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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 J.A.A.M.,
12 Petitioner-Plaintiff,

13 v.

14 John E. CANTÚ, Field Office Director U.S.
15 Immigration and Customs Enforcement and
16 Enforcement and Removal Operations for the
17 Phoenix Field Office

18 Fred FIGUEROA, Warden, Eloy Detention
19 Center;

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

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

26 Pamela BONDI, in her Official Capacity,
27 Attorney General of the United States;

28 Respondents-Defendants.

Case No.

**APPLICATION FOR EX PARTE
TEMPORARY RESTRAINING
ORDER**

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

NOTICE OF MOTION

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, the Petitioner hereby moves this Court for emergency relief in the form of a temporary restraining order (1) enjoining Respondents from relocating Petitioner outside of the District of Arizona or removing him from the United States while this action is pending, (2) directing Respondents to immediately release Petitioner from their custody, (3) in the alternative to Petitioner's immediate release, providing Petitioner with a bond hearing under 8 U.S.C. § 1226(a) before a neutral decisionmaker within seven (7) days; and (4) enjoining Respondents from re-detaining Petitioner unless, prior to any re-arrest, the government provides him with a hearing wherein a neutral adjudicator must evaluate whether clear and convincing evidence demonstrates, taking into consideration alternatives to detention and the Petitioner's ability to pay a bond, that the Petitioner is a danger to the community or a flight risk, such that his re-incarceration is warranted.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Brenda Radmacher with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner asserts that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment, which prevents his re-detention without an individualized hearing before a neutral adjudicator, and under the Administrative Procedures Act.

WHEREFORE, Petitioner prays that this Court grant him request for a temporary restraining order and a preliminary injunction compelling Respondents to release him from custody, and enjoining Respondents from re-detaining him absent an individualized hearing before a neutral adjudicator.

1 DATED: 11/14/2025

Respectfully submitted,

3 /s/ Brenda K. Radmacher
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1 **I. INTRODUCTION**

2 The Petitioner, J.A.A.M. (“Mr. A.M.”),¹ seeks a Temporary Restraining Order requiring
3 Respondents to release him from custody. The Department of Homeland Security (“DHS”)
4 arbitrarily re-arrested him on November 5, 2025, without a warrant at a day laborer site even
5 though he has an affirmative asylum application pending and he is lawfully authorized to work,
6 and without any pre-detention hearing or individualized assessment of his flight risk or danger to
7 the community. Mr. A.M. was moved from the Downtown Los Angeles ICE Processing Center
8 to Florence, Arizona, and he was recently moved again to Eloy, Arizona and remains in custody,
9 where he has been separated from his family. (See Decl. of A.L.L.S., Wife of Petitioner (“ALLS
10 Decl.”), ¶ 22.)

11 Mr. A.M.’s detention without any pre-deprivation hearing or notice violates his right to
12 procedural and substantive due process under Fifth Amendment to the United States Constitution,
13 as numerous courts throughout the Ninth Circuit have found, and violates the Administrative
14 Procedures Act (“APA”) as an agency action that is arbitrary, capricious, and an abuse of
15 discretion. He therefore seeks a Temporary Restraining Order enjoining Respondents from
16 continuing to detain him and further enjoining Respondents from re-arresting him before
17 providing him with a hearing before a neutral adjudicator. Mr. A.M. also seeks an order
18 prohibiting Respondents from relocating him or removing him from the United States pending
19 final resolution of this litigation. In the alternative to his immediate release, Mr. A.M. seeks a
20 bond hearing under 8 U.S.C. § 1226(a) before a neutral decisionmaker within seven (7) days.

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

22 The Petitioner, Mr. A.M., is a 45-year-old citizen of Guatemala who entered the United
23 States without inspection on May 29, 2019, seeking asylum from Guatemala with his wife and
24 three children. See ALLS Decl., ¶ 3; Ex. 1. (Notice to Appear dated June 3, 2019.)

25
26

¹ The Petitioner is proceeding under a pseudonym and has filed a motion to proceed under a
27 pseudonym with the Court. The Petitioner will also provide his identity, including his full name
28 and alien number, to the Respondents’ counsel.

