

1 Marissa Rosenberg-Carlson (SBN 358512)
2 Marissa.rosenberg-carlson@missionaction.org
3 Mission Action
4 938 Valencia Street
5 San Francisco, CA 94110
6 Telephone: (415) 857-7754

7 *Attorney for Petitioner*

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

11 Lizbeth Morelis Ibanez Daza,

12 Petitioner,

13 v.

14 SERGIO ALBARRAN, Field Office Director of the
15 San Francisco Immigration and Customs
16 Enforcement Office; TODD LYONS, Acting
17 Director of United States Immigration and Customs
18 Enforcement; KRISTI NOEM, Secretary of the
19 United States Department of Homeland Security,
20 PAMELA BONDI, Attorney General of the United
21 States, acting in their official capacities,

22 Respondents.

Case No. 3:25-cv-10214

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
INTRODUCTION	6
BACKGROUND	7
ARGUMENT	7
I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.....	8
A. Petitioner’s detention violates due process.	8
B. Petitioner is not subject to mandatory detention under 8 USC § 1225(b)(2).....	12
II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE INJURY ABSENT A TRO.	14
III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER’S FAVOR.	14
SECURITY	15
CONCLUSION	15

1 **TABLE OF AUTHORITIES**

2 **Cases**

3	<i>A.E. v. Andrews</i> ,	
4	No. 1:25-cv-00107, 2025 WL 1424382 (E.D. Cal. May 16, 2025)	11, 12
5	<i>All. for the Wild Rockies v. Cottrell</i> ,	
6	632 F.3d 1127 (9th Cir. 2011).....	9, 15
7	<i>Baca v. Moreno Valley Unified Sch. Dist.</i> ,	
8	936 F. Supp. 719 (C.D. Cal. 1996)	16
9	<i>California v. Azar</i> ,	
10	911 F.3d 558 (9th Cir. 2018).....	15
11	<i>Cnty. of Sacramento v. Lewis</i> ,	
12	523 U.S. 833 (1998)	9
13	<i>Demore v. Kim</i> ,	
14	538 U.S. 510 (2003)	10
15	<i>Diaz v. Kaiser</i> ,	
16	No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)	12, 13, 16
17	<i>Diep v. Wofford</i> ,	
18	2025 WL 6047444 (E.D. Cal. Feb. 25, 2025)	12
19	<i>Doe v. Becerra</i> ,	
20	No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025)	12, 13
21	<i>Doe v. Noem</i> ,	
22	___F. Supp. 3d ___, 2025 WL 1141279 (W.D. Wash. Apr. 17, 2025)	14
23	<i>Env't Prot. Info. Ctr. v. Carlson</i> ,	
24	968 F.3d 985 (9th Cir. 2020).....	15
25	<i>Gagnon v. Scarpelli</i> ,	
26	411 U.S. 778 (1973)	10
27	<i>Garcia v. Bondi</i> ,	
28	No. 3:25-CV-05070, 2025 WL 1676855 (N.D. Cal. June 14, 2025)	13
	<i>GoTo.com, Inc. v. Walt Disney Co.</i> ,	
	202 F.3d 1199 (9th Cir. 2000).....	14
	<i>Hernandez v. Sessions</i> ,	
	872 F.3d 976 (9th Cir. 2017).....	7, 9, 15, 16
	<i>Hurd v. D.C., Gov't</i> ,	
	864 F.3d 671 (D.C. Cir. 2017)	10

