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5 Attorneys for *Petitioner* Michelle Montero-Alvarez

7  
8 **UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

9  
10 **Michelle Montero-Alvarez,**  
11 *Petitioner,*  
12 v.  
13 Sergio ALBARRAN, Acting Field Office  
14 Director of San Francisco Office of  
15 Detention and Removal, U.S. Immigrations  
and Customs Enforcements; U.S. Department  
16 of Homeland Security;  
17 Todd M. LYONS, Acting Director,  
18 Immigration and Customs Enforcement, U.S.  
Department of Homeland Security;  
19 Kristi NOEM, in her Official Capacity,  
20 Secretary, U.S. Department of Homeland  
Security; and  
21 Pam BONDI, in her Official Capacity,  
22 Attorney General of the United States;  
23 *Respondents - Defendants,*  
24

No.

PETITIONER'S NOTICE OF MOTION  
AND EMERGENCY EX PARTE MOTION  
FOR TEMPORARY RESTRAINING  
ORDER

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

Challenge to Unlawful Incarceration;  
Request for Declaratory and Injunctive  
Relief

**NOTICE OF MOTION AND EX PARTE MOTION**

1  
2  
3 PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for  
4 the Eastern District of California, that Petitioner, Michelle Montero-Alvarez (“Ms. Montero-  
5 Alvarez”) will and hereby does move for a temporary restraining order pursuant to Federal Rules  
6 of Civil Procedure 65(b) and Civil Local Rule 65-1. Because Petitioner's detention violates the  
7 Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests  
8 that this Court (1) orders Petitioner's immediate release from Respondent's custody pending these  
9 proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) orders  
10 Petitioner's immediate release from Respondents' custody and, within 14 days, order a pre-  
11 deprivation bond hearing before the San Francisco Immigration Court, where Respondents will  
12 have the burden of proof to show, by clear and convincing evidence, that Petitioner is a danger  
13 or a flight risk. To preserve this Court's jurisdiction, Petitioner further seeks an order (3) enjoining  
14 Respondents from deporting Petitioner during the pendency of this proceeding. Enjoins  
15 Respondents (1) from continuing to detain Petitioner based on an unlawful action by ICE, (2)  
16 orders his immediate release from Respondents' custody; and (3) from re-arresting Ms. Montero-  
17 Alvarez until she is afforded a hearing before a neutral decisionmaker, as required by the Due  
18 Process clause of the Fifth Amendment, to determine whether circumstances have materially  
19 changed such that her re-incarceration would be justified because there is clear and convincing  
20 evidence establishing that she is a danger to the community or a flight risk.

21 Consistent with Civil L.R. 65-1, Petitioner seeks relief at the earliest possible opportunity.  
22 Petitioner filed this motion the same day he filed her Petition for Writ of Habeas Corpus. Her  
23 Writ of Habeas Corpus stated that she would be filing this motion forthwith.  
24 If the Court deems oral argument necessary, Petitioner requests to appear by video.

25 Dated: December 1, 2025 Respectfully submitted,

26  
27  
28  
*/s/ Emilio Parker*  
Emilio Parker  
Attorney for Petitioner-Plaintiff  
Michelle Montero-Alvarez

1 **I. INTRODUCTION**

2 Respondents unlawfully detained Petitioner-Plaintiff Michelle Montero-Alvarez on  
3 November 21, 2025. Ms. Montero-Alvarez was detained during a routine check-in at the ICE  
4 Enforcement and Removal Center at 630 Sansome Street in San Francisco, California. Ms.  
5 Montero-Alvarez entered the United States without inspection on July 8, 2022. Ms. Montero-  
6 Alvarez was detained upon entering the United States. Ms. Montero-Alvarez was subsequently  
7 released from custody on her own recognizance after a determination was made that Ms.  
8 Montero-Alvarez was not a flight risk nor a danger to society.

9 The Department of Homeland Security (“DHS”) handed Ms. Montero-Alvarez a Notice  
10 to Appear with the immigration court and subsequently mailed her a notice for a court date on  
11 August 18, 2026. On January 23, 2024, Petitioner filed for work authorization with USCIS.  
12 Petitioner has legal authorization to work in the United States. Since arriving to the United States,  
13 Ms. Montero-Alvarez has maintained steady employment and has had no criminal history. At  
14 the time of detention, Ms. Montero-Alvarez was working for Instacart and at McDonald’s.