1 Upon entry, Mr. A.M. was briefly detained by the Department of Homeland Security
2 (“DHS”), along with his wife and three children. See ALLS Decl., ¶ 3. On June 3, 2019, Mr.
3 A.M. and his family were released on their own recognizance in accordance with Section 236 of
4 the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations. See
5 ALLS Decl., ¶ 4; Ex. 2 (Order of Release on Recognizance dated June 3, 2019).

6 Mr. A.M. was instructed to report to a U.S. Immigration and Customs Enforcement
7 (“ICE”) office on July 17, 2019. See ALLS Decl., ¶ 4; Ex. 3 (OREC I-220A dated June 3, 2019).
8 He timely reported to the ICE office in Los Angeles, California and was ordered to report in
9 person on January 30, 2020. See ALLS Decl., ¶ 5; Ex. 4 (OREC I-220A dated July 17, 2019).

10 Mr. A.M. and his wife and children were scheduled to appear for a Master Calendar
11 Hearing in 2019 but they did not receive notice of the hearing so they were ordered removed in
12 absentia. See ALLS Decl., ¶ 6. Mr. A.M. and his wife and children learned that they were
13 removed in absentia at their ICE check in on January 30, 2020. See ALLS Decl., ¶ 6. They filed
14 for a Motion to Reopen, which was granted on February 18, 2020. See ALLS Decl., ¶ 7.

15 Mr. A.M. and his family contracted and paid an attorney by the name of Mr. Salvador
16 Ortiz to represent them in their Immigration proceedings. See ALLS Decl., ¶ 8. An attorney by
17 the name of Mr. Hector Becerra appeared for Mr. A.M. in their first Immigration Court
18 proceedings which surprised Mr. A.M. and his family. See ALLS Decl., ¶ 9. Apparently, Mr.
19 Ortiz had asked Mr. Becerra to appear on his behalf. See ALLS Decl., ¶ 9. Mr. Becerra filed a
20 defensive asylum application for the family on May 29, 2020. See Ex. 6 (Stamped File Cover
21 Page of the Defensive Asylum Application filed by Hector Becerra on May 29, 2020). Mr. A.M.
22 and his family learned that Mr. Ortiz had been disbarred and was not allowed to practice law any
23 longer. See ALLS Decl., ¶ 11.

24 In 2023, Mr. A.M. and his family hired new counsel. See ALLS Decl., ¶ 12. The law firm,
25 Seyfarth Shaw LLC, agreed to represent him and his family as pro bono counsel. See Radmacher
26 Decl., ¶ 8; ALLS Decl., ¶ 12. On January 6, 2025, DHS moved to dismiss Mr. A.M and his
27 family’s proceedings, and the immigration judge granted the motion. See Radmacher Decl., ¶ 9;

1 ALLS Decl., ¶ 13; Ex. 7 (Order of the Immigration Judge Granting Motion to Dismiss
2 Proceedings Without Prejudice).

3 On January 17, 2025, Seyfarth Shaw LLP filed the affirmative asylum application for Mr.
4 A.M., which remains pending before United States Citizenship and Immigration Services
5 (“USCIS”). Radmacher Decl., ¶ 10; ALLS Decl., ¶ 14; Ex. 8 (Receipt Notice Issued by USCIS
6 for Affirmative Asylum Application).

7 On November 5, 2025, Mr. A.M. was detained by Immigration and Customs Enforcement
8 officers without a warrant at a day laborer site even though he has an affirmative asylum
9 application pending with USCIS, holds an Employment Authorization Document, and has a
10 Social Security number. Radmacher Decl., ¶ 11; ALLS Decl., ¶ 15. This follows the trend of
11 ICE officers confronting day laborers and detaining them without a warrant.² Radmacher Decl.,
12 ¶ 11, Ex. 11. He was taken to the Downtown Los Angeles Processing Center. Radmacher Decl.,
13 ¶ 12.

