

1 Wilson M. Dunlavey (SBN 307719)
2 Celena H. Nelson (SBN 356840)
3 Nicole M. Rubin (SBN 361232)
4 **LIEFF CABRASER HEIMANN & BERNSTEIN, LLP**
5 275 Battery Street, 29th Floor
6 San Francisco, CA 94111-3339
7 Telephone: 415.956.1000
8 Facsimile: 415.956.1008
9 wdunlavey@lchb.com
10 chnelson@lchb.com
11 nrubin@lchb.com

12 *Attorneys for Petitioner*

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**

15 ESTEBAN QUIROGA-CHAPARRO,
16
17 Petitioner,
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19 v.
20
21 WARDEN OF THE GOLDEN STATE
22 ANNEX DETENTION FACILITY, ET AL.,
23
24 Respondents.

25 Case No. 1:25-cv-01731

26 Agency No. 

27 **PETITIONER'S NOTICE OF**
28 **MOTION AND EX PARTE MOTION**
FOR TEMPORARY RESTRAINING
ORDER

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Eastern District of California that Petitioner Esteban Quiroga-Chaparro will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local Rule 65-1.

Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States and Respondents have failed to provide facts to support his continued detention. Accordingly, Petitioner respectfully request that this Court (1) order Petitioner's immediate release from Respondents' custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) order Petitioner's immediate release from Respondents' custody and, within 14 days, order a pre-deprivation bond hearing before the Immigration Court, where Respondents shall bear the burden of proof to show, by clear and convincing evidence, that Petitioner is a danger or a flight risk.

This motion is based on this Notice of Motion and Motion; the accompanying Memorandum of Points and Authorities; the supporting declaration, the papers, evidence, and records on file in this action; and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court. This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1).

Consistent with Civil L.R. 65-1, Petitioner seeks relief at the earliest possible opportunity. Petitioner is filing this motion shortly after Respondents failed to provide facts sufficient to support Petitioner's detention in their December 22, 2025 Answer to the Petition for Writ of Habeas Corpus (ECF No. 8).

Pursuant to Civil L.R. 65-1(a)(5), and as detailed further in the Declaration of Wilson Dunlavey, Counsel for Petitioner emailed a copy of the filed petition to Counsel for Respondents and advised that a Motion for TRO would be forthcoming. Petitioner also emailed Counsel for Respondents a copy of the Memorandum of Points and Authorities shortly before filing it. As of

1 this filing, Respondents have not stipulated to a TRO.

2
3 Date: December 24, 2025

Respectfully submitted,

4
5 By:



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7 Wilson M. Dunlavey(SBN 307719)
Celena H. Nelson (SBN 356840)
Nicole M. Rubin (SBN 361232)
8 **LIEFF CABRASER HEIMANN &**
BERNSTEIN, LLP
9 275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
10 Telephone: 415.956.1000
Facsimile: 415.956.1008
11 wdunlavey@lchb.com
chnelson@lchb.com
12 nrubin@lchb.com

13
14 *Attorneys for Petitioner*

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4 **LIEFF CABRASER HEIMANN & BERNSTEIN, LLP**
5 275 Battery Street, 29th Floor
6 San Francisco, CA 94111-3339
7 Telephone: 415.956.1000
8 Facsimile: 415.956.1008
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10 chnelson@lchb.com
11 nrubin@lchb.com

12 *Attorneys for Petitioner*

13 **UNITED STATES DISTRICT COURT**
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16 Petitioner,

17 v.

18 WARDEN OF THE GOLDEN STATE ANNEX
19 DETENTION FACILITY, ET AL.,

20 Respondents.

Case No. 1:25-cv-01731

Agency No. 

21 **MEMORANDUM OF POINTS AND**
22 **AUTHORITIES IN SUPPORT OF**
23 **PETITIONER'S EX PARTE MOTION**
24 **FOR TEMPORARY RESTRAINING**
25 **ORDER**

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8 U.S.C. § 1226(c)..... 11

1 **INTRODUCTION**

2 This Temporary Restraining Order involves the unlawful re-arrest of Petitioner at his ICE
3 check-in, and the unlawful detention since that unlawful re-arrest. Respondent has presented
4 zero evidence that Petitioner is a flight risk or a danger, and his re-arrest at his ICE check-in
5 demonstrates precisely the opposite. Petitioner has been detained for months without due
6 process and should be released immediately to his husband, an American citizen.
7

