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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 YAMILETH ALDANA SERRANO, et al.,

12 Petitioners,

13 v.

14 SERGIO ALBARRAN et al.,

15 Respondents.

Case No. 3:25-cv-8408

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

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INTRODUCTION

Petitioners went to the San Francisco Immigration Court on October 2, 2025, expecting routine preliminary hearings in which they would discuss their cases with the immigration judge and schedule further proceedings on the merits of their applications for relief. So they were surprised when, during the hearings, the Department of Homeland Security (DHS) lawyer orally moved to dismiss their cases altogether. The Immigration Judge did not grant the motions to dismiss. Instead, the judge gave Petitioners time to respond and reset their hearings. Minutes after each Petitioner exited the courtroom, a group of DHS agents waiting outside arrested them before they could leave the courthouse.

1 Nothing about Petitioners' immigration cases justified this arrest and detention. When
2 Petitioners entered the country, federal immigration officers released them within days on their
3 own recognizance under USC § 1226a and with no ankle shackle or intrusive supervision
4 conditions. The government thus necessarily determined that they did not pose a flight risk or
5 danger to the community—let alone one warranting detention. Since then, Petitioners' exemplary
6 conduct has only confirmed the government's prediction. They complied with all of their ICE and
7 immigration court obligations and filed applications for asylum, withholding of removal, and
8 protection under the Convention Against Torture. None of them have a criminal history.

9 None of this mattered to the government. Rather than determining that Petitioners posed
10 a flight risk or danger to the community, federal immigration agents arrested them pursuant to a
11 new, sweeping, and unlawful policy targeting people for arrest at immigration courthouses for the
12 purpose of placing them in expedited-removal proceedings. This enforcement campaign is
13 specifically intended to increase ICE arrest numbers to satisfy internal agency quotas.

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

22 As a result of their arrest and detention, Petitioners are suffering irreparable and ongoing
23 harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes
24 irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
25 "[f]reedom from imprisonment—from government custody, detention, or other forms of physical
26 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*
27 *Davis*, 533 U.S. 678, 690 (2001).

28 In light of this irreparable harm, and because they are likely to succeed on the merits of

1 their due process claims, Petitioners respectfully request that this Court issue an *ex parte*
 2 temporary restraining order (“TRO”) immediately releasing them from custody and enjoining the
 3 government from re-arresting them absent the opportunity to contest that arrest at a hearing before
 4 a neutral decision maker. **Since DHS started this new policy, a “tsunami” of Courts in this**
 5 **circuit have granted preliminary relief, including in multi-petitioner cases, when confronted**
 6 **with substantially identical facts and legal issues.** *See Caicedo Hinestroza et al., v. Kaiser*, No.
 7 3:25-cv-07559-JD, 2025 LX 333950 at *4 (Sept. 9, 2025).¹ In recent months, district courts have
 8 also uniformly rejected Respondents’ new position that Petitioners, and millions of people like
 9 them, are subject to mandatory detention under § 1225(b)(2)(A)). *See, e.g., Salcedo Aceros v.*
 10 *Kaiser*, No. 3:25-cv-06924-EMC at *13-21 (N.D. Cal. Sept. 21, 2025). To maintain this Court’s
 11 jurisdiction, the Court should also prohibit the government from transferring Petitioners out of
 12 this District and removing them from the country until these proceedings have concluded.