14 Mr. A.M. was held at this processing center, which is not suitable to be a long term facility,
15 for over three nights. *Id.* ¶ 12; Exs. 12, 13. He has been isolated from his community and family,
16 including his wife, three children, and extended family who live in Los Angeles. ALLS Decl., ¶
17 23.

18 On November 8, 2025, his daughter received a call from him while he was at the
19 Processing Center around 6:00 am and Mr. A.M. notified her that he was being moved to
20 Florence, AZ. ALLS Decl., ¶ 19. That same day, he was moved to Florence, Arizona. Mr. A.M.
21 has since been moved again to Eloy, Arizona. ALLS Decl., ¶ 22. Because Mr. A.M.’s location
22 had not been updated in ICE’s Online Detainee Locator System, his counsel filed a habeas corpus
23 petition in the Central District of California. ALLS Decl., ¶ 20. Given that Mr. A.M. was moved
24 to Arizona prior to the filing of the habeas corpus petition, Mr. A.M.’s counsel will file a motion
25

26 ² See *US: ICE Abuses in Los Angeles Set Stage for Other Cities*, Human Rights Watch (Nov. 4,
27 2025), available at <https://www.hrw.org/news/2025/11/04/us-ice-abuses-in-los-angeles-set-stage-for-other-cities>.
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1 to dismiss the habeas corpus petition pending before the Central District of California, and will
2 re-file before this Court.

3 Although he has been detained, Mr. A.M has not applied for bond before the Immigration
4 Court, as doing so would be futile based on the BIA's decision in *Matter of Yajure Hurtado*, 29
5 I&N Dec. 216 (BIA 2025), which holds that noncitizens who, like Mr.
6 A.M, entered the United States without inspection, are subject to mandatory detention and
7 not eligible for bond. Radmacher Decl., ¶ 16.

8 Mr. A.M. is neither a flight risk nor a danger to the community. *Id.* ¶ 14. He has a
9 demonstrated history of complying with ICE check-ins and has appeared for Immigration Court
10 on all the occasions he was aware of, even moving to reopen removal proceedings. *Id.* He also
11 has a pending application for asylum, employment authorization, and a social security card. Mr.
12 A.M. has no criminal record in the U.S. or in his country of origin. *Id.*; Ex. 8 (Receipt Notice
13 Issued by USCIS for Affirmative Asylum Application), Ex. 10 (Social Security Card of Mr.
14 J.A.A.M).

15 Mr. A.M. remains isolated from his community and family, including his wife, three
16 children, and extended family who live in Los Angeles. See Radmacher Decl., ¶ 15. A recent
17 study has found that “increased length of imprisonment . . . directly exerts harm” and that
18 “detention lasting 6 months or longer . . . [results in] even higher rates of poor [health], mental
19 illness, and PTSD following release.”³ The date of his final hearing, and the anticipated duration
20 of his detention, remains undetermined.

21 **III. LEGAL STANDARD**

22 Mr. A.M. is entitled to a temporary restraining order if he establishes that (1) he is likely
23 to succeed on the merits of his claim; (2) he is likely to suffer irreparable harm in the absence of
24 preliminary relief; (3) the balance of equities tips in his favor, and (4) an injunction is in the
25 public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int'l Sales*

26 ³ See Saadi, Altaf, MD, et. al., DURATION IN IMMIGRATION DETENTION AND HEALTH HARMS,
27 JAMA NETWORK (Jan 24, 2025), available at
28 <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2829506>.

1 *Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that the standards for
 2 preliminary injunctions and temporary restraining orders are “substantially identical”). Even if
 3 Mr. A.M. does not show a likelihood of success on the merits, the Court may still grant a
 4 temporary restraining order if he raises “serious questions” as to the merits of his claims, the
 5 balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied.
 6 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). The purpose of the
 7 temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing
 8 is held. See *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local*
 9 *No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). As set forth below, Mr. A.M.’s arbitrary
 10 detention without any pre-deprivation notice or hearing violates his right to due process, and he
 11 will continue to suffer irreparable injury each day that he remains detained. Further, the balance
 12 of equities and the public interest tips sharply in his favor.

