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

11 D.J.R.G.,

12 **Petitioner,**

13 v.

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

21 **Respondents.**

Case No. 1:25-cv-1747-DC-EFB

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

NOTICE OF MOTION AND MOTION

1
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 D.J.R.G. will and hereby does move for a
4 temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local
5 Rule 231. Because Petitioner's detention violates the Due Process Clause of the Fifth
6 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, and enjoin Respondents from re-detaining him without
9 leave from this court; or, in the alternative, (2) order Petitioner's immediate release from custody
10 without electronic monitoring and prohibit Petitioner's re-detention without a pre-deprivation
11 bond hearing before a neutral adjudicator, where Respondents shall bear the burden of proof to
12 show, by clear and convincing evidence, that Petitioner is a danger or a flight risk. Petitioner
13 further seeks an order (3) enjoining Respondents from transferring Petitioner out of this District
14 or out of the Northern District of California, where Petitioner was residing before his arrest, and
15 enjoining Respondents from deporting him during the pendency of the underlying proceedings.
16
17

18 This motion is based on this Notice of Motion and Motion, the accompanying
19 Memorandum of Points and Authorities, and the accompanying Proposed Order; the Declaration
20 of Sarah Gavigan In Support of Petition for Writ of Habeas Corpus, with attached exhibits; the
21 papers, evidence, and records on file in this action; and any other written or oral evidence or
22 argument as may be presented at or before the time this motion is heard by the Court. This motion
23 is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1).
24

25 Consistent with Civil L.R. 231, Petitioner seeks relief at the earliest possible opportunity.
26 Petitioner is filing this motion within a day of filing his Petition for Writ of Habeas Corpus.
27
28

1 Pursuant to Civil L.R. 231(a), and as detailed further in the Declaration of Sarah Gavigan,
2 Counsel for Petitioner has provided Counsel for Respondents with notice of this Motion and
3 advised Respondents of the emergency reasons requiring Petitioner to seek an *ex parte*
4 application for a temporary restraining order. Counsel for Petitioner emailed a copy of the filed
5 habeas petition to Counsel for Respondents. Counsel for Petitioner advised Counsel for
6 Respondents that a Motion for Temporary Restraining Order would be forthcoming. Counsel for
7 Petitioner will email Counsel for Respondents a copy of the Memorandum of Points and
8 Authorities immediately after filing it. As of this filing, Respondents have not stipulated to a
9 temporary restraining order.
10

11
12 Date: December 5, 2025

Respectfully Submitted,

13
14 /s/ Sarah Gavigan
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8 **UNITED STATES DISTRICT COURT**
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19 United States Immigration and Customs
20 Enforcement; Kristi NOEM, Secretary of the
21 United States Department of Homeland
22 Security; Pamela BONDI, Attorney General of
23 the United States, acting in their official
24 capacities,

25 Respondents.

Case No. 1:25-cv-1747-DC-EFB

**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 D.J.R.G. hereby incorporates and respectfully refers the Court to his verified Petition-Complaint, and the declaration in support of the habeas petition (ECF 4), 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 not pursuant to any change in circumstances that would justify detention based on flight risk or danger, but rather pursuant to a new, unlawful practice of detaining migrants in order to meet arrest quotas, stripping them of their rights and pressuring them to abandon their claims for relief.

His detention violates Petitioner’s due process rights and causes him 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). Petitioner thus respectfully requests that this Court issue a temporary restraining order (1) mandating immediate release from Respondents’ custody, with no intrusive electronic monitoring, and enjoining Respondents from re-detaining him absent further order of this Court; (2) in the alternative, requiring immediate release without intrusive electronic monitoring, and enjoining his re-detention absent a showing of clear and convincing evidence, before a neutral fact-finder, he is a flight risk or danger to the community; (3) enjoining the government from transferring him out of this District or the Northern District of California, or removing him from the country, pending these proceedings

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

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

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

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

To comply with substantive due process, the government’s deprivation of an individual’s liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either

1 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
2 (“[T]he government has no legitimate interest in detaining individuals who have been determined
3 not to be a danger to the community and whose appearance at future immigration proceedings can
4 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
5 absent, immigration detention serves no legitimate government purpose and becomes
6 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v. Indiana*,
7 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the government’s interests
8 in preventing flight and danger); *see also Mahdawi v. Trump*, 781 F. Supp. 3d 214, 232 (D. Vt.
9 2025) (ordering release from custody after finding petitioner may “succeed on his Fifth Amendment
10 claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks
11 any legitimate reason to detain him”).
12

13 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
14 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003)
15 (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing and
16 completing deportation proceedings, it could become necessary then to inquire whether the
17 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to
18 incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision today
19 on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional
20 challenges to applications of the statute as we have now read it.”).
21
22

23 Petitioner, who upon information and belief has no criminal record and has been diligently
24 pursuing immigration relief, is neither a danger nor a flight risk. Therefore, his detention is both
25 punitive and not justified by a legitimate purpose, violating his substantive due process rights.
26 Indeed, Respondents chose to release Petitioner from custody in 2022, necessarily indicating that
27 they determined he was neither dangerous nor a flight risk. *See Declaration of Sarah Gavigan*
28 (“Gavigan Dec.”), Exh. 2 (ECF 4). *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal.

1 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects
2 a determination by the government that the noncitizen is not a danger to the community or a flight
3 risk.”). Nothing has transpired since to disturb that finding.

