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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**

11 Karina Alejandra GARCIA MARIAGUA,
12
13 **Petitioner,**

14 v.

15 Christopher CHESTNUT, Warden, California
City Detention Facility; Sergio ALBARRAN,
Acting Field Office Director of the San
16 Francisco Immigration and Customs
Enforcement Office; Todd LYONS, Acting
17 Director of United States Immigration and
Customs Enforcement; Kristi NOEM, Secretary
18 of the United States Department of Homeland
Security, Pamela BONDI, Attorney General of
19 the United States, acting in their official
capacities,

20 **Respondents.**
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Case No. 1:25-CV-01744-DJC-CKD

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

1 NOTICE OF MOTION AND MOTION

2 PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court
3 for the Eastern District of California, that Petitioner Karina Alejandra Garcia Mariagua will and
4 hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure
5 65(b) and Civil Local Rule 65. Because Petitioner's detention violates the Due Process Clause of
6 the Fifth Amendment to the United States, Petitioner respectfully requests that this Court (1) order
7 Petitioner's immediate release from Respondents' custody pending these proceedings, without
8 requiring bond or electronic monitoring, or, in the alternative, (2) order Petitioner's immediate
9 release from Respondents' custody and prohibit Petitioner's re-detention without a pre-
10 deprivation bond hearing before a neutral adjudicator, where Respondents shall bear the burden
11 of proof to show, by clear and convincing evidence, that Petitioner is a danger or a flight risk. To
12 preserve this Court's jurisdiction, Petitioner further seeks an order (3) enjoining Respondents
13 from transferring Petitioner out of this District or deporting her during the pendency of the
14 underlying proceedings.

15 This motion is based on this Notice of Motion and Motion, the accompanying
16 Memorandum of Points and Authorities, the Declaration of Sarah Gavigan In Support of Petition
17 for Writ of Habeas Corpus, *Ex Parte* Motion for Temporary Restraining Order (ECF No. 3), and
18 the Proposed Order; the papers, evidence, and records on file in this action; and any other written
19 or oral evidence or argument as may be presented at or before the time this motion is heard by the
20 Court. This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1).

21 Consistent with Civil L.R. 65-1, Petitioner seeks relief at the earliest possible opportunity.
22 Petitioner is filing this motion the same day as she filed her Petition for Writ of Habeas Corpus.

23 Pursuant to Civil L.R. 65-1(a)(5), and as detailed further in the supporting Declaration of
24 Sarah Gavigan, Counsel for Petitioner provided Counsel for Respondents with notice of this
25 Motion and advised Respondents of the emergency reasons requiring Petitioner to seek an *ex*
26 *parte* application for a temporary restraining order. Counsel for Petitioner and Counsel for
27 Respondents communicated by email regarding the habeas petition, and Counsel for Petitioner
28 emailed a copy of the filed petition to Counsel for Respondents. Counsel for Petitioner advised

1 Counsel for Respondents that a Motion for TRO would be forthcoming. Counsel for Petitioner
2 will email Counsel for Respondents a copy of the Memorandum of Points and Authorities
3 immediately after filing it. As of this filing, Respondents have not stipulated to a TRO.

4
5 Date: December 5, 2025

Respectfully Submitted,

6 /s/ Sarah Gavigan
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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 Karina Alejandra GARCIA MARIAGUA,

12 Petitioner,

13 v.

14 Christopher CHESTNUT, Warden, California City
15 Detention Facility; Sergio ALBARRAN, Acting Field
16 Office Director of the San Francisco Immigration and
17 Customs Enforcement Office; Todd LYONS, Acting
18 Director of United States Immigration and Customs
19 Enforcement; Kristi NOEM, Secretary of the United
20 States Department of Homeland Security, Pamela
21 BONDI, Attorney General of the United States,
22 acting in their official capacities,

23 Respondents.

Case No. 1:25-CV-1744-DJC-CKD

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

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INTRODUCTION

In the interest of expedition and in light of the ongoing irreparable harm to Petitioner, Petitioner hereby incorporates and respectfully refers the Court to her verified Petition-Complaint, and the declaration in support of the habeas petition (ECF 3), for a statement of the facts giving rise to this motion. In sum, this case presents facts materially similar to recent cases in which courts have provided swift interim relief: ICE detained Petitioner Karina Alejandra Garcia Mariagua (“Ms. Garcia Mariagua”) not pursuant to any change in circumstances to justify detention based on flight risk or danger, but rather pursuant to a new, unlawful policy of detaining migrants in order to meet arrest quotas, stripping them of their rights and pressuring them to abandon their claims for relief.