8 Petitioner Esteban Quiroga-Chaparro entered the United States in 2023 to seek asylum
9 from persecution in Colombia. He presented himself and was detained by Department of
10 Homeland Security (DHS) officials. Officials issued a Notice and Order of Expedited Removal
11 under § 235(b)(1) of the INA on grounds of inadmissibility under INA § 212(a)(7)(A)(i)(I).
12 Petitioner claimed fear of return, and, shortly thereafter, a USCIS asylum officer made a
13 positive credible fear determination. On May 1, 2023, Petitioner was released on parole with
14 reporting requirements under the Alternatives to Detention program.
15

16 On October 22, 2025, Petitioner went to the ISAP Office at 478 Tehama Street in San
17 Francisco for a routine check-in appointment, as DHS had instructed him to do. Petitioner was
18 then directed to report to the Immigrations and Customs Enforcement Field Office (the “Field
19 Office”) a few blocks away. Petitioner complied. After Petitioner and his husband waited for
20 several hours at the Field Office, Petitioner was abruptly detained without prior warning and
21 transferred to the Golden State Annex in McFarland, California. Petitioner has been in ICE
22 custody ever since. In short, ICE unlawfully re-arrested Petitioner at his ICE check-in.
23

24 The only legitimate interests that civil immigration detention serves are mitigating flight
25 risk and preventing danger to the community. When those interests are absent, the Fifth
26 Amendment’s Due Process Clause squarely prohibits detention. Additionally, by summarily
27 arresting and detaining Petitioner without making any affirmative showing of changed
28 circumstances, the government violated Petitioner’s procedural due process rights. At the very

1 least, he was constitutionally entitled to a hearing before a neutral decisionmaker at which the
2 government should have justified its decision to detain him.

3 Petitioner filed a proposed Order to Show Cause which was signed by Magistrate Judge
4 Allison Claire on December 8, 2025 (ECF No. 4), giving Respondents the opportunity to
5 provide an evidentiary basis for Petitioner’s re-detention. The government’s December 22, 2025
6 Answer (ECF No. 8) failed to submit any individual facts to support Petitioner’s continued
7 detention.
8

9 As a result of his arrest and detention, Petitioner is suffering irreparable and ongoing
10 harm. The unconstitutional deprivation of “physical liberty” “unquestionably constitutes
11 irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
12 “[f]reedom from imprisonment—from government custody, detention, or other forms of
13 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
14 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
15

16 In light of this irreparable harm, and because he is likely to succeed on the merits of his
17 due process claims, Petitioner respectfully requests that this Court issue a temporary restraining
18 order (“TRO”) immediately releasing him from custody and enjoining the government from re-
19 arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision
20 maker. Confronted with similar facts and legal issues, numerous courts in this Circuit have
21 recently granted the exact relief Petitioner seeks. *See Bernal v. Albarran*, No. 25-cv-09772-RS,
22 2025 U.S. Dist. LEXIS 232122, at *19 (N.D. Cal. Nov. 25, 2025); *Garro Pinchi v. Noem*, 2025
23 WL 1853763, *4 (N.D. Cal. July 4, 2025), converted to preliminary injunction at 792 F. Supp.
24 3d 1025 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July
25 11, 2025) (granting preliminary injunction).
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1 **FACTUAL BACKGROUND**

2 Petitioner is an asylum seeker from Colombia. Petitioner was briefly detained by federal
3 agents after entering the United States in 2023. Petitioner’s Habeas Petition (“Pet.”) ¶ 48;
4 Declaration of Wilson Dunlavey (“Dunlavey Decl.”) ¶ 3. Federal officials arrested him and
5 issued a Notice and Order of Expedited Removal under § 235(b)(1) of the INA on grounds of
6 inadmissibility under INA § 212(a)(7)(A)(i)(I). Pet. ¶ 48. Petitioner claimed fear of return and
7 was interviewed by an immigration officer regarding his fear of returning to Colombia. *Id.*
8 Petitioner was then transferred to a detention center in Karnes City, Texas. *Id.* A few days later,
9 on April 20, 2023, Petitioner was interviewed telephonically by a USCIS asylum officer who
10 made a positive credible fear determination. One day later, the supervisory asylum officer
11 approved the determination. *Id.* at ¶ 49.