15 On November 19, 2025, Ms. Montero-Alvarez missed an ISAP appointment due to car  
16 problems. Ms. Montero-Alvarez contacted ISAP who informed her that it was not a problem and  
17 to come in on November 21, 2025. Ms. Montero-Alvarez received a follow-up notice to go to  
18 ICE at Sansome on November 21, 2025. When Ms. Montero-Alvarez appeared at her  
19 appointment with ICE, she was detained and subsequently sent to California City Detention  
20 facility.

21 Ms. Montero-Alvarez is not an applicant for admission to the United States. Ms.  
22 Montero-Alvarez has lived in the United States for over three years. She currently resides with  
23 her significant other in Antioch, California.

24 Ms. Montero-Alvarez’s summary arrest and indefinite detention flout the Constitution.  
25 The only legitimate interests that civil immigration detention serves are mitigating the risk of  
26 flight and preventing danger to the community. When those interests are absent, the Fifth  
27 Amendment’s Due Process Clause squarely prohibits detention. Additionally, by summarily  
28 arresting and detaining Ms. Montero-Alvarez without making any affirmative showing of flight  
risk or danger to the community, the government violated Petitioner’s procedural due process  
rights. At the very least, she was constitutionally entitled to a hearing before a neutral  
decisionmaker at which the government should have justified her detention.

1 Ms. Montero-Alvarez must be accorded his 5th amendment due process rights as affirmed  
2 in the US Supreme Court case *Department of Homeland Security v. Thuraissigium*, 140 S.Ct.  
3 1959 (2020), Specifically, in *Thuraissigium*, the Supreme Court Stated: “aliens who have  
4 established connections in this country have due process rights in deportation proceedings,”

5 As a result of her arrest and detention, Ms. Montero-Alvarez is suffering irreparable and  
6 ongoing harm. The unconstitutional deprivation of “physical liberty” unquestionably constitutes  
7 irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,  
8 “[f]reedom from imprisonment—from government custody, detention, or other forms of physical  
9 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*  
10 *Davis*, 533 U.S. 678, 690 (2001). Ms. Montero-Alvarez’s arrest and detention have caused and  
11 will cause immediate, tremendous, and ongoing harm, which include health problems, hygiene,  
12 sleep and nutrition deprivation, family separation, emotional and economic harm, loss of  
13 employment, and psychological harm.

14 In light of this irreparable harm, and because she is likely to succeed on the merits of her  
15 due process claims, Ms. Montero-Alvarez respectfully requests that this Court issue an Ex Parte  
16 temporary restraining order (“TRO”) immediately releasing her from custody and enjoining the  
17 government from re-arresting her absent the opportunity to contest that arrest at a hearing before  
18 a neutral decision maker. Confronted with substantially identical facts and legal issues, this and  
19 other courts in this circuit have recently granted the exact relief Petitioner seeks.

20 See *J.O.L.R. v Wofford*, 2025 WL 2718631 \* 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*,  
21 2025 WL 2617255 \* 11 (E.D. Cal Sept. 9, 2025), *Garro Pinchi v. Noem*, 2025 WL 1853763, \*4  
22 (N.D. Cal. July 4, 2025), converted to preliminary injunction at \_\_ F. Supp. 3d \_\_, 2025 WL  
23 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, \*10 (E.D. Cal. July  
24 11, 2025) (granting preliminary injunction).

25 To maintain this Court’s jurisdiction, the Court should also prohibit the government from  
26 transferring Ms. Montero-Alvarez out of this District and removing her from the country until  
27 these proceedings have concluded.

## 28 **II. STATEMENT OF FACTS AND CASE**

Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign  
targeting people who are not in status, many of whom have pending applications for asylum or  
other relief. This “coordinated operation” is “aimed at dramatically accelerating deportations” by

1 arresting people at the courthouse, USCIS interviews, or at the ICE office and placing them into  
2 expedited removal. The Trump administration implemented a policy to drastically increase  
3 immigration arrests to a target of at least 3,000 per day. According to White House officials, such  
4 as Stephen Miller, this directive prioritized arrest numbers over individuals' criminal history,  
5 encouraging agents to conduct mass round-ups in public spaces rather than targeted  
6 investigations.