Her detention violates Ms. Garcia Mariagua’s due process rights and causes her irreparable, ongoing harm. The unconstitutional deprivation of “physical liberty” “unquestionably constitutes irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 USS. 678, 690 (2001). Ms. Garcia Mariagua thus respectfully requests that this Court issue a temporary restraining order (1) prohibiting the government from transferring or removing her pending these proceedings; (2) immediate release without any intrusive electronic monitoring; and (3) enjoining the government from re-arresting her absent the opportunity to contest that arrest at a hearing before a neutral decision maker.

ARGUMENT

To warrant a TRO, a movant must show (1) they are “likely to succeed on the merits,” (2) they are “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the balance of equities tips in [their] favor,” and that (4) “an injunction is in the public interest.” *All. for the*

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

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

10 **A. Petitioner’s detention violates substantive due process because she is neither a**
11 **flight risk nor a danger to the community.**

12 The Due Process Clause applies to “all ‘persons’ within the United States, including
13 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*,
14 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary
15 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of
16 power without any reasonable justification in the service of a legitimate government objective,”
17 *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from
18 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
19 that Clause protects.” *Zadvydas*, 533 U.S. at 690.

21 To comply with substantive due process, the government’s deprivation of an individual’s
22 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil,
23 not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
24 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; see *Hernandez*, 872 F.3d at 994
25 (“[T]he government has no legitimate interest in detaining individuals who have been determined
26 not to be a danger to the community and whose appearance at future immigration proceedings can
27 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
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1 absent, immigration detention serves no legitimate government purpose and becomes
2 impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*,
3 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests
4 in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL
5 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may
6 "succeed on her Fifth Amendment claim if he demonstrates *either* that the government acted with
7 a punitive purpose *or* that it lacks any legitimate reason to detain him").
8

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

18 Ms. Garcia Mariagua, who upon information and belief has no criminal record and who is
19 diligently pursuing her immigration case, is neither a danger nor a flight risk. Therefore, her
20 detention is both punitive and not justified by a legitimate purpose, violating her substantive due
21 process rights. Indeed, Respondents chose to release Ms. Garcia Mariagua from custody in 2024,
22 necessarily indicating that they determined she was neither dangerous nor a flight risk. *See*,
23 Declaration of Sarah Gavigan In Support of Petition for Writ of Habeas Corpus, *Ex Parte* Motion
24 for Temporary Restraining Order, ECF 3, (Gavigan Declaration) Ex. A, Notice to Appear, Gavigan
25 Declaration Ex. B, Order of Release on Recognizance. *See Saravia v. Sessions*, 280 F. Supp. 3d
26 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
27 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to
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1 the community or a flight risk.”). Nothing has transpired since to disturb that finding.

2 *First*, because Ms. Garcia Mariagua has had no known criminal history, with no intervening
3 criminal history or arrests since her release, there is no credible argument that she is a danger to the
4 community.

5 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
6 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
7 F.3d at 990-91. There is no basis to argue that Ms. Garcia Mariagua, who was arrested by
8 Respondents *while appearing for an ICE appointment*, is a flight risk. Moreover, Ms. Garcia
9 Mariagua has been pursuing an asylum application, further mitigating any risk of flight. *See*,
10 Gavigan Declaration Ex. C, stamped biometrics appointment notice, Gavigan Declaration Ex. D,
11 Employment Authorization Document. *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F.
12 Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight
13 risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). At
14 the time of her arrest, Ms. Garcia Mariagua had filed an application for asylum. She is employed
15 and attends a local church. She also believes she is pregnant and lives with her partner in San
16 Francisco where they hope to raise their family.

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19 In sum, Ms. Garcia Mariagua’s actions since Respondents first released her confirm that
20 she is neither a danger nor a flight risk. Her ongoing compliance and community ties compel the
21 conclusion that she is even *less* of a danger or flight risk than when she was originally released.
22 Accordingly, Ms. Garcia Mariagua’s ongoing detention is unconstitutional, and substantive due
23 process principles require her immediate release.

24
25 **B. The government violated procedural due process by depriving Petitioner of the**
26 **opportunity to contest her arrest and detention before a neutral decision-maker.**

27 Noncitizens living in the United States like Ms. Garcia Mariagua have a protected liberty
28 interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme

1 Court “usually has held that the Constitution requires some kind of a hearing *before* the State
2 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is
3 so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671,
4 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention
5 after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*,
6 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S.
7 471, 482 (1972) (same, in parole context).

9 Accordingly, the Supreme Court has repeatedly held that individuals released from
10 custody on bond, parole, or other forms of conditional release have a protected interest in their
11 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
12 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
13 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
14 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
15 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
16 963, 970 (N.D. Cal. 2019). Ms. Garcia Mariagua thus has a protected liberty interest in her
17 freedom from physical custody.