13 BACKGROUND

14 Petitioners fled their home countries and entered the United States in 2023 and 2024.

15
 16 ¹ *See also Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting
 17 preliminary injunction); *Garro Pinchi v. Noem*, 2025 WL 1853763 at *4 (N.D. Cal. July 4, 2025),
 18 converted to preliminary injunction at ___ F. Supp. 3d ___, 2025 WL 2084921 (N.D. Cal. July 24,
 19 2025); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 U.S. Dist. LEXIS 157841 at *33
 20 (E.D. Cal. Aug. 14, 2025 (granting preliminary injunction); *Garcia Barrera v. Andrews*, 2025
 21 WL 2420068 at *3 (E.D. Cal. Aug. 21, 2025) (same); *Ramirez Clavijo v. Kaiser*, 2025 WL
 22 2419263 at *25 (N.D. Cal. Aug. 21, 2025) (same); *Paz Hernandez v. Kaiser*, No. 1:25-cv-00986,
 23 2025 U.S. Dist. LEXIS 163056 at *26 (E.D. Cal. Aug. 21, 2025) (same); *Salazar v. Kaiser*, No.
 24 1:25-CV-01017-JLT-SAB, 2025 U.S. Dist. LEXIS 165942 at *33 (E.D. Cal. Aug. 26, 2025)
 25 (same); *Garcia v. Kaiser*, No. 3:25-cv-06916, 2025 U.S. Dist. LEXIS 178531 at *17 (N.D. Cal.
 26 Aug. 29, 2025) (same); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, 2025 U.S. Dist.
 27 LEXIS 171892 at *10 (N.D. Cal. Sept. 3, 2025) (same); *Salcedo Aceros v. Kaiser*, No. 25-cv-
 28 06924-EMC, 2025 U.S. Dist. LEXIS 179594 at *39 (N.D. Cal. Sept. 12, 2025) (same); *Espinoza*
v. Kaiser, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *38 (E.D. Cal. Sept.
 18, 2025) (same); *Oliveros v. Kaiser*, No. 25-cv-07117-BLF, 2025 U.S. Dist. LEXIS 183943, at
 *28 (N.D. Cal. Sept. 18, 2025) (same); *Acosta Roa et al. v. Albarran*, No. 25-cv-07802-RS, 2025
 U.S. Dist. LEXIS 189485, at *14 (Sept. 25, 2025) (same); *Valera Chuquillanqui v. Kaiser*, No.
 3:25-cv-06320 (N.D. Cal. July 29, 2025) (granting ex parte TRO); *Pablo Sequen v. Kaiser*, No.
 5:25-cv-06487, 2025 U.S. Dist. LEXIS 148751 at *9 (N.D. Cal. Aug. 1, 2025) (same); *Ruiz Otero*
v. Kaiser, No. 5:25-cv-06536, 2025 U.S. Dist. LEXIS 167728 at *9 (N.D. Cal. Aug. 3, 2025)
 (same); *Pineda Campos v. Kaiser*, No. 25-cv-06920, 2025 U.S. Dist. LEXIS 159038 at *8 (N.D.
 Cal. Aug. 15, 2025) (same); *Jaraba Oliveros v. Kaiser*, No. 25-cv-07117, 2025 U.S. Dist. LEXIS
 164010 at *10 (N.D. Cal. Aug. 22, 2025) (same); *Valencia Zapata et al v. Kaiser et al*, No. 3:25-
 cv-07492, 2025 U.S. Dist. LEXIS 173992 at *13 (Sept. 5, 2025) (same); *Castellanos v. Kaiser et*
al., 3:25-cv-07962, at *10-11, 2025 U.S. Dist. LEXIS 183957, (N.D. Cal. Sept. 18, 2025) (same).

1 Petitioners' Habeas Petition ("Pet.") ¶¶ 49-69. They were apprehended by immigration officials
 2 at the border and released on Orders of Release of Recognizance under 8 USC § 1226a. *Id.* The
 3 immigration officials determined that they posed little if any flight or danger to the community
 4 and released them into the community to wait for their immigration court dates. *Id.* All of them
 5 filed applications for asylum, withholding of removal, and protection under the Convention
 6 Against Torture. *Id.* They also complied with all of their ICE and immigration court requirements.
 7 None of them have been convicted of a crime. *Id.*

8 Petitioners were all scheduled for immigration court hearings in San Francisco on October
 9 2, 2025. *Id.* ¶¶ 49-69. During their hearings, the government orally made motions to dismiss. Pet.
 10 ¶¶ 49-69; Declaration of Milli Atkinson ("Atkinson Dec."), ¶ 4. The Immigration Judge did not
 11 rule on the motions at those hearings. *Id.* Instead he gave Petitioners time to respond and reset
 12 their hearings for a future date. *Id.*

13 Upon leaving the courtroom, ICE agents arrested Petitioners and took them into custody
 14 at 630 Sansome, where they currently remain. Pet. ¶¶ 49-69; Atkinson Dec., ¶ 5. Petitioners'
 15 arrests did not have anything to do with their individual cases. Instead, they are part of a new,
 16 nationwide DHS strategy of sweeping up people who attend their immigration court hearings,
 17 detaining them, and seeking to re-route them to fast-track deportations.² Since mid-May, DHS
 18 has implemented a coordinated practice of immigration detention to strip people like Petitioners
 19 of their substantive and procedural rights and pressure them into deportation. DHS is aggressively
 20 pursuing this arrest and detention campaign at courthouses throughout the country, including
 21 Northern California. At the San Francisco Immigration Court, where Petitioners were arrested,
 22 dozens of people have been arrested in the last couple of months after attending their routine
 23 immigration hearings.³