7 As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-  
8 thirds of those deported had no criminal history. This focus on quantity over public safety led to  
9 a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE  
10 appointments, regardless of the status of their legal cases. This has created a climate of fear,  
11 discouraging people from attending their mandatory hearings or ICE appointments.

12 In addition, individuals are now held for extended periods, sometimes days, in temporary  
13 holding cells that are not designed for overnight or prolonged detention, often under inhumane  
14 conditions. Government officials have justified these harsh conditions not as a matter of  
15 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for  
16 detention.

17 Ms. Montero-Alvarez has lived in the United States for over three years. She has many  
18 friends and family members in the United States. At the time of detention, Ms. Montero-Alvarez  
19 was working full time in multiple jobs. Ms. Montero-Alvarez has no criminal history anywhere  
20 in the world. She has established strong connections to the United States.

21 Ms. Montero-Alvarez's arrest and detention have caused and will cause immediate,  
22 tremendous, and ongoing harm, which include health, hygiene, sleep, and nutrition deprivation,  
23 family separation, emotional and economic harm to her family, loss of employment, and  
24 psychological harm. Ms. Montero-Alvarez is not a flight risk, as evidenced by her deep ties to  
25 the community, including her relatives in the US. She is not a danger to the community. She is  
26 a law-abiding, tax paying, and gainfully employed person. Her detention serves no legitimate  
27 purpose.

28 This case has substantial factual and legal support to be granted, resulting in Ms. Montero-  
Alvarez's release from custody, and enjoining DHS from detaining Ms. Montero-Alvarez  
pending a hearing before a neutral adjudicator, to substantiate a material change in circumstances  
indicating that Ms. Montero-Alvarez is either a flight risk or a danger to the community.

1 Intervention from this Court is therefore required to ensure that Ms. Montero-Alvarez is  
 2 released from his current custody based on her unlawful arrest, returned to her home in Antioch,  
 3 California, where ICE can then provide her with a hearing before determining to re-arrest her  
 4 pursuant to the Due Process Clause of the Fifth Amendment.

5 **III. LEGAL STANDARD**

6 Ms. Montero-Alvarez is entitled to a temporary restraining order if she establishes that  
 7 she is “likely to succeed on the merits...likely to suffer irreparable harm in the absence of  
 8 preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the  
 9 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l*  
 10 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary  
 11 injunction and temporary restraining order standards are “substantially identical”). Even if Ms.  
 12 Montero-Alvarez does not show a likelihood of success on the merits, the Court may still grant  
 13 a temporary restraining order if she raises “serious questions” as to the merits of her claims, the  
 14 balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied.  
 15 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more  
 16 detail below, Ms. Montero-Alvarez overwhelmingly satisfies both standards.

17 Furthermore, the requirements for issuing a temporary restraining order without notice  
 18 are met here. See Fed. R. Civ. P. 65(b). Ms. Montero-Alvarez has attempted to secure her release  
 19 from ICE but has received no response. Ms. Montero-Alvarez also set out specific facts  
 20 demonstrating that immediate and irreparable injury, loss, or damage may result before  
 21 respondents can be heard in opposition. See *Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 L  
 22 1853763, at \*4 (N.D. Cal. July 4, 2025); *J.O.L.R. v Wofford*, 2025 WL 2718631 \* 11 (E.D. Cal  
 23 Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL 2617255 \* 11 (E.D. Cal Sept. 9, 2025)(granting  
 24 ex parte temporary restraining order in similar circumstances).

25 **IV. ARGUMENT**

26 **A. Michelle Montero Alvarez Warrants a Temporary Restraining Order**

27 A temporary restraining order should be issued if “immediate and irreparable injury, loss,  
 28 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.  
 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a  
 preliminary injunction hearing is held. See *Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*  
*Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Ms. Montero-

1 Alvarez is likely to remain in unlawful custody in violation of her due process rights without  
2 intervention by this Court. Ms. Montero-Alvarez will continue to suffer irreparable injury if she  
3 continues to be detained without due process.