1	<i>Index Newspapers LLC v. U.S. Marshals Serv.,</i>	
2	977 F.3d 817 (9th Cir. 2020).....	16
3	<i>Jackson v. Indiana,</i>	
4	406 U.S. 715 (1972).....	9
5	<i>Jimenez v. Wolf,</i>	
6	No. 19-cv-07996-NC, 2020 WL 510347 (N.D. Cal. Jan. 30, 2020).....	12
7	<i>Johnson v. Ryan,</i>	
8	55 F.4th 1167 (9th Cir. 2022)	11
9	<i>Jones v. Blanas,</i>	
10	393 F.3d 918 (9th Cir. 2004).....	11
11	<i>Jorge M. F. v. Wilkinson,</i>	
12	No. 21-CV-01434-JST, 2021 WL 783561 (N.D. Cal. Mar. 1, 2021)	12, 13, 16
13	<i>Jorgensen v. Cassidy,</i>	
14	320 F.3d 906 (9th Cir. 2003).....	16
15	<i>Mahdawi v. Trump,</i>	
16	No. 2:25-CV-389, 2025 WL 1243135 (D. Vt. Apr. 30, 2025)	10
17	<i>Martinez v. Clark,</i>	
18	124 F.4th 775 (9th Cir. 2024)	12
19	<i>Mathews v. Eldridge,</i>	
20	424 U.S. 319 (1976).....	11
21	<i>Melendres v. Arpaio,</i>	
22	695 F.3d 990 (9th Cir. 2012).....	15
23	<i>Morrissey v. Brewer,</i>	
24	408 U.S. 471 (1972).....	10, 11
25	<i>Nielsen v. Preap,</i>	
26	586 U.S. 392 (2019).....	10
27	<i>Nozzi v. Hous. Auth. of City of Los Angeles,</i>	
28	806 F.3d 1178 (9th Cir. 2015).....	11
	<i>Ortega v. Bonnar,</i>	
	415 F. Supp. 3d 963 (N.D. Cal. 2019)	11, 13
	<i>Padilla v. Immigr. & Customs Enf't,</i>	
	953 F.3d 1134 (9th Cir. 2020).....	16
	<i>People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency,</i>	
	766 F.2d 1319 (9th Cir. 1985).....	16

1	<i>Romero v. Kaiser,</i>	
2	No. 22-CV-02508-TSH, 2022 WL 1443250 (N.D. Cal. May 6, 2022)	13
3	<i>Rosales-Mireles v. United States,</i>	
4	585 U.S. 129 (2018)	15
5	<i>Saravia v. Sessions,</i>	
6	280 F. Supp. 3d 1168 (N.D. Cal. 2017)	10
7	<i>Singh v. Holder,</i>	
8	638 F.3d 1196 (9th Cir. 2011)	12
9	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.,</i>	
10	240 F.3d 832 (9th Cir. 2001)	9
11	<i>Valdez v. Joyce,</i>	
12	No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025)	13, 14
13	<i>Vargas v. Jennings,</i>	
14	No. 20-CV-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020)	13
15	<i>Warsoldier v. Woodford,</i>	
16	418 F.3d 989 (9th Cir. 2005)	15
17	<i>Winter v. Nat. Res. Def. Council, Inc.,</i>	
18	555 U.S. 7 (2008)	9
19	<i>Wolff v. McDonnell,</i>	
20	418 U.S. 539 (1974)	9
21	<i>Young v. Harper,</i>	
22	520 U.S. 143 (1997)	10
23	<i>Zadvydas v. Davis,</i>	
24	533 U.S. 678 (2001)	7, 9, 10
25	<i>Zinerman v. Burch,</i>	
26	494 U.S. 113 (1990)	10
27		
28		

INTRODUCTION

Petitioner Lizbeth Morelis Ibanez Daza is a asylum seeker from Colombia. She entered the United States in 2024 to seek asylum. She was released by immigration officials into the United States on an Order of Recognizance to wait for her immigration court date.

On November 25, 2025, Petitioner went to the ICE facility in 630 Sansome in San Francisco for a check-in appointment, as ICE instructed her to do. ICE detained her at that check-in without warning, and Petitioner is now in ICE custody. There is no reason to believe Petitioner, who was arrested at an ICE check-in and has no criminal record, is a flight risk or danger.

The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention.

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

In light of this irreparable harm, and because she is likely to succeed on the merits of his due process claims, Petitioner respectfully requests that this Court issue a temporary restraining order ("TRO") immediately releasing from her custody and enjoining the government from re-arresting her absent the opportunity to contest that arrest at a hearing before a neutral decision maker

Confronted with substantially identical facts and legal issues, courts in this circuit have repeatedly granted the preliminary relief Petitioner seeks – including in the ICE check-in context. *See, e.g., Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 223941 (N.D. Cal. Nov. 13, 2025); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *20 (E.D. Cal., Nov. 6, 2025); *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-

HBK, 2025 U.S. Dist. LEXIS 211728, at *21 (E.D. Cal., Oct. 27, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *20-21 (E.D. Cal., Oct. 17, 2025); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706, at *15-16 (E.D. Cal., Oct. 14, 2025); *E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *17 (W.D. Wash. Aug. 19, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB, 2025 U.S. Dist. LEXIS 217645, at *17 (E.D. Cal., July 17, 2025); *M.R.R. v. Chestnut*, 1:25-cv-01517-JLT-SKO (E.D. Cal. Nov. 24, 2025); see also *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction). To maintain this Court’s jurisdiction, the Court should also prohibit the government from transferring Petitioner out of this District and removing her from the country until these proceedings have concluded.

