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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JOSE OSVALDO FERREIRA JUNION

Petitioner,

v.

Timothy S. ROBBINS, Field Office Director of the Los Angeles Field Office of U.S. Immigration and Customs enforcement; Todd M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement; U.S. DEPARTMENT OF HOMELAND SECURITY, Kristi NOEM, Secretary of the U.S. Department of Homeland Security, Christopher CHESTNUT, Warden, California City Corrections Center, and Pamela BONDI, Attorney General of the United States

Respondents,

Case No. 25-1183

MOTION FOR TEMPORARY RESTRAINING ORDER

Note on Motion Calendar:

ORAL ARGUMENT REQUESTED

INTRODUCTION

Petitioner Jose Osvaldo Ferreira Junior ("Petitioner") is a Brazilian noncitizen detained by Immigration and Customs Enforcement (ICE) at the California City Detention Center, in California City, California. He entered the United States in or around February 7, 2023, along with his spouse and United States-born infant child, and he was subsequently released on February 9, 2023. Subsequently, ICE officials informed Petitioner his release was pursuant to §236. For the next two years and nine months, Petitioner complied with what was asked of him: He adhered to all the conditions of his release, which consisted on in-person visits at the ICE's field office. He also retained the services of an immigration attorney for the purpose of obtaining a potential immigration benefit and try to have the removal proceedings against him and his family dismissed. Nevertheless, in or around November 19, 2025, Petitioner was arrested at what should have been a routine in-person check-in at the San Francisco ICE field office, without any notice or opportunity to respond to any allegation purportedly justifying his re-detention. He remains in detention at California City Detention Center, separated from his spouse, infant United States born child, and his friends and community.

At no time prior to his arrest did Respondents provide Petitioner a hearing, let alone a hearing before a neutral decisionmaker at which ICE was required to justify his re-detention and show that he now poses a flight risk or danger to the community. Indeed, he was not provided any notice as to the reason for his re-detention, much less the written notice required under 8 C.F.R. § 212.5(e)(2) that must accompany a revocation of parole. Nor has he received any meaningful opportunity to respond to any allegations triggering her re-detention.

By denying him any notice and hearing, Respondents violated Petitioner's right to due process. As a number of Federal District courts recently held, her ongoing detention is therefore unlawful, and his immediate release is required. (See e.g., *E.A. T.-B. v. Wamsley*, No. 25-cv-1192-KKE, --- F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"). Accordingly, Petitioner respectfully seeks

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immediate relief from this Court to vindicate his right to liberty under the Fifth Amendment's Due Process Clause.[1]

STATEMENT OF FACTS

Petitioner Jose Osvaldo Ferraira Junior ("Petitioner") is a national of Brazil who fled Brazil along with his spouse and infant United States-born child, intending to seek asylum based on [redacted] [redacted] (Dec. of Maria Eduarda Paula-Carvalho, ¶ 1.) After Petitioner arrived in the United States on February 7, 2023, federal agents detained him and his family. Petitioner and his family were eventually released by ICE officers on February 9, 2023 after a determination that neither Petitioner or his spouse were a flight risk or a danger to the community. (Id.) Upon his release, Petitioner and his spouse were instructed to appear in person at the ICE San Francisco field office on March 28, 2024. (Id.) As instructed, Petitioner and his spouse presented themselves for an in-person check-in at the ICE San Francisco Field Office. They were both instructed to return for an in-person check-in on March 20, 2024. (Id.)

Prior to the March 20, 2024 visit date, Petitioner and his spouse consulted with an immigration attorney with the Bueno Law Corporation on December 2023 for the purpose of seeking representation for their expected removal proceedings. (Id. at ¶2.) During their first meeting, the immigration attorney determined that Petitioner might qualify for an immigration benefit known as U-Visa, which is granted, would permit Petitioner and his spouse to seek dismissal of their removal proceedings. Furthermore, the grant of the U-Visa would make Petitioner and his spouse eligible to apply for legal permanent residence through an adjustment of status application. (Id.) They eventually filed an U-Visa application with the United States Citizenship and Immigration Services on July 15, 2024. (Id.) A few days later, Petitioner was served with a Notice to Appear, indicating that a Master Calendar Hearing had been scheduled for June 3, 2026, with the San Francisco Immigration Court. (Id.)