4 **1. Michelle Montero-Alvarez is likely to succeed on the merits because her  
5 detention violates substantive due process.**

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

14 To comply with substantive due process, the government’s deprivation of an individual’s  
15 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is  
16 “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either (1)  
17 dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; see *Hernandez*, 872 F.3d at 994  
18 (“[T]he government has no legitimate interest in detaining individuals who have been determined  
19 not to be a danger to the community and whose appearance at future immigration proceedings  
20 can be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales  
21 are absent, immigration detention serves no legitimate government purpose and becomes  
22 impermissibly punitive, violating a person’s substantive due process rights. See *Jackson v.*  
23 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the  
24 government’s interests in preventing flight and danger); see also *Mahdawi v. Trump*, No. 2:25-  
25 CV-389, 2025 WL 1243135, at \*11 (D. Vt. Apr. 30, 2025) (ordering release from custody after  
26 finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates either that the  
27 government acted with a punitive purpose or that it lacks any legitimate reason to detain him”).

28 The Supreme Court has recognized that noncitizens may bring as-applied challenges to  
detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33  
(2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing  
and completing deportation proceedings, it could become necessary then to inquire whether the

1 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but  
2 to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision  
3 today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,  
4 constitutional challenges to applications of the statute as we have now read it.”).

5 Ms. Montero-Alvarez is neither a danger nor a flight risk. Therefore, her detention is both  
6 punitive and not justified by a legitimate purpose, violating her substantive due process rights.  
7 Ms. Montero-Alvarez’s ongoing detention is unconstitutional, and substantive due process  
8 principles require her immediate release.

9 **2. Michelle Montero-Alvarez is Likely to Succeed on the Merits of Her Claim  
10 That in This Case the Constitution Requires a Hearing Before a Neutral  
11 Adjudicator Prior to Any Re-Incarceration by ICE.**

12 Ms. Montero-Alvarez is likely to succeed on her claim that, in her particular  
13 circumstances, her current detention is unlawful because the Due Process Clause of the  
14 Constitution prevents Respondents from detaining her without first providing a pre-deprivation  
15 hearing before a neutral adjudicator where the government demonstrates by clear and convincing  
16 evidence that she is a danger to the public or a flight risk.

17 Courts analyze procedural due process claims, such as this one, in two steps: the first asks  
18 whether a protected liberty interest exists under the Due Process Clause, and the second examines  
19 the procedures necessary to ensure that any deprivation of that protected liberty interest accords  
20 with the Constitution. See *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

21 **a. Michelle Montero-Alvarez Has a Protected Liberty Interest**

22 The Due Process Clause protects Ms. Montero-Alvarez’s liberty from immigration  
23 custody: “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.”  
25 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

26 Ms. Montero-Alvarez has an established life in California. Ms. Montero-Alvarez has  
27 lived in the United States for over three years. She resides with her significant other in Antioch,  
28 California. At the time of detention, Ms. Montero-Alvarez worked in multiple jobs. Ms.  
Montero-Alvarez has no criminal history anywhere in the world.

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1                   **b. Michelle Montero Alvarez’s Liberty Interest Mandates Her Release from**  
2                   **Unlawful Custody And A Hearing Before any Re-Arrest.**

3           Ms. Montero-Alvarez asserts that, here, (1) where her detention would be civil; (2) where  
4 she has viable immigration relief; (3) where no circumstances exist that would justify her lawful  
5 detention; and (4) where ICE’s move to arrest as many people as possible under the new  
6 administration’s initiative, due process mandates that she be released from her unlawful custody  
7 and receive notice and a hearing before a neutral adjudicator before any re-arrest or revocation  
8 of her custody release.

9           “Adequate, or due, process depends upon the nature of the interest affected. The more  
10 important the interest and the greater the effect of its impairment, the greater the procedural  
11 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d  
12 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey v. Brewer*, 408 U.S. 471, at 481-82  
13 (1972)). This Court must “balance [Ms. Montero-Alvarez’s] liberty interest against the  
14 [government’s] interest in the efficient administration of” its immigration laws to determine what  
15 process she is owed to ensure that ICE does not unconstitutionally deprive him of her liberty. *Id.*  
16 at 1357. Under the test outlined in *Mathews v. Eldridge*, this Court must consider three factors in  
17 conducting its balancing test: “first, the private interest that will be affected by the official action;  
18 second, the risk of an erroneous deprivation of such interest through the procedures used, and the  
19 probative value, if any, of additional or substitute procedural safeguards; and finally the  
20 government’s interest, including the function involved and the fiscal and administrative burdens  
21 that the additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at  
22 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