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

28 *First*, the private interest affected in this case is profound. When considering this factor,

1 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
2 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
3 here is high. Ms. Garcia Mariagua, who on information and belief has lived a law-abiding life
4 since DHS decided to release her, faces prolonged detention, denying her the “free[dom] to be
5 with family and friends and to form the . . . enduring attachments of normal life.” *Morrissey*, 408
6 U.S. at 482. Cutting someone off from the “core values of unqualified liberty”—including her
7 ability to work, attend church, and enjoy the peace and safety she could not find in Venezuela—
8 creates a “grievous loss.” *Id.* Moreover, because Ms. Garcia Mariagua faces *civil detention*, “[her]
9 liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” *See Ortega*, 415
10 F. Supp. 3d at 970. As someone in civil detention, therefore, “it stands to reason that [Petitioner]
11 is entitled to protections at least as great as those afforded to a[n] . . . individual . . . accused but
12 not convicted of a crime.” *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

15 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
16 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
17 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.
18 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*,
19 No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents detained
20 Ms. Garcia Mariagua at an ICE appointment, with no notice and no opportunity to contest her re-
21 detention before a neutral arbiter. In such circumstances, when Respondents have provided *no*
22 procedural safeguards, “the probable value of additional procedural safeguards, *i.e.*, a bond
23 hearing, is high.” *A.E.*, 2025 WL 1424382, at *5. This is especially true here, where on informaton
24 and belief there is no change in Ms. Garcia Mariagua’s circumstances suggesting that she now
25 poses a flight risk or danger to the community. Her re-detention instead appears to be motivated
26 instead by high arrest quotas and the will to secure the swift removal of asylum seekers. *See Pet.*
27 *for Writ of Habeas Corpus* ¶¶ 33-35. Neither constitutes a lawful justification to re-detain a person
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1 who does not pose a flight risk or a danger to the community. Her arrest fits with the recent trend
2 of ICE regularly arresting individuals at their check-in appointments, often on thinly veiled
3 pretexts, despite having no demonstrable flight risk or danger.¹

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

12
13 *Third*, the government’s interest in detaining Ms. Garcia Mariagua without first providing
14 notice and submitting to a custody hearing is minimal. Immigration courts routinely conduct
15 custody hearings, which impose a “minimal” cost to the government. See *Doe*, 2025 WL 691664,
16 at *6; *A.E.*, 2025 WL 1424382, at *5. On information and belief, Ms. Garcia Mariagua has a
17 record of compliance, and there is no reason to believe that will change between the date of her
18 release and her custody hearing. Indeed, courts regularly hold that the government’s interest in
19 re-detention without a custody hearing is low when the petitioner “has long complied with her
20 reporting requirements.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D.
21 Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-
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25 ¹ Julia Ainsley, Laura Strickler and Didi Martinez, *ICE arrests record number of immigrants in*
26 *single day, including hundreds at scheduled appointments*, NBC News, 4 June 2025,
27 [https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-](https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817)
28 [single-day-rcna210817](https://www.nbcnews.com/politics/national-security/ice-arrests-record-number-immigrants-single-day-rcna210817); Elize Manoukian and Katie DeBenedetti, *ICE Arrests 15 People in*
San Francisco, Including Children, Pelosi Says, KQED, 5 June 2025,
[https://www.kqed.org/news/12042887/ice-arrests-15-people-in-san-francisco-including-a-](https://www.kqed.org/news/12042887/ice-arrests-15-people-in-san-francisco-including-a-child)
[child](https://www.kqed.org/news/12042887/ice-arrests-15-people-in-san-francisco-including-a-child); Valerie Gonzalez, Cedar Attanasio, and Sophia Tareen, *Once-routine immigration*
check-ins become high-stakes calculations as some are detained, Associated Press, 14 March
2025, <https://whyy.org/articles/immigration-check-ins-calculation-risk-detainments-ice/>

1 deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561,
2 at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition
3 ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-
4 *5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing petitioner who
5 had been detained without process, who had “voluntarily attended his scheduled immigration
6 court proceedings” and “established ties” through his work and volunteering with the church).
7 Notably, courts have also granted release in habeas cases where ICE officials have alleged non-
8 compliance with reporting requirements.
9

