court issue an order that: (i) R.S. be released
24 immediately from Respondents-Defendants’ custody; (ii) Respondents-Defendants not
25 impose any additional restrictions on R.S., unless that is determined to be necessary at a
26 future pre-hearing/custody hearing; (iii) Respondents-Defendants be enjoined and
27 restrained from re-arresting or re-detaining R.S. absent compliance with constitutional
28 protections, which include at a minimum, pre-deprivation notice describing the change of

1 circumstances necessitating his arrest and detention, and a timely hearing; and (iv) at any
2 such hearing, Respondents-Defendants bear the burden of establishing, by clear and
3 convincing evidence, that R.S. poses a danger to the community or a risk of flight, and
4 R.S. shall be allowed to have counsel present.

5
6
7 Dated: October 8, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Petitioner, certifies that this brief contains 4,765 words, which complies with the word limit of L.R. 11-6.1.


JENNIFER G. KAHN