23           The Supreme Court “usually has held that the Constitution requires some kind of a  
24 hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.  
25 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies  
26 are “the only remedies the State could be expected to provide” can the post-deprivation process  
27 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one  
28 of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible  
in preventing the kind of deprivation at issue” such that “the State cannot be required  
constitutionally to do the impossible by providing pre-deprivation process,” can the government  
avoid providing pre-deprivation process. *Id.*

1 Because, in this case, the provision of a pre-deprivation hearing is both possible and  
2 valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Ms. Montero-  
3 Alvarez with notice and a hearing prior to any incarceration. See *Morrissey*, 408 U.S. at 481-82;  
4 *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; see also  
5 *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982). Under *Mathews*, “the balance weighs heavily  
6 in favor of [Ms. Montero-Alvarez’s] liberty” and requires a pre-deprivation hearing before a  
neutral adjudicator.

7 **i. Ms. Montero-Alvarez’s Private Interest in Her Liberty is Profound.**

8 What is at stake in this case for Ms. Montero-Alvarez is one of the most profound  
9 individual interests recognized by our legal system: whether ICE may unilaterally detain a non-  
10 citizen and be able to take away her physical freedom, i.e., her “constitutionally protected interest  
11 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)(internal  
12 quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty  
13 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See also  
14 *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention,  
15 or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause  
protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

16 Thus, there is a profound private interest at stake in this case, which must be weighed  
17 heavily when determining what process he is owed under the Constitution. See *Mathews*, 424  
18 U.S. at 334-35.

19 **ii. The Government’s Interest in Incarcerating Michelle Montero-  
20 Alvarez Without a Hearing is Low and the Burden on the  
21 Government to Refrain from Re-Arresting Her Unless and Until She  
is Provided a Hearing is Minimal**

22 The government’s interest in maintaining an unlawful detention without a due process  
23 hearing is low, and when weighed against Michelle Montero-Alvarez’s significant private  
24 interest in her liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping  
25 her in unlawful custody; (2) re-arresting Ms. Montero-Alvarez unless and until the government  
26 demonstrates to a neutral adjudicator by clear and convincing evidence that she is a flight risk or  
27 danger to the community; and (3) removing her from the United States in violation of an agency  
28 order and district court injunction. It becomes abundantly clear that the *Mathews* test favors Ms.

1 Montero-Alvarez when the Court considers that the process she seeks—notice and a bond hearing  
2 before a neutral decision maker—is a standard course of action for the government. Providing  
3 Ms. Montero-Alvarez with a hearing before this Court (or a neutral decision maker) to determine  
4 whether there is clear and convincing evidence that Ms. Montero-Alvarez is a flight risk or danger  
5 to the community would impose only a de minimis burden on the government, because the  
6 government routinely provides this sort of hearing to individuals like Ms. Montero-Alvarez.

7 As immigration detention is civil in nature, it cannot serve a punitive purpose. The  
8 government’s only interest in holding an individual in immigration detention can be to prevent  
9 danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. See  
10 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any  
11 basis for detaining Ms. Montero-Alvarez since she has lived at liberty with her community,  
12 without any criminal or civil traffic infractions and she has attended all court hearings and ICE  
13 check-ins except when she had car problems where she called and returned two days later. The  
14 government’s interest in detaining Ms. Montero-Alvarez currently is extremely low. That ICE  
15 has a new policy to make a minimum number of arrests each day under the new administration  
16 does not constitute a valid reason to detain her.

17 Moreover, the “fiscal and administrative burdens” that her immediate release and a lawful  
18 pre-detention hearing would impose is nonexistent in this case. See *Mathews*, 424 U.S. at 334-  
19 35. Ms. Montero-Alvarez does not seek a unique or expensive form of process, but rather a  
20 routine hearing. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the  
21 public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a  
22 total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. It is only fair to say these costs  
23 have increased in the past 8 years.