24 ² Joshua Goodman and Gisela Saloman, *ICE Agents Wait in Hallways of Immigration Court as*
 25 *Trump Seeks to Deliver on Mass Arrest Pledge*, LA Times, May 22, 2025,
 26 <https://www.latimes.com/world-nation/story/2025-05-22/ice-agents-wait-in-hallways-of-immigration-court-as-trump-seeks-to-deliver-on-mass-arrest-pledge>.

27 ³ Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron.,
 28 June 12, 2025, <https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php>; Margaret Kadifia, *Immigrants Fearful as ICE Nabs at Least 15 in S.F., Including Toddler*, Mission Local, June 5, 2025, <https://missionlocal.org/2025/06/ice-arrest-san-francisco->

1 This “coordinated operation” is “aimed at dramatically accelerating deportations” by
 2 arresting people at the courthouse and placing them into expedited removal.⁴ The first step of the
 3 operation typically takes place inside the immigration court. When people arrive in court for their
 4 master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without
 5 any notice to the affected individual. Although DHS regulations do not permit such motions to
 6 dismiss absent a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. §
 7 239.2(a)(7), (c), DHS attorneys are not conducting any case-specific analysis of changed
 8 circumstances before filing these motions to dismiss.

9 The next step takes place outside the courtroom. ICE officers, in consultation with DHS
 10 attorneys and officials, station themselves in courthouse waiting rooms, hallways, and elevator
 11 banks. When an individual exits their immigration hearings, ICE officers—typically masked and
 12 in plainclothes—immediately arrest the person and detain them. The officers execute these arrests
 13 regardless of how the IJ rules on the government’s motion to dismiss. Once the person is detained,
 14 DHS attorneys often unilaterally transfer venue to a “detained” immigration court where they renew
 15 their motion to dismiss and seek to place individuals in expedited removal. That is what happened
 16 to Petitioners here.

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

19 ARGUMENT

20 To warrant a TRO, a movant must show (1) they are “likely to succeed on the merits,” (2)
 21 they are “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the balance
 22 of equities tips in [their] favor,” and that (4) “an injunction is in the public interest.” *All. for the*
 23

24 toddler/; Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF Immigration Court*,
 25 S.F. Standard, May 27, 2025, <https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/>.

26 ⁴ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in*
 27 *Trump’s Deportation Push*, Wash. Post, May 23, 2025,
 28 <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>;
 see also Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up*
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<https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html> (updated June 1,
 2025).

1 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def.*
2 *Council, Inc.*, 555 U.S. 7, 20 (2008)); *see Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240
3 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary restraining order
4 and a preliminary injunction is substantially the same). Even if the movant raises only “serious
5 questions” as to the merits of their claims, the court can grant relief if the balance of hardships
6 tips “sharply” in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. All factors here weigh
7 decisively in Petitioner’s favor.

8 **I. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS.**

9 **A. Petitioners’ detention violates substantive due process because they are neither**
10 **flight risks nor dangers to the community.**

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

19 To comply with substantive due process, the government’s deprivation of an individual’s
20 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil,
21 not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
22 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
23 (“[T]he government has no legitimate interest in detaining individuals who have been determined
24 not to be a danger to the community and whose appearance at future immigration proceedings can
25 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
26 absent, immigration detention serves no legitimate government purpose and becomes
27 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v. Indiana*,
28 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the government’s interests

1 in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL
2 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may
3 “succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with
4 a punitive purpose *or* that it lacks any legitimate reason to detain him”).

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

13 Petitioners, who have no criminal record and who are diligently pursuing their immigration
14 cases, are neither dangers nor flight risks. Therefore, their detention is both punitive and not
15 justified by a legitimate purpose, violating their substantive due process rights. Indeed, when
16 Respondents chose to release Petitioners from custody, that decision represented their finding that
17 they were neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176
18 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)
19 (“Release reflects a determination by the government that the noncitizen is not a danger to the
20 community or a flight risk.”). Nothing has transpired since to disturb that finding.