12
13 After determining that he was not a flight risk or a danger to the community, Petitioner
14 was released on parole with reporting requirements under the Alternatives to Detention
15 program. *Id.* at ¶ 50. Petitioner moved to California, properly informed authorities of the same,
16 and his file was transferred to the San Jose field office. *Id.*

17
18 While living in California, Petitioner met and began dating his now husband, U.S.
19 citizen Jacob Ryan Rojas. *Id.* at ¶ 51. On April 12, 2024, Petitioner married Mr. Rojas in Clark
20 County, Nevada. *Id.* The couple celebrated with 20 of their closest friends and family members.
21 In April 2025, Mr. Rojas submitted the Spousal I-130 package. *Id.* at ¶ 52. In July 2025, an
22 immigration judge in San Francisco noticed a Master Hearing for Petitioner’s case set for July
23 17, 2026. *Id.*

24
25 On April 9, 2024, Petitioner filed a defensive asylum application (Form I-589). *Id.* at ¶ 53.
26 Shortly thereafter, Petitioner’s Individual Service Plan was updated with San Francisco field
27 office periodic visits and reporting via SmartLINK. *Id.* Petitioner did not miss any of his
28 scheduled in-person check-ins at the ISAP Office located at 478 Tehama Street in San Francisco.

1 He checked-in at the ISAP Office every 48 weeks as instructed and made a good faith effort to
2 comply with all supervision terms. *Id.* at ¶ 54. Petitioner also did not commit any crimes. *Id.* at ¶
3 61; Dunlavey Decl. ¶ 6.

4 On October 22, 2025, Petitioner went to the ICE facility in San Francisco for a routine
5 ICE check-in. Without prior notice, ICE suddenly arrested him at that check-in. Pet. ¶ 55;
6 Dunlavey Decl. ¶ 5.

7 Nothing has transpired since Petitioner's original release that makes him a flight risk or
8 danger. His detention is thus not authorized under the Due Process Clause.

9 Petitioner suffers serious and ongoing harm every moment he remains in detention.

10 ARGUMENT

11 To warrant a TRO, Petitioner must show (1) that he is "likely to succeed on the merits,"
12 (2) that he is "likely to suffer irreparable harm in the absence of preliminary relief," (3) that "the
13 balance of equities tips in [their] favor," and (4) that "an injunction is in the public interest." *All.*
14 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat.*
15 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); see *Stuhlberg Int'l Sales Co. v. John D. Brush &*
16 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary
17 restraining order and a preliminary injunction is substantially the same). Even if Petitioner raises
18 only "serious questions" as to the merits of his claims, the court can grant relief if the balance of
19 hardships tips "sharply" in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. All factors
20 here weigh decisively in Petitioner's favor.

21 I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

22 A. ICE's indefinite detention of Petitioner violates Petitioner's substantive due 23 process because he is not a flight risk or a danger to the community.

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

9 To comply with substantive due process, the government’s deprivation of an individual’s
10 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is
11 “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
12 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
13 (“[T]he government has no legitimate interest in detaining individuals who have been determined
14 not to be a danger to the community and whose appearance at future immigration proceedings can
15 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
16 absent, immigration detention serves no legitimate government purpose and becomes
17 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*
18 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
19 government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, 781
20 F.Supp.3d 214, 232 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner
21 may “succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted
22 with a punitive purpose *or* that it lacks any legitimate reason to detain him”).
23
24

25 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
26 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
27 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
28 pursuing and completing deportation proceedings, it could become necessary then to inquire

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

5 Petitioner is not a danger or a flight risk. Therefore, his detention is both punitive and not
6 justified by a legitimate purpose, violating his substantive due process rights.

7 When Respondents chose to release Petitioner from custody, that decision represented
8 their finding that he was neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp.
9 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th
10 Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a
11 danger to the community or a flight risk.”).

12 Once a noncitizen is released from custody, federal agents are prohibited from re-arresting
13 them without “evidence of materially changed circumstances — namely, evidence that the
14 noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of
15 removal.” *Saravia v. Sessions*, 280 F. Supp. 3d at 1176; *Panosyan v. Mayorkas*, 854 F. App’x
16 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances ... ICE cannot redetain
17 Panosyan.”); *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *11 (N.D.
18 Cal. Sept. 16, 2025). No evidence has been provided here and certainly no evidence of a flight
19 risk or a danger.
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23 The mere allegation of changed circumstances by ICE alone is not enough to justify re-
24 arrest, absent urgent concerns. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D.
25 Cal. 2025); *see also Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB (HC), 2025 WL
26 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (concluding that, “given the absence of evidence of
27 urgent concerns . . . a pre-deprivation hearing [was] required to satisfy due process,” and
28