13 **IV. ARGUMENT**

14 **A. Mr. A.M. is Likely to Succeed on the Merits of His Claim That His Re-** 15 **Detention Without Individualized Notice or Hearing Violates His Right to Due** 16 **Process**

17 Mr. A.M. is likely to succeed in his claims that his detention by DHS without a prior
 18 hearing before a neutral adjudicator violates his right to due process under the Fifth Amendment,
 19 and is arbitrary, capricious, and an abuse of discretion under the APA. Thus, action from this
 20 Court is necessary to remedy this violation.

21 **1. *The Respondents detention of Mr. A.M. without an individualized pre-*** 22 ***deprivation hearing violates Mr. A.M.’s right to procedural due process.***

23 “Freedom from imprisonment—from government custody, detention, or other forms of
 24 physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*
 25 *v. Davis*, 533 U.S. 678, 690 (2001). This fundamental due process protection applies to all
 26 noncitizens, including both removable and inadmissible noncitizens. See *id.* at 721 (Kennedy, J.,
 27 dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from
 28 detention that is arbitrary or capricious”). Even when the government has discretion to detain an

1 individual, its subsequent decision to release the individual creates “an implicit promise” that she
2 will be re-detained only if she violates the conditions of her release. See *Morrissey v. Brewer*, 408
3 U.S. 471, 482 (1972). Individuals have a protected liberty interest in freedom from re-detention
4 even if they are out of custody but still on pre-parole, parole, or probation. See *Rosado v.*
5 *Figueroa*, No. CV 25-02157 PHX DLR (CBD), 2025 U.S. Dist. LEXIS 156344 (D. Ariz. Aug.
6 11, 2025); *Perez-Mendez v. Lyons*, No. 2:25-cv-07727-VBF-RAO, 2025 WL 2970373, at *1
7 (C.D. Cal. Oct. 21, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gagnon v.*
8 *Scarpelli*, 411 U.S. 778, 782 (1973)).

9 Due process requires “adequate procedural protections” to ensure that the government’s
10 asserted justification for physical confinement “outweighs the individual’s constitutionally
11 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation
12 marks omitted). Moreover, the Due Process Clause generally “requires some kind of a hearing
13 before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
14 (1990).

15 In this case, when the government initially released Mr. A.M. from custody, he gained a
16 vested liberty interest in his release. Courts across this district and within the jurisdiction of the
17 Ninth Circuit have consistently held that if DHS has released a noncitizen pending civil removal
18 proceedings, the noncitizen has a protected liberty interest in remaining out of immigration
19 custody. See, e.g., *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL
20 2898389 (D. Az. Oct. 7, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CBD), 2025
21 U.S. Dist. LEXIS 156344 (D. Ariz. Aug. 11, 2025); *Rodriguez Flores v. Semaia*, No. CV 25-
22 6900 JGB (JCx), 2025 WL 2684181, at *3 (C.D. Cal. Aug. 14, 2025); *Roa v. Albarran*, No. 25-
23 cv-07802-RS, 2025 WL 2732923, at *5 (N.D. Cal. Sept. 25, 2025); *Ramirez Clavijo v. Kaiser*,
24 No. 25-cv-06248-BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025); *Guillermo M. R. v.*
25 *Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025); *Rodriguez v.*
26 *Kaiser*, No. 1:25-cv-01111-KES-SAB (HC), 2025 WL 2855193, *5 (E.D. Cal Oct. 8, 2025);
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1 *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *5 (E.D. Cal July 14,
2 2025).