21 *First*, because Petitioners have no criminal history, and have had no intervening criminal
22 convictions since their releases, there is no credible argument that they are dangers to the
23 community.

24 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
25 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
26 F.3d at 990-91. There is no basis to argue that Petitioners, who were arrested by Respondents *while*
27 *appearing in immigration court* for master calendar hearings, are flight risks. Petitioners have
28 attended all of their immigration court hearings and ICE check-ins. Moreover, Petitioners have a

1 viable path toward immigration relief and a pathway to lawful permanent residence through their
2 asylum cases, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*,
3 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of
4 flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States).

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

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

13 Noncitizens living in the United States like Petitioners have a protected liberty interest in
14 their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court
15 “usually has held that the Constitution requires some kind of a hearing *before* the State deprives
16 a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
17 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C.
18 Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-
19 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
20 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482
21 (1972) (same, in parole context).

22 Accordingly, the Supreme Court has repeatedly held that individuals released from
23 custody on bond, parole, or other forms of conditional release have a protected interest in their
24 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
25 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
26 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
27 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
28 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d

1 963, 970 (N.D. Cal. 2019). Petitioners thus have a protected liberty interest in their freedom from
2 physical custody.

3 Once a petitioner has established a protected liberty interest, as Petitioners have done here,
4 courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See*
5 *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S.
6 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk
7 of erroneous deprivation and probable value of procedural safeguards; and (3) the government's
8 interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioners and prohibiting
9 their re-detention without a custody hearing at which the government bears the burden of proof.

10 *First*, the private interest affected in this case is profound. When considering this factor,
11 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
12 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
13 here is high. Petitioners have been completely deprived of their physical liberty. Petitioners’
14 detention has ripped from them the “free[dom] to be with family and friends and to form the . . .
15 enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Cutting someone off from the
16 “core values of unqualified liberty”—for Petitioners creates a “grievous loss.” *Id.* Moreover,
17 because Petitioners face *civil detention*, “[their] liberty interest is arguably greater than the interest
18 of the parolees in *Morrissey*.” *See Ortega*, 415 F. Supp. 3d at 970. As people in civil detention,
19 therefore, “it stands to reason that [Petitioners] [are] entitled to protections at least as great as
20 those afforded to a[n] . . . individual . . . accused but not convicted of a crime.” *See Jones v.*
21 *Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

22 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
23 petitioners] ha[ve] not received any bond or custody redetermination hearing.” *A.E. v. Andrews*,
24 No. 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*,
25 No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v.*
26 *Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents
27 grabbed Petitioners by surprise as they left their immigration court hearings, detaining them with
28 no notice and no opportunity to contest their re-detention before a neutral arbiter. In such

1 circumstances, when Respondents have provided *no* procedural safeguards, “the probable value
2 of additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5.
3 This is especially true here, where there is no change in Petitioners’ circumstances suggesting that
4 Petitioners now pose a flight risk or danger to the community. Their re-detention instead appears
5 to be motivated instead by Respondents’ new arrest quotas and practice of leveraging detention
6 to secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality
7 Act, to initiate expedited removal. Neither constitutes a lawful justification to re-detain a person
8 who does not pose a flight risk or danger to the community.

9 Because the private interest in freedom from immigration detention is substantial, due
10 process also requires that in cases like this one, the government bears the burden of proving “by
11 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community.”
12 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775,
13 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing
14 evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025
15 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which
16 government bears burden by clear and convincing evidence).

17 *Third*, the government’s interest in detaining Petitioners without first providing notice and
18 submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
19 hearings, which impose a “minimal” cost to the government. *See Doe*, 2025 WL 691664, at *6;
20 *A.E.*, 2025 WL 1424382, at *5. Petitioners have an impeccable record of complying with their
21 immigration obligations; there is no reason to believe that between the date of their release and
22 their custody hearings, their compliance will change. Indeed, courts regularly hold that the
23 government’s interest in re-detention without a custody hearing is low when the petitioner “has
24 long complied with his reporting requirements.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL
25 1676854, at *3-*4 (N.D. Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen
26 without a pre-deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021
27 WL 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting
28 habeas petition ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL

1 1707737, at *4-*5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing
2 petitioner who had been detained without process, who had “voluntarily attended his scheduled
3 immigration court proceedings” and “established ties” through his work and volunteering with
4 the church).