1 collecting cases). Numerous decisions reach this conclusion.¹

2 For example, a court recently analyzed Respondents' arguments for the re-detention of a
3 60-year-old grandmother of seven who was accused of "minor, technical violations" of her
4 release on own recognizance. *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS
5 232122, at *19 (N.D. Cal. Nov. 25, 2025). The court found "detention is permitted under section
6 1226(a) only if [petitioner] is dangerous or a flight risk," and that Respondents had alleged only
7 "minor, technical violations" of her release conditions, rather than suggesting that she was a
8 danger or flight risk. *Id.* The court granted injunctive relief, concluding that "Respondents have
9 not come close to showing that [petitioner is a danger or flight risk], and in fact, have hardly even
10 tried." *Id.* Courts thus analyze the sufficiency of the evidence Respondents present to determine
11 whether the re-arrest was pretextual.

12
13 Here, Petitioner is not a danger. He has no criminal history or any intervening criminal
14 arrests since his release. As to flight risk, the question is whether custody is reasonably necessary
15 to secure a person's appearance at immigration court hearings and related check-ins. *See*
16 *Hernandez*, 872 F.3d at 990-91. Petitioner has made a good faith effort to comply with all the
17 terms of his release. Any concerns about flight risk would be mitigated by the fact that Petitioner
18 was arrested *while attending his ICE check-in*. Although Respondents have not stated their
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21 ¹ *See Jocop v. Albarran*, No. 25-cv-09059-JD, 2025 U.S. Dist. LEXIS 209368, at *5-6 (N.D. Cal. Oct. 23,
22 2025); *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *43 (N.D. Cal. Sept. 16,
23 2025); *Leandro v. Albarran*, No. 3:25-cv-10042, 2025 U.S. Dist. LEXIS 228978, at *8-9 (N.D. Cal. Nov.
24 20, 2025); *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122 at *21 (N.D. Cal.
25 Nov. 25, 2025); *Andundia-Carillo v. Albarran*, No. 3:25-cv-10380, 2025 U.S. Dist. LEXIS 167975, at *8
26 (N.D. Cal. Dec. 3, 2025); *Paternina v. Albarran*, No. 4:25-cv-10378-YGR, 2025 U.S. Dist. LEXIS
27 167976, at *8 (N.D. Cal. Dec. 3, 2025); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S.
28 Dist. LEXIS 202706, at *15-16 (E.D. Cal., Oct. 14, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-
EPG, 2025 U.S. Dist. LEXIS 205300, at *12 (E.D. Cal., Oct. 17, 2025); *Alvarenga Matute v. Wofford*, No.
1:25-CV-01206-KES-SKO (HC), 2025 WL 2996577, at *19 (E.D. Cal. Oct. 24, 2025); *F.M.V. v. Wofford*,
No. 1:25-cv-01381-KES-SAB, 2025 U.S. Dist. LEXIS 217645, at *17-18 (E.D. Cal. Nov. 4, 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 *20-21
(E.D. Cal. Oct. 27, 2025); *Sharan S. v. Chestnut*, No. 1:25-cv-01427-KES-SKO, 2025 U.S. Dist. LEXIS
222923, at *29 (E.D. Cal. Nov. 12, 2025); *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK, 2025 U.S.
Dist. LEXIS 224966, at *14 (E.D. Cal., Nov. 14, 2025).

1 reason for the re-arrest, any allegation that Petitioner missed an ICE check-in or otherwise
2 violated a “minor, technical” term of his release would be insufficient justify his re-detention. *See*
3 *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *19.

4 Petitioner offered Respondents an opportunity to state the reason for his re-arrest by
5 moving for an Order to Show Cause as opposed to a Temporary Restraining Order in the first
6 instance. The government’s Answer (ECF No. 8) provides no evidence at all, and certainly no
7 facts to support Petitioner’s re-arrest.

8
9 Moreover, Petitioner has a viable path toward immigration relief and a pathway to lawful
10 permanent residence through both his asylum application and Mr. Rojas’s Spousal I-130
11 application package, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and*
12 *Customs Enf’t*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a
13 legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to
14 remain in the United States).