On March 20, 2024, Petitioner and his spouse made an in-person visit to the San Francisco ICE

[1] Together with the filing of the habeas petition and motion, counsel certifies that they are providing concurrent notice regarding this filing to the U.S. Attorney's Office for the Central District of California via email at USACAE.ECF2241@usdoj.gov.

Field Office where after undergoing an interview, Petitioner was provided with an Order of Release on recognizance, which stated he was being released pursuant to section 236 of the Immigration and Nationality Act. As a condition of Petitioner's release, he was instructed to make an appearance via email with the ICE Field office in San Francisco on March 20, 2025. (Id., ¶3.)

Unfortunately, following that visit, on August 23, 2024, Petitioner was driving in San Francisco County with his spouse when they were stopped by police officers. (Id., ¶4.) The police officer informed Petitioner he had been driving at an excessive speed. (Id.) Although the police officer initially indicated to Petitioner he was going to give him a ticket for excessive speeding, the police officer eventually detained Petitioner, believing he might have been driving under the influence. (Id.) Petitioner was charged with driving under the influence ("DUI") pursuant to California Vehicle Code Sections 23152(a) and (b), a misdemeanor. (Id.) However, on February 24, 2025, the San Francisco Superior Court dismissed the DUI charges and instead, found Petitioner guilty of Wet Reckless driving under California Vehicle Code Section 23103 pursuant to a plea agreement. (Id.) In regard to the sentence, the San Francisco Superior Court suspended the sentence and instead, placed Petitioner on probation, which included attending a 92-day first offender program. (Id.) Petitioner completed the first offender program on May 29, 2025. (Id.)

Although Petitioner and his spouse were scheduled for a check-in by email on March 20, 2025, in or around March 8, 2025, Petitioner was notified that his spouse and he needed to check in in person at the ICE San Francisco Field office due to a change in the monitoring policy under which no more check-in by email was permitted. (Id., ¶5.) Pursuant to the instructions received by ICE, Petitioner and his spouse appeared in person at the ICE San Francisco Field Office on March 20, 2025. (Id.) During this visit, ICE officers questioned Petitioner about the DUI charges. (Id.) Respondent informed them about his plea deal. The ICE officers instructed Petitioner to return to the ICE San Francisco field office on May 19, 2025 in order to provide them with a copy of the court judgment. (Id.) Petitioner returned to the ICE San Francisco field office alone on May 19, 2025. (Id.) He provided the ICE officers with a copy of the Minute Order from the San Francisco County Superior court, indicating that he was not convicted of DUI under Cal. Veh. Code § 23152, but rather, he had been convicted of wet reckless

driving under Cal. Veh. Code § 23103, but that the imposition of sentence had been suspended. After reviewing the documents, the ICE Officer told Petitioner that "everything is all right" and that Petitioner was to return for another check in visit on November 19, 2025. (Id.)

During the two years and nine months following his February 9, 2023 release, Petitioner had appeared at all of his in-person check-ins at the ICE Field Office in San Francisco. (Id., ¶6.) Petitioner also had notified ICE whenever Petitioner and his family changed addresses. (Id.) Although Petitioner had a wet reckless driving conviction, Petitioner believed that based on his meeting with ICE on May 19, 2025 and the statement by the ICE Officer that "everything is all right," ICE had determined that he was still in compliance with the terms of the supervision. (Id.) Until the day of his detention, Petitioner and his family always lived within San Mateo County, near San Francisco. (Id.)