24 Alternatively, providing Ms. Montero-Alvarez with a hearing before this Court (or a  
25 neutral decision-maker) regarding release from custody is a routine procedure that the  
26 government provides to those in immigration detention facilities daily. At that hearing, the Court  
27 would have the opportunity to determine whether circumstances justify her arrest and detention.  
28 But there is no justifiable reason to incarcerate Ms. Montero-Alvarez before such a hearing takes  
place.

Releasing Ms. Montero-Alvarez from unlawful custody and enjoining Ms. Montero-  
Alvarez’s arrest until ICE (1) moves for a custody re-determination before an IJ and (2)

1 demonstrates by clear and convincing evidence that Ms. Montero-Alvarez is a flight risk or  
2 danger to the community is far less costly and burdensome for the government than keeping her  
3 detained to a total daily cost of over \$6.5 million. *Hernandez*, 872 F.3d at 996.

4 **iii. Without a Due Process Hearing Prior to Any Arrest, the Risk of an**  
5 **Erroneous Deprivation of Liberty is High, and Process in the Form of**  
6 **a Constitutionally Compliant Hearing Where ICE Carries the Burden**  
7 **Would Decrease That Risk.**

8 Releasing Ms. Montero-Alvarez from unlawful custody and providing Ms. Montero-  
9 Alvarez a pre-deprivation hearing would decrease the risk of her being erroneously deprived of  
10 his liberty. Before Ms. Montero-Alvarez can be lawfully detained, she should have been  
11 provided with a hearing before a neutral adjudicator at which the government is held to show that  
12 there are sufficient circumstances to detain her. Clear and convincing evidence exists to establish  
13 that Ms. Montero-Alvarez is not a danger to the community or a flight risk.

14 The procedure Ms. Montero-Alvarez seeks—a hearing in front of a neutral adjudicator at  
15 which the government must prove by clear and convincing evidence to justify her detention. “A  
16 neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d  
17 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548  
18 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty  
19 under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes  
20 custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.  
21 2011).

22 Due process also requires consideration of alternatives to detention at any custody  
23 redetermination hearing that may occur. The primary purpose of immigration detention is to  
24 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.

25 Detention is not reasonably related to this purpose if there are alternatives to incarceration  
26 that could mitigate the risk of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly,  
27 alternatives to detention must be considered in determining whether Ms. Montero-Alvarez’s  
28 reincarceration is warranted.

As the above-cited authorities show, Ms. Montero-Alvarez is likely to succeed in her  
claim that the current arrest and detention that ICE effected November 21, 2025, are unlawful.  
The Due Process Clause requires notice and a hearing before a neutral decision-maker before any

1 reincarceration by ICE. And, at the very minimum, she clearly raises serious questions regarding  
2 this issue, thus also meriting a TRO. See *Alliance for the Wild Rockies*, 632 F.3d at 1135.

3 **3. Ms. Montero-Alvarez Will Suffer Irreparable Harm Absent**  
4 **Injunctive Relief**

5 Ms. Montero-Alvarez will suffer irreparable harm if she remains detained after being  
6 deprived of her liberty and subjected to unlawful incarceration by immigration authorities  
7 without being provided with the constitutionally adequate process that this motion for a  
8 temporary restraining order seeks. Detainees in ICE custody are held in “prison-like conditions.”  
9 *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained,  
10 “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means  
11 loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514,  
12 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th  
13 Cir. 1984).

14 Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms  
15 imposed on anyone subject to immigration detention,” including “subpar medical and psychiatric  
16 care in ICE detention facilities, the economic burdens imposed on detainees and their families as  
17 a result of detention, and the collateral harms to children of detainees whose parents are  
18 detained.” *Hernandez*, 872 F.3d at 995.

19 The government itself has documented alarmingly poor conditions in ICE detention  
20 centers. See, e.g., DHS, Office of Inspector General (OIG), Summary of Unannounced  
21 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations  
22 of environmental health and safety standards; staffing shortages affecting the level of care  
23 detainees received for suicide watch, and detainees being held in administrative segregation in  
24 unauthorized restraints, without being allowed time outside their cell, and with no documentation  
25 that they were provided health care or three meals a day).