15
16 In sum, Petitioner’s actions since Respondents first released him confirm that he is neither
17 a danger nor flight risk. Indeed, his ongoing compliance and community ties compel the
18 conclusion that he is even *less* of a danger or flight risk than when he was originally released in
19 2023. Accordingly, Petitioner’s ongoing detention is unconstitutional, and substantive due
20 process principles require his immediate release.

21
22 **B. The government violated procedural due process by depriving Petitioner of the
opportunity to contest his arrest and detention before a neutral decisionmaker.**

23 Noncitizens living in the United States like Petitioner have a protected liberty interest in
24 their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court
25 “usually has held that the Constitution requires some kind of a hearing *before* the State deprives
26 a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
27 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671, 683
28

1 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention
2 after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*,
3 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408
4 U.S. 471, 482 (1972) (same, in parole context).

5 Accordingly, the Supreme Court has repeatedly held that individuals released from
6 custody on bond, parole, or other forms of conditional release have a protected interest in their
7 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
8 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
9 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
10 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
11 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
12 963, 970 (N.D. Cal. 2019). Petitioner thus has a protected liberty interest in his freedom from
13 physical custody.
14

15
16 Once a petitioner has established a protected liberty interest, as Petitioner has done here,
17 courts in this Circuit apply the *Mathews* test to determine what procedural protections are due.
18 *See Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424
19 U.S. 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the
20 risk of erroneous deprivation and probable value of procedural safeguards; and (3) the
21 government’s interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioner
22 and prohibiting his re-detention without a custody hearing at which the government bears the
23 burden of proof.
24

25 *First*, the private interest affected in this case is profound. When considering this factor,
26 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
27 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of
28 deprivation here is high. Petitioner has been completely deprived of his physical liberty.

1 Petitioner’s detention has ripped from him the “free[dom] to be with family and friends and to
2 form the . . . enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Cutting someone
3 off from the “core values of unqualified liberty” creates a “grievous loss.” *Id.* Moreover,
4 because Petitioner remains in *civil detention*, “h[is] liberty interest is arguably greater than the
5 interest of the parolees in *Morrissey*.” *See Ortega*, 415 F. Supp. 3d at 970. As someone in civil
6 detention, therefore, “it stands to reason that [Petitioner] is entitled to protections at least as
7 great as those afforded to a[n] . . . individual . . . accused but not convicted of a crime.” *See*
8 *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

10 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
11 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
12 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*,
13 No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v.*
14 *Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents
15 grabbed Petitioner by surprise as he appeared for his routine ICE check-in, detaining him with
16 no notice and no opportunity to contest his re-detention before a neutral arbiter. In such
17 circumstances, when Respondents have provided *no* procedural safeguards, “the probable value
18 of additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at
19 *5. This is especially true here, where there is no material change in Petitioner’s circumstances
20 suggesting that Petitioner now poses a flight risk or danger to the community. His re-detention
21 appears to be motivated instead by the government’s new and implausible interpretation of 8
22 U.S.C. § 1225(b)(2). *See Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 U.S. Dist.
23 LEXIS 179594, at *20-32 (Sept. 12, 2025). This does not constitute a lawful justification to re-
24 detain a person who does not pose a flight risk or danger to the community.

25
26
27 Because the private interest in freedom from immigration detention is substantial, due
28 process also requires that in cases like this one, the government bears the burden of proving “by

1 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community.”
2 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775,
3 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing
4 evidence in court-ordered bond hearing); *Doe v. Becerra*, 787 F.Supp.3d 1083, 1096 (E.D. Cal.
5 Mar. 3, 2025) (ordering pre-deprivation bond hearing in which government bears burden by
6 clear and convincing evidence).

7
8 *Third*, the government’s interest in detaining Petitioner without first providing notice
9 and submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
10 hearings, which impose a “minimal” cost to the government. *See Doe*, 787 F.Supp.3d at 1094;
11 *A.E.*, 2025 WL 1424382, at *5. Petitioner has made a good faith effort to comply with all
12 release requirements; he was arrested *while attending his ICE check-in*. There is no reason to
13 believe that, between the date of his release and custody hearing, his compliance will change.
14 Indeed, courts regularly hold that the government’s interest in re-detention without a custody
15 hearing is low when the petitioner “has long complied with his reporting requirements.” *Diaz v.*
16 *Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-4 (N.D. Cal. June 14, 2025) (granting
17 TRO prohibiting re-detention of noncitizen without a pre-deprivation bond hearing); *Jorge M. F.*
18 *v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3-4 (N.D. Cal. Mar. 1, 2021)
19 (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition ordering the same); *see also*
20 *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-5 (S.D.N.Y. June 18,
21 2025) (granting habeas petition and immediately releasing petitioner who had been detained
22 without process, who had “voluntarily attended his scheduled immigration court proceedings”
23 and “established ties” through his work and volunteering with the church).