In addition, since his entry into the United States on February 7, 2023, Petitioner had been living a productive life together with his spouse and infant child. (Id., ¶7.) Petitioner and his family attended services at Grace Covenant Church every Sunday, and Petitioner participated in the volunteer program at the church. (Id.) He was well known in the local community as a hard-working person who took care of his spouse and infant child. (Id.) In regards to his employment, Petitioner had a successful career at a building company, which permitted him to provide for his family. (Id.)

On November 19, 2025, Petitioner and his spouse appeared accompanied by an attorney from the Bueno Law Corporation for their scheduled in-person visit at the ICE Field Office in San Francisco, where Petitioner was promptly arrested by ICE Officers. (Id., ¶8.) The ICE Officers verbally stated they were detaining Petitioner due to his DUI conviction. (Id.) Petitioner tried to explain that the DUI charges had been dismissed and that he had been placed on probation relating to a reckless driving conviction, but the ICE officers detained Petitioner nonetheless. Prior to him being re-detained, Petitioner was not provided a written notice of the reasons for his re-detention. (Id.) On the same day, Petitioner was transferred to the California City Detention Center, in California City, California. (Id.)

Since Petitioner's detention, his spouse and child have been suffering substantial hardship. Petitioner's spouse has no means to make sufficient money to cover their rent and afford for their basic needs, such as food and utilities. (Id., ¶9.) In addition, the fact Petitioner's spouse now has to care for

their infant child alone resulted in her having to cut her work hours. Petitioner's spouse fears they will be evicted and that she will most likely end up becoming homeless along with their infant child. (Id.) In addition, Petitioner's infant child is emotionally affected by her father's detention, crying non-stop due to his absence. (Id.)

Petitioner filed a habeas petition in this court along with the present motion. By means of the present motion, she now seeks immediate relief from her continued, unlawful detention.

ARGUMENT

Requirements for a temporary restraining order

On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." (*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical").) A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." (*All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified).) To succeed under the "serious question" test, Petitioner must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. (Id. at 1132.)

Petitioner is likely to succeed on the merits of her argument that her detention is unlawful because she was not afforded a pre-deprivation hearing

Due process requires Respondents to afford Petitioner a hearing before a neutral decisionmaker where ICE is required to justify re-detention *before* it occurs. In recent months, as DHS has detained many similarly-situated noncitizens, several courts—including District Courts in California—have held the same and ordered the immediate release of noncitizens who had been re-detained by DHS without a pre-deprivation hearing. (*See, e.g.*, *E.A. T.-B.*, 2025 WL 2402130; *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL

2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).) In light of this, Petitioner is likely to succeed on her claim and the Court should order her immediate release. If Respondents continue to assert that her detention is justified after her release, they may thereafter schedule a hearing where they bear the burden of presenting clear and convincing evidence that her re-detention is warranted.

In regards to cases involving an immigrant being re-detained, the U.S. District Court for the Western District of Washington recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976) is the controlling framework for determining what process Petitioner is due. *Mathews* requires the Court to evaluate (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." (424 U.S. at 335; *see also Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (applying *Mathews* factors to assess right to pre-deprivation hearing); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee's liberty interests and the state's interests to assess what process is due a parolee). Here, those factors strongly favor Petitioner.

A. Petitioner Has a Weighty Private Interest.

Petitioner has an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of her liberty. Indeed, her "interest in not being detained is 'the most elemental of liberty interests[.]'" (*E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).) Thus, "[d]etention, including that of a non-citizen, violates due process if there are not 'adequate procedural protections' or 'special justification[s]' sufficient to outweigh one's 'constitutionally protected interest in avoiding physical restraint.'" (*Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690).) Similarly, the Ninth Circuit has held that

"[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" (*Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)).)

This principle applies with significant force given Petitioner's initial release from detention on parole. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." (*Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017).) As the *Hurd* court explains, this includes cases of "pre-parole conditional supervision," *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); "probation," (Id.) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and "parole," (Id.) (citing *Morrissey*, 408 U.S. at 482).)