10 In similar cases, courts in this Circuit have regularly held that re-detaining noncitizens
11 without a pre-deprivation hearing in which the government bears the burden of proof violates due
12 process, and have granted the emergency relief that Ms. Garcia Mariagua seeks here. That
13 includes cases where ICE has alleged compliance violations. *See Bernal v. Albarran*, No. 25-CV-
14 09772-RS, 2025 WL 3281422, (N.D. Cal. Nov. 25, 2025) (granting preliminary injunction,
15 compliance disputed, detained at check-in); *Perez v. Albarran*, No. 1:25-CV-01540-DAD-CSK
16 (HC), 2025 WL 3187578 (E.D. Cal. Nov. 14, 2025) (granting temporary restraining order,
17 detained at check-in); *O.P.A.M. v. Wofford*, No. 1:25-CV-01423 JLT SAB, 2025 WL 3120552
18 (E.D. Cal. Nov. 7, 2025) (granting preliminary injunction); *F.M.V. v. Wofford*, No. 1:25-CV-
19 01381-KES-SAB (HC), 2025 WL 3083934 (E.D. Cal. Nov. 4, 2025) (granting preliminary
20 injunction, compliance disputed); *J.C.L.A. v. Wofford*, No. 1:25-CV-01310-KES-EPG (HC), 2025
21 WL 2959250 (E.D. Cal. Oct. 17, 2025) (granting preliminary injunction, arrested at ICE
22 appointment, compliance violations alleged); *Pablo Sequen v. Kaiser*, No. 25-CV-06487-PCP,
23 2025 WL 2650637 (N.D. Cal. Sept. 16, 2025) (granting preliminary injunction); *Garro Pinchi v.*
24 *Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. July 24, 2025) (granting preliminary injunction); *Singh*
25 *v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction);
26 *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 20,
27
28

1 2025) (granting preliminary injunction); *Aviles-Mena v. Kaiser*, No. 25-CV-06783-RFL, 2025
2 WL 2322788 (N.D. Cal. Sept. 5, 2025) (granting preliminary injunction); *Alva v. Kaiser*, No. 25-
3 CV-06676-RFL, 2025 WL 2419262, (N.D. Cal. Aug. 21, 2025) (granting preliminary injunction);
4 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

5 In short, Respondents violated Ms. Garcia Mariagua’s due process rights when they
6 detained her without notice and without a custody hearing before a neutral arbiter. Here, only an
7 order releasing Ms. Garcia Mariagua and enjoining re-detention—unless Respondents provide her
8 with a custody hearing where the government bears the burden of proof—would return the parties
9 to the “last uncontested status which preceded the pending controversy.” *Doe v. Noem*, ___ F.
10 Supp. 3d ___, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v.*
11 *Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez*, 2025 WL 1707737, at
12 *4-*5 (ordering petitioner’s immediate release as remedy for procedural due process violation).
13
14

15 * * * * *

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

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

24 Without a temporary restraining order, Ms. Garcia Mariagua will suffer irreparable injury.
25 Indeed, she will face such injury every day that she remains in detention, in violation of her Fifth
26 Amendment rights. “It is well established that the deprivation of constitutional rights
27 ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres*
28 *v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional

1 right is involved, most courts hold that no further showing of irreparable injury is necessary.”
2 *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks
3 omitted). More, the unlawful deprivation of physical liberty is the quintessential irreparable harm.
4 *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by virtue of the
5 fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time”);
6 *see also, e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny
7 amount of actual jail time is significant, and has exceptionally severe consequences for the
8 incarcerated individual” (cleaned up)).

9
10 In addition to her constitutional injury, Ms. Garcia Mariagua will suffer other irreparable
11 harms from continued detention, including loss of income and livelihood interfering with her
12 ability to access counsel and present her asylum claim; inability to attend her church; and
13 separation from her community. Continued detention will pose a compounding psychological
14 burden, in addition to the physical hardships she has to endure from prison conditions especially
15 considering she believes she is pregnant.
16

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

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

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

1 procedural protections against unlawful detention, and the Ninth Circuit has recognized that the
2 costs to the public of immigration detention are staggering.” *Diaz*, 2025 WL 1676854, at *3 (citing
3 *Jorge M. F.*, 2021 WL 783561, at *3). More fundamentally, “[i]t is always in the public interest
4 to prevent the violation of a party’s constitutional rights.” *Index Newspapers LLC v. U.S.*
5 *Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf’t* ,
6 953 F.3d 1134, 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).
7

8 SECURITY

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

19 CONCLUSION

20 For the foregoing reasons, Ms. Garcia Mariagua respectfully requests the Court grant a
21 TRO to restore the *status quo ante* that (1) immediately releases her from Respondents’ custody
22 and enjoins Respondents from re-detaining her absent further order of this Court; (2) in the
23 alternative, immediately releases her from Respondents’ custody and enjoins Respondents from
24 re-detaining her unless they demonstrate at a pre-deprivation bond hearing, by clear and
25 convincing evidence, that Ms. Garcia Mariagua is a flight risk or danger to the community such
26 that her physical custody is required; and (3) prohibits the government from transferring her out
27
28

1 of this District and/or removing her from the country until these habeas proceedings have
2 concluded.

3 //

4 //

5 //

6
7 Date: December 5, 2025

Respectfully Submitted,

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