24
25
26 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens
27 without a pre-deprivation hearing in which the government bears the burden of proof violates
28 due process, and grant the emergency relief Petitioner seeks here. *See Garro Pinchi v. Noem*,

1 792 F. Supp. 3d 1025, 1038 (N.D. Cal. 2025) (converting TRO requiring release of asylum seeker
2 arrested at her immigration court hearing into preliminary injunction prohibiting the government
3 from re-detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D.
4 Cal. July 11, 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8
5 (granting TRO over one month after petitioner’s initial detention); *see also, e.g., Diaz*, 2025 WL
6 1676854, at *3-*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal.
7 June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-CV-02508-
8 TSH, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-
9 PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

11 In short, Respondents violated Petitioner’s due process rights when they detained him
12 without notice and without a custody hearing before a neutral arbiter. Here, only an order
13 releasing Petitioner and enjoining re-detention absent a custody hearing where the government
14 bears the burden of proof would return the parties to the “last uncontested status which preceded
15 the pending controversy.” *Doe v. Noem*, 778 F. Supp. 3d 1151, 1166 (W.D. Wash. Apr. 17,
16 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see*
17 *also Valdez*, 2025 WL 1707737, at *4-*5 (ordering petitioner’s immediate release as remedy for
18 procedural due process violation).

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

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

28 Without a temporary restraining order, Petitioner will suffer immense irreparable injury.

1 Indeed, he faces such injury every day he remains in detention in violation of his Fifth
2 Amendment rights. “It is well established that the deprivation of constitutional rights
3 ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing
4 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a
5 constitutional right is involved, most courts hold that no further showing of irreparable injury is
6 necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation
7 marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable
8 harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by
9 virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate
10 period of time”); *see also, e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018)
11 (recognizing that “[a]ny amount of actual jail time is significant, and has exceptionally severe
12 consequences for the incarcerated individual” (cleaned up)).
13
14

15 **III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH**
16 **STRONGLY IN PETITIONER’S FAVOR.**

17 When the government is the party opposing the request for emergency relief, the balance
18 of the equities and the public interest merge. *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991
19 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance
20 of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of
21 ongoing constitutional violations and continued additional suffering if the TRO is not granted.
22 *See* Section II, *supra*; *Hernandez*, 872 F.3d at 996 (when “[f]aced with ... preventable human
23 suffering, ... the balance of hardships tips decidedly in plaintiffs’ favor”) (internal citation
24 omitted).
25

26 The public interest likewise weighs strongly in Petitioner’s favor. As another California
27 district court recently concluded, “[t]he public has a strong interest in upholding procedural
28 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

7 **IV. NO SECURITY IS NECESSARY HERE.**

8 No security is necessary here. Courts “may dispense with the filing of a bond when,” as
9 here, “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”
10 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
11 requirement in cases raising constitutional claims, because “to require a bond would have a
12 negative impact on plaintiff’s constitutional rights, as well as the constitutional rights of other
13 members of the public.” *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
14 Cal. 1996). Finally, Petitioner’s showing of a high likelihood of success on the merits supports
15 the court’s waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v.*
16 *Tahoe Reg’l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir.
17 1985).
18

19
20 **V. CONCLUSION.**

21 For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to
22 restore the *status quo ante* that (1) immediately releases him from Respondents’ custody and
23 enjoins Respondents from re-detaining him absent further order of this Court, or, (2) in the
24 alternative, immediately releases him from Respondents’ custody and enjoins Respondents from
25 re-detaining him unless they demonstrate at a pre-deprivation bond hearing, by clear and
26 convincing evidence, that Petitioner is a flight risk or danger to the community such that his
27 physical custody is required.
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Date: December 24, 2025

Respectfully submitted,

By: 

Wilson M. Dunlavey (SBN 307719)
Celena H. Nelson (SBN 356840)
Nicole M. Rubin (SBN 361232)
**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**
275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008
wdunlavey@lchb.com
chnelson@lchb.com
nrubin@lchb.com

Attorneys for Petitioner