3 Moreover, DHS's deprivation of Mr. A.M.'s liberty was not accompanied by sufficient
4 procedural protections as required by the Due Process Clause. When examining what form of
5 process is due before DHS may re-detain a noncitizen previously released from custody, courts
6 in this jurisdiction have applied the three-factor test from *Mathews v. Eldridge*, 424 U.S. 319,
7 335 (1976). *Id.* at 1779-80. *See, e.g., Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CBD),
8 2025 U.S. Dist. LEXIS 156344, *37 (D. Ariz. Aug. 11, 2025); *Sun v. Santacruz*, No. 5:25-cv-
9 02198-JLS-JC, 2025 WL 2730235, at * 5 (C.D. Cal. Aug. 26, 2025); *Rodriguez Flores*, 2025 WL
10 2684181, at *3 (C.D. Cal. Aug. 14, 2025); *Rodriguez*, 2025 WL 2855193, *7 (E.D. Cal. Oct. 8,
11 2025); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24,
12 2025). Under the *Mathews* framework, courts analyzing a procedural due process claim consider
13 (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous
14 deprivation of such interest through the procedures used, and the probable value, if any, of
15 additional or substitute procedural safeguards;" and (3) "the Government's interest, including the
16 function involved and the fiscal and administrative burdens that the additional or substitute
17 procedural requirement would entail." 424 U.S. at 335.

18 Courts applying the first *Mathews* factor in the immigration context have held that, once
19 initially granted, continued liberty from ICE custody represents a "substantial private interest"
20 deserving the protections of due process. *Pinchi*, 2025 WL 2084921, at *4 (N.D. Cal. July 24,
21 2025); *Perez-Mendez*, 2025 WL 2970373, at *1 (C.D. Cal. Oct. 21, 2025); *Ortega v. Bonnar*,
22 415 F.Supp.3d 963, 970 (N.D. Cal. Nov. 22, 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH,
23 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS
24 156344, *33 (D. Ariz. Aug. 11, 2025) ("Even those who face significant constraints on their
25 liberty or those over whose liberty the government wields significant discretion retain a protected
26 interest in their liberty."). In this case, Mr. A.M. was initially released from custody on his own
27 recognizance after he was initially taken into custody when he entered the United States.

1 Thereafter, he resided in United States for nearly six years before he was arbitrarily re-detained.
2 Mr. A.M. also has a demonstrated history of complying with ICE check-ins and has appeared for
3 Immigration Court on all the occasions he was aware of. Thus, Mr. A.M. has a substantial liberty
4 interest at stake, and the first *Mathews* factor weighs heavily in his favor.

5 Mr. A.M. asserts that the second *Mathews* factor requires that DHS provide notice and an
6 individualized, pre-deprivation hearing before a neutral adjudicator before DHS re-detains him.
7 He is likely to prevail on this factor, as courts across this district and the Ninth Circuit have held,
8 where the government has released a noncitizen from immigration custody, “due process requires
9 notice and a hearing, prior to any re-arrest.” *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR
10 (CBD), 2025 U.S. Dist. LEXIS 156344, *35 (D. Ariz. Aug. 11, 2025); (citing *Ortega v. Bonnar*,
11 415 F. Supp. 3d 963, 968-70 (N.D. Cal. 2019) (granting habeas relief on due process claim,
12 permanently enjoining the government from “re-arresting [the petitioner] unless and until a
13 hearing, with adequate notice, is held in Immigration Court to determine whether his bond should
14 be revoked or altered”); *Vargas*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (“In light
15 of the persuasive reasoning of *Ortega*, and the ongoing litigation over the procedural due process
16 claim granted by the court there, the court finds that petitioner has raised serious questions on the
17 merits of his claim that he is entitled to a pre-deprivation hearing before an immigration judge if
18 he is re-arrested.”); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3
19 (N.D. Cal. Mar. 1, 2021) (granting ex parte application for TRO, finding petitioner “has raised
20 serious questions on the merits of his claim that he is entitled to a pre-deprivation hearing before
21 an immigration judge if he is re-arrested”); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025
22 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (issuing temporary injunction preventing the re-
23 arrest of noncitizen at his ICE interview when he had been on bond for more than five years));
24 *see also Rodriguez Flores*, 2025 WL 2684181, at *3 (C.D. Cal. Aug. 14, 2025) (determining that
25 the petitioner’s re-detention following release on bond violated his right to due process and
26 holding that “the petitioner is entitled to a pre-detention hearing where the government bears the
27 burden of proving, by clear and convincing evidence, that he is a danger to the community or a
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1 flight risk, and that no conditions other than his detention would be sufficient to prevent those
2 harms,” and that “the risk of an erroneous deprivation of Petitioner’s liberty is high, with only a
3 post-arrest detention hearing instead of a pre-detention hearing.”); *Rodriguez*, 2025 WL 2855193,
4 *7 (E.D. Cal. Oct. 8, 2025) (“On balance, the *Mathews* factors show that petitioner is entitled to
5 a bond hearing, which should have been provided before petitioner was detained.”); *Garcia*, 2025
6 WL 1927596, at *5 (E.D. Cal July 14, 2025) (“Having found Petitioner has a liberty interest and
7 determined that due process requires Petitioner receive a hearing to determine whether detention
8 is warranted, the Court finds that Petitioner has established a likelihood of success on the merits.);
9 *cf. Hernandez v. Lyons*, No.: 2:25-cv-05376-FWS-AGR, 2025 WL 2019969, at *9-12 (C.D. Cal
10 June 16, 2025) (finding that the petitioner, who was re-arrested following release on bond, was
11 likely to succeed on his claim that he was re-detained without sufficient process under the
12 *Mathews v. Eldridge* factors); *Perez-Mendez*, 2025 WL 2970373, at *2 (C.D. Cal. Oct. 21, 2025)
13 (“Petitioner has shown he is likely to succeed on the merits of his claim because he has a protected
14 liberty interest in remaining free from ICE detention, and due process entitles him to a bond
15 hearing on the merits with an immigration judge prior to his re-detention.”); *G.S. v. Bostock*, No.
16 2:25-CV-01255-JNW-TLF, 2025 WL 3014274, at *9 (W.D. Wash. Oct. 8, 2025) (“[T]he risk of
17 erroneous deprivation is high because a hearing would have likely revealed petitioner presents
18 no risk to public safety and no risk of non-appearance.”). Mr. A.M. is thus likely to prevail on
19 the second *Mathews* factor.