These principles apply with even more force here, where civil immigration detention is concerned, than in cases involving renewed incarceration in the criminal context. As one court has explained, "[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater than the interest of parolees in *Morrissey*." (*Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).) Parolees and probationers have a diminished liberty interest because of their underlying convictions. (*See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001) ("Probation is one point on a continuum of possible punishments . . . ." (citation modified)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not enjoy the absolute liberty to which every citizen is entitled . . . ." (citation modified).) Nonetheless, even in the criminal parole and supervised release context, courts have held that parolees cannot be re-arrested without a due process hearing affording them the opportunity to contest the legality of their re-incarceration. (See, e.g., *Hurd*, 864 F.3d at 684.)

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Critically, in recent months and years, courts have repeatedly applied these principles to hold that noncitizens have a strong liberty interest in cases involving re-detention. A person re-detained after a prior release from ICE custody is "undoubtedly deprive[d] . . . of an established interest in his liberty." (*E.A. T.-B.*, 2025 WL 2402130, at *3.) Other courts have reached the same conclusion. (*See, e.g.*, *Garcia*, 2025 WL 2420068, at *10) ("[P]arole allowed [the petitioner] to build a life outside detention, albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody which would allow him to continue in these life activities, including supporting his family."); (*Pinchi*, 2025 WL 2084921, at *4) ("[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her relationships in the community, and continuing to attend her church."); (*Maklad*, 2025 WL 2299376, at *8 (similar).) In addition, even though Petitioner has a conviction for wet reckless driving, this is not a bar for a court granting a motion for TRO based on a violation of one's Due Process rights under the Fifth Amendment. (*Guillermo M.R. v. Kaiser*, 791 F. Supp 3d 1021, No. 25-cv-05436-RFL, 2025 U.S. Dist. Lexis 138205 *, 2025 Lx 291411, at *13 (N.D. Cal. July 17, 2025) ("Furthermore, [p]etitioner has completed all requirement of his criminal sentence from 2013. ICE seeks to place him in civil detention. "Given the civil context, his liberty interest is arguably greater than the interest of parolees in *Morrisey*""); also see *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).)[2]

As in these cases, Petitioner has a strong interest in his liberty. Prior to his re-detention, Petitioner resided in San Mateo County, California for two years and nine months, living with his wife and their United States-born infant child. He also had a steady and very successful career at a local construction company, where he made enough money to support his family. He also had been complying with all her ICE check-in requirements. And although Petitioner was arrested under suspicion of a DUI, the San

[2] In *Ortega*, the court found that an individual convicted as a juvenile and who had been detained by ICE following the completion of his 22-year prison sentence should still be granted his Petition for Writ of Habeas Corpus from re-arresting him without a re-detention hearing. The court observed that at the time of his re-detention, he had been complying with all terms of his criminal parole, and he also had demonstrated being an active member of the community, from volunteering to participating in cycling events. He also had been holding a steady job and had a good relationship with his spouse. (*Ortega*, 415 F. Supp. 3d, at 966-970.)

Francisco Superior Court permitted him to plead guilty to a less-serious charge of wet reckless driving and he was in compliance with the terms of the probation set by the San Francisco County Superior Court. In addition, since his arrival in the United States, Petitioner had formed a strong bond to the local community, attending church services every week and doing volunteer services within the church. (Maria Eduarda Paula Carvalho's Decl. ¶¶ 1–8.). In addition, during his first in-person visit with ICE, Petitioner was informed that he had been released on his own recognizance pursuant to Section 236. He has substantial connections to this country, and his spouse and infant child are suffering in his absence. These facts show not only that Petitioner's freedom is at stake, but that his absence is negatively affecting the life of his spouse and infant child.