BACKGROUND

Petitioner is an asylum seeker from Colombia. Petitioner was briefly detained by federal agents after entering the United States around November 2024. Petitioners’ Habeas Petition (“Pet.”) ¶¶ 1-2. Determining that she was not a flight risk or a danger to the community, the agents released Petitioner on her own recognizance with a notice to appear for removal proceedings in immigration court. *Id.* ¶ 2.

Petitioner applied for asylum, withholding removal, and relief under the Convention Against Torture. *Id.* ¶ 49. Petitioner also diligently complied with ICE release requirements, such as using SmartLINK regularly and never missing a check-in. *Declaration of Brandon Vesely* ¶ 3; *Declaration of Marissa Rosenberg-Carlson* ¶ 3.

There is no legitimate reason for ICE to detain Petitioner. Petitioner suffers serious and ongoing harm every day she remains in detention.

ARGUMENT

To warrant a TRO, a movant must show (1) they are “likely to succeed on the merits,” (2) they are “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the

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

9 **I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.**

10 **A. Petitioner’s detention violates due process.**

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.”
13 *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against
14 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
15 exercise of power without any reasonable justification in the service of a legitimate government
16 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from
17 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
18 the heart of the liberty 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
21 “civil, 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.*
28

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

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

14 When Respondents chose to release Petitioner from custody, that decision represented
15 their finding that she was neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F.
16 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d
17 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is
18 not a danger to the community or a flight risk.”). At that point, she gained a protected liberty
19 interest in her ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme
20 Court “usually has held that the Constitution requires some kind of a hearing *before* the State
21 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so
22 even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671,
23 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-
24 detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v.*
25 *Scarpelli*, 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v.*
26 *Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

27 Accordingly, the Supreme Court has repeatedly held that individuals released from
28 custody on bond, parole, or other forms of conditional release have a protected interest in their

1 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
2 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
3 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
4 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
5 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
6 963, 970 (N.D. Cal. 2019).

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

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

27 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
28 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.

1 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*,
2 No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also* *Diep v.*
3 *Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). ICE arrested
4 Petitioner by surprise as she appeared for her check-in appointment, detaining her with no notice
5 and no opportunity to contest her re-detention before a neutral arbiter. In such circumstances,
6 when Respondents have provided *no* procedural safeguards, “the probable value of additional
7 procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5. This is
8 especially true here, where there is no change in Petitioner’s circumstances suggesting that
9 Petitioner now poses a flight risk or danger to the community. This does not constitute a lawful
10 justification to re-detain a person.

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

19 *Third*, the government’s interest in detaining Petitioner without first providing notice
20 and submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
21 hearings, which impose a “minimal” cost to the government. *See Doe*, 2025 WL 691664, at *6;
22 *A.E.*, 2025 WL 1424382, at *5. Petitioner has a strong record of attending her immigration
23 proceedings; there is no reason to believe that between the date of her release and her custody
24 hearing, her compliance will change. Indeed, courts regularly hold that the government’s
25 interest in re-detention without a custody hearing is low when the petitioner “has long complied
26 with his reporting requirements.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-
27 *4 (N.D. Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a
28 pre-deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL

1 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting
2 habeas petition ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025
3 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately
4 releasing petitioner who had been detained without process, who had “voluntarily attended his
5 scheduled immigration court proceedings” and “established ties” through his work and
6 volunteering with the church).

7 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens
8 without a pre-deprivation hearing in which the government bears the burden of proof violates
9 due process, and grant the emergency relief Petitioner seeks here. *See, e.g Garro Pinchi v.*
10 *Noem*, __ F. Supp. 3d __, 2025 WL 2084921, at *7 (converting TRO requiring release of
11 asylum seeker arrested at her immigration court hearing into preliminary injunction prohibiting
12 the government from re-detaining her without a hearing). This includes cases where petitioners
13 were arrested at ICE check-ins. *See, e.g., C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT
14 SKO2025 U.S. Dist. LEXIS 216277, at *27 (E.D. Cal., Nov. 1, 2025).