20 On the other hand, the government can show little interest in continuing to arbitrarily and
21 unlawfully detain Mr. A.M. absent a pre-deprivation hearing. Courts in the Ninth Circuit have
22 found that the government has little interest in continuing to detain non-citizens who have
23 complied with reporting requirements. *See, e.g., Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL
24 1676854, at *3 (N.D. Cal. June 14, 2025); *Jorge M.F.*, 2021 WL 783561, at *3 (N.D. Cal. Mar.
25 1, 2021); *Ortega*, 415 F. Supp. 3d at 970 (N.D. Cal. Nov. 22, 2019). Importantly, the government
26 has no legitimate interest in conducting a bond hearing only *after* Mr. A.M. has been detained,
27 rather than in advance thereof. *See Pinchi*, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025)

1 (holding the government has no legitimate interest in providing only a post-detention bond
2 hearing for a noncitizen re-detained after complying with conditions of her release); *Pablo*
3 *Sequen v. Kaiser*, No. 25-CV-06487-PCP, 2025 WL 2691143, at *3 (N.D. Cal. Sept. 19, 2025)
4 (“Given the apparent lack of a valid basis for [petitioner’s] detention and the limited cost of
5 providing a custody hearing in immigration court, the government has at most a minimal
6 countervailing interest in her continued detention.”). “In immigration court, custody hearings are
7 routine and impose a minimal’ cost.” *G.S.*, 2025 WL 3014274, at *9 (W.D. Wash. Oct. 8, 2025)
8 (quoting *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *2 (E.D. Cal. Mar.
9 3, 2025)). Mr. A.M. is thus likely to prevail on the final *Mathews* factor, and in his claim that the
10 Respondents failed to provide him with adequate pre-deprivation process.