B. The Risk of Erroneous Deprivation Is High.

Second, "the risk of erroneous deprivation of Petitioner's liberty interest in the absence of a pre-detention hearing is high." (*E.A. T.-B.*, 2025 WL 2402130, at *4.) "That the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process." (Id.) Her re-detention must still "bear[] [a] reasonable relation" to a valid government purpose—here, preventing flight or protecting the community against dangerous individuals. (*Zadvydas*, 533 U.S. at 690) (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified and that Petitioner poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists. But to date, only the "government enforcement agent" has made any decision about the propriety of detention, (*Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971)), a far cry from the hearing before a neutral decisionmaker that due process requires, (see, e.g., *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."); see also *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar).) In fact, Petitioner did not (and has not) even received a formal notice of the basis for his re-detention, much less any opportunity to respond to any allegations purporting to justify his re-detention or a hearing before a neutral decisionmaker.

The importance of a hearing before a neutral decisionmaker principle remains even though Petitioner might have initially been subject to mandatory detention under 8 U.S.C. § 1225(b)(1) or (b)(2) when he was processed for expedited removal. (See *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).) This is because, as this Court explained in *E.A. T.-B.*, "Petitioner does not claim to be entitled to a hearing consistent with a particular statute: he argues that the Due Process Clause requires it." (2025 WL 2402130, at *4.) And due process requires such a hearing because "Petitioner's circumstances have changed materially" since her release on August 9, 2022. (*Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019).) As noted above, Petitioner has formed deep connections to this country, residing in California, and working to support himself and his wife and United States-born infant child. "These facts show that a[] [pre-deprivation] hearing provide[s] additional safeguards under these circumstances." (Id.; see also, e.g., *Jorge M.F.*, 534 F. Supp. 3d at 1055) ("In any pre-detention hearing, the IJ would be required to consider any additional evidence from the eight-plus months since Petitioner was released."); (*Garcia*, 2025 WL 2420068, at *10 ("[P]arole allowed [Petitioner] to build a life outside detention.").

C. The Government's Interest Is Minimal.

Finally, "the government's interest in detaining [Petitioner] or re-detaining [her] without a hearing is slight." (*Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970) ("If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). "[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining her, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue." (*E.A. T.-B.*, 2025 WL 2402130, at *5.) Notably, since his release, Petitioner "has continued to demonstrate that [he] poses neither a flight risk nor a danger to the community," holding an honest job and helping both himself and his family, and developing friendships, among other factors. (*Pinchi*, 2025 WL 2084921, at *5.)

The government may claim that its interest in enforcing immigration laws weighs heavily in its favor. But the government's interest in immigration enforcement "is not at stake here; instead, it is the

much lower interest in detaining [Petitioner] pending removal without a bond hearing." (*Perera*, 598 F. Supp. 3d at 746.) Many other courts have observed the same. (See, e.g., *Zagal-Alcaraz v. ICE Field Office*, No. 3:19-CV-01358-SB, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) ("The government interest at stake here is not the continued detention of Petitioner, but the government's ability to detain him without a bond hearing."), *report and recommendation adopted*, 2020 WL 1855189 (D. Or. Apr. 13, 2020). What is more, Petitioner has complied with the immigration laws: he was released on parole and has been preparing to appear at his first Master Calendar Hearing, as the Immigration and Nationality Act (INA) expressly permits. (8 U.S.C. § 1158.) He also made all required check-ins with ICE. Any claimed "enforcement" amounts to punishing and deterring people like Petitioner from asserting the statutory rights that the INA expressly provides, rather than enforcing those laws.

In addition, the government's interest is not limited to enforcement of the law; instead, it also encompasses the interest of the "public," including the administrative or financial burdens additional process requires. (*Mathews*, 424 U.S. at 348.) Here, any cost in holding a hearing, should the government choose to do so, is minimal. Moreover, any financial burden is outweighed by the costs of detaining Petitioner prior to such a hearing. The public's "interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required." (*Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).) This consideration also "cuts strongly in favor" of Petitioner because "[w]hen the Government incarcerates individuals it cannot show to be a poor bail risk for prolonged periods of time, as in this case, it separates families and removes from the community breadwinners, caregivers, parents, siblings and employees." (*Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020).)