26 Conditions at the California City Detention Facility – where plaintiff is being held - are  
27 so inhumane that the ACLU just this month filed a Class Action lawsuit in this Federal District  
28 detailing the grotesque, inhumane, and substandard conditions of the facility. *Gomez Ruiz v. U.S.*  
*Immigration and Customs Enforcement*, (N.D. Cal. Case 3:25-cv-09757, filed 11/12/25).

As detailed supra, Petitioner contends that her arrest, absent a hearing before a neutral  
adjudicator, violates her due process rights under the Constitution. It is clear that “the deprivation

1 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695  
2 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a  
3 temporary restraining order is necessary to prevent Ms. Montero-Alvarez from suffering  
4 irreparable harm by being subject to unlawful and unjust detention.

5 **4. The Balance of Equities and the Public Interest Favor Granting the**  
6 **Temporary Restraining Order.**

7 The balance of equities and the public interest undoubtedly favor granting this temporary  
8 restraining order. First, the balance of hardships strongly favors Ms. Montero-Alvarez. The  
9 government cannot suffer harm from an injunction that prevents it from engaging in an unlawful  
10 practice. See *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably  
11 assert that it is harmed in any legally cognizable sense by being enjoined from constitutional  
12 violations.”). Therefore, the government cannot allege harm arising from a temporary restraining  
13 order or preliminary injunction ordering it to comply with the Constitution.

14 Further, any burden imposed by requiring the ICE to release Ms. Montero-Alvarez from  
15 unlawful custody and refrain from re-arrest unless and until she is provided with a hearing before  
16 a neutral arbitrator is both de minimis and clearly outweighed by the substantial harm she will  
17 suffer as if she is detained. See *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s  
18 interest lies on the side of affording fair procedures to all persons, even though the expenditure  
19 of governmental funds is required.”).

20 A temporary restraining order is in the public interest. First and most importantly, “it  
21 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements  
22 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*  
23 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d  
24 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government will  
25 effectively be granted permission to detain Ms. Montero-Alvarez in violation of the requirements  
26 of Due Process. “The public interest and the balance of the equities favor ‘prevent[ing] the  
27 violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting  
28 *Melendres*, 695 F.3d at 1002); see also *Hernandez*, 872 F.3d at 996 (“The public interest benefits  
from an injunction that ensures that individuals are not deprived of their liberty and held in  
immigration detention because of bonds established by a likely unconstitutional process.”); cf.  
*Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns

1 are implicated when a constitutional right has been violated, because all citizens have a stake in  
2 upholding the Constitution.”).

3 Therefore, the public interest overwhelmingly favors entering a temporary restraining  
4 order and preliminary injunction.

5 **V. CONCLUSION**

6 For all the above reasons, this Court should find:

7 (1) that Ms. Montero-Alvarez warrants a temporary restraining order and a preliminary  
8 injunction ordering that Respondents Declare that Petitioner’s detention violates the Due Process  
9 Clause of the Fifth Amendment;

10 (2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately  
11 and schedule a bond hearing before an immigration judge;

12 (3) Declare immediately that Defendants are prohibited from moving Petitioner outside  
13 of the jurisdiction of the Eastern District of California and enjoin Defendants from sending her  
14 to any place outside of the United States;

15 (4) Enjoin defendant from re-detaining Petitioner without a pre-deprivation hearing  
16 before an immigration judge where the Government bears the burden of proving that  
17 circumstances have materially changed, rendering Petitioner a danger to the community or a  
18 flight risk;

19 (5) Order Defendants to file a written declaration attesting to full compliance with these  
20 obligations.

21 (6) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, and  
22 on any other basis justified under law; and

23 (7) Grant any further relief this Court deems just and proper.

24 Dated: December 1, 2025

25 Respectfully submitted,

26 /s/ Emilio Parker  
27 Emilio Parker  
28 Attorney for Petitioner  
Michelle Montero-Alvarez

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**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am submitting this verification on behalf of the Petitioner because I am one of  
Petitioner’s attorneys. I have discussed the events described in the Petition with the Petitioner.  
Based on those discussions, I hereby verify that the factual statements made in the attached  
Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 1, 2025, in Oakland, CA.

/s/ Emilio Parker  
Emilio Parker  
Attorney for Michelle  
Montero-Alvarez