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

23
24 **B. Petitioner is not subject to mandatory detention under 8 USC § 1225(b)(2).**

25 To the extent that Respondents argue Petitioner is subject to mandatory detention under 8
26 USC § 1225(b)(2), due process prevents the unilateral reclassification of her detention authority
27 years after she was released at the border. For decades, when immigration authorities arrested and
28

1 released people on an Order of Recognizance at the border, those people were subject to
 2 discretionary detention under 8 USC § 1226(a). In the last few months, however, Respondents
 3 have reversed course and now take the dramatic and implausible new position that these
 4 individuals are subject to mandatory detention under 8 USC § 1226(b). *Matter of Yajure Hurtado*,
 5 29 I&N Dec. 216, 220 (B.I.A. 2025). District courts in recent months have thoroughly rejected
 6 the government's new position. *See, e.g., Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC
 7 (N.D. Cal. Sept. 21, 2025) at *13-21; *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 U.S.
 8 Dist. LEXIS 187233, at *n.5 (E.D. Cal., Sept. 23, 2025) (finding *Matter of Yajure Hurtado*
 9 unpersuasive); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO at *6-9 (E.D. Cal.
 10 Sep. 9, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 at *10-13 (S.D. Cal. Sept. 3,
 11 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal.
 12 Aug. 21, 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *9 (N.D. Cal. Aug. 29, 2025);
 13 *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11-12 (S.D.N.Y. Aug. 13,
 14 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 LX 341363, at *15 (E.D. Cal.
 15 July 28, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24,
 16 2025). Respondents cannot switch tracks mid litigation and suddenly reclassify Petitioner under a
 17 different detention authority. *See Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC (N.D. Cal.
 18 Sept. 21, 2025).

19
20
21 * * * * *

22
23 For the foregoing reasons, Petitioner is likely to succeed on the merits of her claims. But
 24 even if the Court disagrees, she presents at least “serious question[s] going to the merits,”
 25 alongside a “balance of hardships” tipping decidedly in their favor. *All. for the Wild Rockies*,
 26 632 F.3d at 1135. Indeed, the constitutional concerns delineated above are of the weightiest
 27 order and beyond colorable. This Court should therefore enter the requested TRO.
 28

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

Without a temporary restraining order, Petitioner will suffer immense irreparable injury. Indeed, she faces such injury every day she remains in detention in violation of his 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 PETITIONER’S 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 Petitioner, who faces 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 Petitioner’s 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

1 public of immigration detention are staggering.” *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge*
 2 *M. F.*, 2021 WL 783561, at *3). More fundamentally, “[i]t is always in the public interest to
 3 prevent the violation of a party’s constitutional rights.” *Index Newspapers LLC v. U.S. Marshals*
 4 *Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf’t*, 953 F.3d
 5 1134, 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

6 SECURITY

7 No security is necessary here. Courts “may dispense with the filing of a bond when,” as
 8 here, “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”
 9 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
 10 requirement in cases raising constitutional claims, because “to require a bond would have a
 11 negative impact on plaintiff’s constitutional rights, as well as the constitutional rights of other
 12 members of the public.” *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
 13 Cal. 1996). Finally, Plaintiff’s showing of a high likelihood of success on the merits supports the
 14 court’s waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v.*
 15 *Tahoe Reg’l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir.
 16 1985).

17 CONCLUSION

18 For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to
 19 restore the *status quo ante* that (1) immediately releases her from Respondents’ custody and
 20 enjoins Respondents from re-detaining her absent further order of this Court; (2) in the
 21 alternative, immediately releases her from Respondents’ custody and enjoins Respondents from
 22 re-detaining her unless they demonstrate at a pre-deprivation bond hearing, by clear and
 23 convincing evidence, that Petitioner is a flight risk or danger to the community such that her
 24 physical custody is required; and (3) prohibits the government from transferring her out of this
 25 District and/or removing her from the country until these habeas proceedings have concluded.

26
 27 Respectfully submitted,

28 Date: November 25, 2025

/s/ Marissa Rosenberg-Carlson

Marissa Rosenberg-Carlson

Attorney for Petitioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28