In sum, Petitioner has demonstrated—or is likely to be able to demonstrate—that he "has a protected liberty interest in his continuing release from custody, and that due process requires that Petitioner receive a hearing before an immigration judge before he can be re-detained." (*E.A. T.-B.*, 2025 WL 2402130, at *5.)

Petitioner will suffer irreparable harm absent an injunction.

Petitioner must also show he is "likely to suffer irreparable harm in the absence of preliminary relief." (*Winter*, 555 U.S. at 20.) Irreparable harm is the type of harm for which there is "no adequate

legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Here, Petitioner's unlawful detention constitutes "a loss of liberty that is . . . irreparable." (*Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk).) This is particularly true here, where Petitioner's detention also violates the Constitution. "Civil immigration detention violates due process outside of certain special and narrow nonpunitive circumstances." (*Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation modified).) As detailed above, Petitioner's detention is outside of those "special and narrow nonpunitive circumstances," as the Due Process Clause forbids his detention without a pre-deprivation hearing. These constitutional concerns also counsel in favor of finding that Petitioner has demonstrated irreparable harm, for he has shown that his detention violates due process. (See *Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").)

Detention also inflicts substantial harm on Petitioner by separating him from her family. Absent a TRO, Petitioner has no hope of being reunited with his spouse, his United States-born infant-child and community. Such "separation from family members" is an important irreparable harm factor. (*Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding "separated families" to be a "substantial injur[y] and even irreparable harm[]"); *cf. Hernandez*, 872 F.3d at 996 (recognizing that "government-compelled [family] separation" causes family members "trauma" and "other burdens").) In addition, Petitioner knows that his family is at a risk of facing substantial hardships without him being present to work and support his wife and infant child financially.

In sum, Petitioner is suffering numerous and irreparable harms: detention itself, separation from family and friends. All of these factors warrant a TRO.

The balance of hardships and public interest weigh heavily in Petitioner's favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." (*Nken v. Holder*, 556 U.S. 418, 435 (2009).) Here, as previously discussed, Petitioner faces weighty hardships: loss of liberty and separation from family and friends. The government, by contrast, faces no hardship, as all it must do is release a person it previously released and who has since lawfully resided in San Mateo County, California. Avoiding such "preventable human suffering" strongly tips the balance in favor of Petitioner. (*Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).)

What is more, "the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process." (*Hernandez*, 872 F.3d at 996.) Indeed, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction." (*Baird*, 81 F.4th at 1048.)

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents release Petitioner and to require a hearing before a neutral decisionmaker where the government must demonstrate she poses a flight risk or danger before any re-detention.

Immediate release is warranted.

As in *E.A. T.-B.*, this Court should order Petitioner's immediate release. "[A] post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." (*E.A. T.-B.*, 2025 WL 2402130, at *6.) In other words, Petitioner's unlawful detention without a pre-deprivation hearing is *already* occurring, and only immediate release remedies that issue. Moreover, the evidence here demonstrates that Petitioner has made every effort to follow the law: receiving parole, preparing for his removal proceedings by means of having filed an U-Visa application, and complying with all the monitoring requirements required by ICE. As a result, the Court should order his immediate release and provide that Petitioner may only be re-detained if ICE justifies re- detention by clear and convincing evidence at a hearing where ICE is required to

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demonstrate Petitioner is a flight risk or danger to the community. (See, e.g., *Pinchi*, 2025 WL 2084921, at *7; *Maklad* 2025 WL 2299376, at *10; *Garcia*, 2025 WL 2420068, at *13.)

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant his motion for a temporary restraining order and order her immediate release.

Respectfully submitted,

DATE: 11/28/2025

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,334 words, in compliance with the Local Civil Rules.

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