11 Where courts in this district and others have found that a petitioner was re-detained
12 without adequate process in violation of the petitioner’s right to due process, such courts have
13 ordered the petitioner to be released from custody. *See Rosado v. Figueroa*, No. CV 25-02157
14 PHX DLR (CBD), 2025 U.S. Dist. LEXIS 156344 (D. Ariz. Aug. 11, 2025) (ordering the release
15 of petitioner after finding that she was re-detained without prior notice, a showing of changed
16 circumstances, or a meaningful opportunity to objection, and therefore she was not afforded the
17 procedural requirements of the Fifth Amendment); *Co Tupul v. Noem*, No. CV-25-02748-PHX-
18 DJH (JZB), 2025 WL 2426787 (D. Ariz. Aug. 4, 2025) (granting TRO because petitioner raised
19 serious questions regarding her statutory ineligibility for expedited removal due to her decades-
20 long presence in the U.S., demonstrated probable irreparable harm from removal, and showed
21 that the balance of hardships tipped sharply in her favor); *Rodriguez Flores*, 2025 WL 2684181,
22 at *5 (C.D. Cal. Aug. 14, 2025); *Villata Salazar*, 2025 WL 2633128, at *6 (C.D. Cal. June 18,
23 2025); *Garcia*, 2025 WL 1927596, at *5 (E.D. Cal July 14, 2025); *cf. N.A.*, 2025 WL 2841989,
24 at *6 (S.D. Cal Oct. 7, 2025) (finding that petitioner who was released at the border and
25 subsequently detained at an Immigration Court hearing was not lawfully detained under 8 U.S.C.
26 § 1225(b)(1)(B)(ii) and ordering for the petitioner’s release). Furthermore, under such
27 circumstances, courts in this district and others have enjoined the government from re-detaining
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1 the petitioner without notice and a pre-detention hearing where the government bears the burden
2 of proving, by clear and convincing evidence, that the circumstances have changed as to his
3 danger to the community or a flight risk, and that no conditions other than his detention would
4 be sufficient to prevent those harms. *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CBD),
5 2025 U.S. Dist. LEXIS 156344 (D. Ariz. Aug. 11, 2025); *Rodriguez Flores*, 2025 WL 2684181,
6 at *5 (C.D. Cal. Aug. 14, 2025); *Perez-Mendez*, 2025 WL 2970373, at *2 (C.D. Cal. Oct. 21,
7 2025); *Pinchi*, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025); *Rodriguez*, 2025 WL 2855193,
8 *7 (E.D. Cal. Oct. 8, 2025); *Garcia*, 2025 WL 1927596, at *6 (E.D. Cal July 14, 2025).

9 Consistent with the cases cited above, Mr. A.M. has shown a likelihood of success on the
10 merits of his procedural Due Process claim sufficient for this Court to issue injunctive relief
11 ordering his release from custody and protection from re-detention absent a pre-deprivation
12 custody hearing.

13 **2. Respondents' arbitrary re-detention of Mr. A.M. violates his right to**
14 **substantive due process.**

15 As discussed above, when the government initially released Mr. A.M. custody, he gained
16 a vested liberty interest in his release. Moreover, the Due Process Clause prohibits the
17 government from stripping Mr. A.M. of his liberty absent either of the two constitutional bases
18 for civil immigration detention: to mitigate against the risk of flight or to protect the community
19 from danger. *See Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (2003). Here,
20 the government can show neither. DHS already determined that Mr. A.M. was neither a danger
21 nor a flight risk when it released him from custody on his own recognizance on June 3, 2019. *See*
22 *Radmacher* Dec ¶ 5. Mr. A.M. complied with all conditions of his release and dutifully appeared
23 before the immigration court. *Id.* ¶ 15. Nevertheless, ICE re-arrested him on November 5, 2025.
24 *Id.* ¶ 11. Under these circumstances, his re-detention violates his constitutional right to be free
25 from the unjustified deprivation of his liberty, and he is likely to prevail on the merits of his
26 substantive due process claim.

1 Here, Mr. A.M. has been detained without any opportunity to challenge his detention.
2 Detainees in DHS custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193,
3 1195 (9th Cir. 2016), vacated on other grounds by *Nielsen v. Preap*, 139 S. Ct. 954 (2019). As
4 such, every day that Mr. A.M. remains in custody constitutes an irreparable injury sufficient for
5 the issuance of a temporary restraining order.