5 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without
6 a pre-deprivation hearing in which the government bears the burden of proof violates due process,
7 and grants the emergency relief Petitioners seek here. *See Garro Pinchi v. Noem*, __ F. Supp. 3d
8 __, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her
9 immigration court hearing into preliminary injunction prohibiting the government from re-
10 detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11,
11 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO
12 over one month after petitioner’s initial detention); *see also, e.g., Diaz*, 2025 WL 1676854, at *3-
13 *4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025);
14 *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL
15 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
16 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

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

25 C. Petitioners are Not Subject to Mandatory Detention.

26 For decades, when immigration authorities arrested and released people on Orders of
27 Recognizance at the border, like they did with Petitioners, those people were subject to
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1 discretionary detention under 8 USC § 1226(a). In the last few months, however, Respondents
2 have reversed course and now take the dramatic and implausible new position that these
3 individuals are subject to mandatory detention under 8 USC § 1226(b). *Matter of Yajure Hurtado*,
4 29 I&N Dec. 216, 220 (B.I.A. 2025). District courts in recent months have thoroughly rejected
5 the government's new position. *See, e.g., Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC
6 (N.D. Cal. Sept. 21, 2025) at *13-21; *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 U.S.
7 Dist. LEXIS 187233, at *n.5 (E.D. Cal., Sept. 23, 2025) (finding *Matter of Yajure Hurtado*
8 unpersuasive); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO at *6-9 (E.D. Cal.
9 Sep. 9, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 at *10-13 (S.D. Cal. Sept. 3,
10 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal.
11 Aug. 21, 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *9 (N.D. Cal. Aug. 29, 2025);
12 *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11-12 (S.D.N.Y. Aug. 13,
13 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 LX 341363, at *15 (E.D. Cal.
14 July 28, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24,
15 2025). Although not necessary to grant preliminary relief in this case, should the Court reach the
16 detention statute question, it should join the other courts in finding that Petitioners are subject to
17 discretionary detention under 8 USC § 1226a. *See id.*

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

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

Without a temporary restraining order, Petitioners will suffer immense irreparable injury. Indeed, they face such injury every day they remain in detention in violation of their Fifth Amendment rights. “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “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) (internal quotation marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time”); *see also, e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual” (cleaned up)).

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONERS’ FAVOR.

When the government is the party opposing the request for emergency relief, the balance of the equities and the public interest merge. *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance of equities overwhelmingly favors Petitioners, who face irreparable injury in the form of ongoing constitutional violations and continued additional suffering if the TRO is not granted. *See Section II, supra; Hernandez*, 872 F.3d at 996 (when “[f]aced with ... preventable human suffering, ... the balance of hardships tips decidedly in plaintiffs’ favor”) (internal citation omitted).

The public interest likewise weighs strongly in Petitioners’ favor. As another California district court recently concluded, “[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering.” *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M. F.*, 2021 WL 783561, at *3). More fundamentally, “[i]t is always in the public interest to prevent

1 the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals Serv.*,
 2 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134,
 3 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

4 SECURITY

5 No security is necessary here. Courts "may dispense with the filing of a bond when," as
 6 here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."
 7 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
 8 requirement in cases raising constitutional claims, because "to require a bond would have a negative
 9 impact on plaintiff's constitutional rights, as well as the constitutional rights of other members of
 10 the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996).
 11 Finally, Plaintiff's showing of a high likelihood of success on the merits supports the court's
 12 waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l*
 13 *Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

14 CONCLUSION

15 For the foregoing reasons, Petitioners respectfully requests the Court grant a TRO to
 16 restore the *status quo ante* that (1) immediately releases them from Respondents' custody without
 17 an ankle monitor and enjoins Respondents from re-detaining them absent further order of this
 18 Court; (2) in the alternative, immediately releases them from Respondents' custody and enjoins
 19 Respondents from re-detaining them unless they demonstrate at a pre-deprivation bond hearing,
 20 by clear and convincing evidence, that Petitioners are a flight risk or danger to the community
 21 such that their physical custody is required; and (3) prohibits the government from transferring
 22 them out of this District and/or removing them from the country until these habeas proceedings
 23 have concluded.

24 Date: October 2, 2025

Respectfully submitted,

27 /s/ Diana Mariscal
 28 Diana Mariscal

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