6 Further, courts have consistently held that denying bond hearings imposes irreparable
7 harm. *See e.g., Miguel Santiago Flores v. Kristi Noem*, No. 5:25-cv-02490-AB-AJR (C.D. Cal.
8 Sept. 29, 2025). Indeed, Mr. A.M.’s continued detention in ICE custody without a bond hearing
9 constitutes irreparable harm.

10 Mr. A.M.’s individual circumstances place him at especially great risk of harm.
11 Specifically, Mr. A.M.’s medical condition is of great concern while he is in detention. Mr. A.M.
12 became sick with COVID-19 in 2020, he was not able to seek medical care as it was the beginning
13 of the pandemic and the government was discouraging people from going to the doctor unless
14 they had immediate life threatening symptoms due to hospitals being overwhelmed. ALLS Decl.,
15 ¶ 18. As a result, Mr. A.M. stayed home and recuperated there without seeing a doctor. Since
16 having COVID-19, Mr. A.M. has had long term impacts on his health. His wife describes Mr.
17 A.M.’s condition as “having weak lungs.” This manifests in Mr. A.M.’s health as his lungs are
18 very sensitive to the cold, manifesting in a serious cough, bronchitis-like condition when he gets
19 cold. *Id.* Mr. A.M. has to always wear jackets and keep himself warm or he will develop a serious
20 cough. When he has developed this cough, he has had to rest at home and drink lots of tea,
21 avoiding being cold. *Id.* Mr. A.M. has been unable to see a doctor to formally diagnose his
22 condition because his insurance would not cover the exams necessary for him to receive a
23 diagnosis. *Id.* He has successfully prevented developing a cold by staying as warm as possible
24 but he has to act preventatively to prevent his serious cough. *Id.* While Mr. A.M. was detained
25 in the Downtown Los Angeles Processing Center, Mr. A.M. shared with his family that he has
26 been cold and unable to stay warm. ALLS Decl., ¶ 17 & 19. Without the ability to stay warm,
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1 there is a concern that Mr. A.M. will be unable to address any bronchitis symptoms and that the
2 cough would develop into pneumonia.

3 Additionally, he has been separated from his family, namely his wife and minor children,
4 while in detention. *Id.* ¶ 23. Mr. A.M. is the primary provider for his family as his wife works
5 only part-time. *Id.* ¶ 16. His income allows the family to pay rent, for his eldest daughter's college
6 tuition, and any school costs for his children as well as groceries and all other financial
7 obligations. *Id.* His wife is not sure how they are going to continue making the necessary
8 payments to support their livelihood. *Id.* His wife and children are greatly concerned for Mr.
9 A.M. to remain in detention for his health and wellbeing. *Id.* ¶ 23. His oldest son is having trouble
10 sleeping and his wife and daughter are constantly worried about Mr. A.M. *Id.* Mr. A.M. has been
11 unable to communicate with his family for days at a time since he has been moved three times in
12 the last seven days, Mr. A.M. has been unable to communicate regularly with them to keep them
13 informed of his health condition. *Id.*

14 The government itself has documented alarmingly poor conditions in DHS detention
15 centers. *See, e.g.*, DHS, Office of the Inspector General (OIG), Summary of Unannounced
16 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations
17 of environmental health and safety standards; staffing shortages affecting the level of care
18 detainees received for suicide watch; and detainees being held in administrative segregation in
19 unauthorized restraints, without being allowed time outside their cell, and with no documentation
20 that they were provided health care or three meals a day).⁴ It is exceedingly likely that Mr. A.M.
21 will suffer from inadequate care for his medical condition if he remains in custody. Given that
22 Mr. A.M. has a constitutional right to due process, and considering the individual factors noted
23 above, a temporary restraining order is necessary to prevent Mr. A.M. from suffering irreparable
24 harm as a result of his unlawful and arbitrary detention.

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26 ⁴ U.S. Dept. of Homeland Security, Office of Inspector General, OIG-24-59, September 24, 2024,
27 "Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023,"
28 <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed
November 2, 2025).

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Respectfully submitted,

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