4 *First*, because Petitioner has had no known criminal history, with no intervening criminal
5 history or arrests since his release, there is no credible argument that he is a danger to the
6 community.

7
8 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
9 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
10 F.3d at 990-91. There is no basis to argue that Petitioner, who was arrested by Respondents *while*
11 *appearing for an ICE appointment*, is a flight risk. After appearing on time for three years, this time
12 he was two days late to his appointment, but only because he believed that his check-in was in
13 Florida, and had flown there for that purpose -- only to be told at the Orlando ICE office that he
14 needed to report in San Francisco. *See Gavigan Dec.*, Exhs. 1-4 (ECF 4). He emailed San Francisco
15 ICE ahead of time to lead them know of the mistake, and even drove to Sacramento in an attempt
16 to check in because he was able to make an online appointment there. *Id.* Respondents had ample
17 opportunity to see that he was dedicated to complying with his reporting. Moreover, Petitioner has
18 a pending asylum application, further mitigating any risk of flight. *Gavigan Dec*, Exh. 2 (ECF 4).
19 *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023)
20 (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum
21 claims and desire to remain in the United States). He is employment authorized and works long
22 hours..
23
24

25 In sum, Petitioner’s actions since Respondents first released him confirm that he is neither
26 a danger nor a flight risk. His ongoing compliance and community ties compel the conclusion that
27 he is even *less* of a danger or flight risk than when he was originally released. Accordingly,
28 Petitioner’s ongoing detention is unconstitutional, and substantive due process principles require

1 his immediate release.

2 **B. The government violated procedural due process by depriving Petitioner of the**
3 **opportunity to contest his arrest and detention before a neutral decision-maker.**

4 Noncitizens living in the United States like Petitioner have a protected liberty interest in
5 their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court
6 “usually has held that the Constitution requires some kind of a hearing *before* the State deprives
7 a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
8 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671, 683 (D.C.
9 Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-
10 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
11 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482
12 (1972) (same, in parole context).

13
14
15 Accordingly, the Supreme Court has repeatedly held that individuals released from
16 custody on bond, parole, or other forms of conditional release have a protected interest in their
17 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
18 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
19 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
20 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
21 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
22 963, 970 (N.D. Cal. 2019). Petitioner thus has a protected liberty interest in his freedom from
23 physical custody.
24

25 Once a petitioner has established a protected liberty interest, as Petitioner has done here,
26 courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See*
27 *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S.
28 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk

1 of erroneous deprivation and probable value of procedural safeguards; and (3) the government's
2 interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioner and prohibiting
3 his re-detention without a custody hearing at which the government bears the burden of proof.

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

19 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
20 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
21 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.
22 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*,
23 No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents detained
24 Petitioner at an ICE appointment, with no notice and no opportunity to contest his re-detention
25 before a neutral arbiter. In such circumstances, when Respondents have provided *no* procedural
26 safeguards, “the probable value of additional procedural safeguards, *i.e.*, a bond hearing, is high.”
27 *A.E.*, 2025 WL 1424382, at *5. This is especially true here, where on information and belief there
28

1 is no change in Petitioner’s circumstances suggesting that he now poses a flight risk or danger to
2 the community. His re-detention instead appears to be motivated instead by high arrest quotas and
3 the will to secure the swift removal of asylum seekers. *See* Pet. for Writ of Habeas Corpus ¶¶ 33-
4 35. Neither constitutes a lawful justification to re-detain a person who does not pose a flight risk
5 nor a danger to the community. His arrest fits with the recent trend of ICE regularly arresting
6 individuals at their check-in appointments, often on thinly veiled pretexts, despite having no
7 demonstrable flight risk or danger.¹

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

18 *Third*, the government’s interest in detaining Petitioner without first providing notice and
19 submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
20 hearings, which impose a “minimal” cost to the government. *See Doe*, 2025 WL 691664, at *6;
21 *A.E.*, 2025 WL 1424382, at *5. Petitioner has a demonstrated record of compliance, and there is
22 no reason to believe that will change between the date of his release and his custody hearing. *See*,

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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/](https://www.kqed.org/news/12042887/ice-arrests-15-people-in-san-francisco-including-a-child)
[news/12042887/ice-arrests-15-people-in-san-francisco-including-a-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://why.org/articles/](https://why.org/articles/immigration-check-ins-calculation-risk-detainments-ice/)
[immigration-check-ins-calculation-risk-detainments-ice/](https://why.org/articles/immigration-check-ins-calculation-risk-detainments-ice/)

1 e.g., Gavigan Dec., Exh. 3 (ECF 4). Indeed, courts regularly hold that the government’s interest
2 in re-detention without a custody hearing is low when the petitioner “has long complied with [his]
3 reporting requirements.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D.
4 Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-
5 deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561,
6 at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition
7 ordering the same); see also *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-
8 *5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing petitioner who
9 had been detained without process, who had “voluntarily attended his scheduled immigration
10 court proceedings” and “established ties” through his work and volunteering with the church).
11 Notably, courts have also granted release in habeas cases where ICE officials have alleged non-
12 compliance with reporting requirements.
13

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

1 Cal. Sept. 16, 2025) (granting preliminary injunction); *Garro Pinchi v. Noem*, 792 F. Supp. 3d
2 1025 (N.D. Cal. July 24, 2025) (granting preliminary injunction); *Singh v. Andrews*, 2025 WL
3 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction); *Arzate v. Andrews*, No.
4 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 20, 2025) (granting
5 preliminary injunction); *Aviles-Mena v. Kaiser*, No. 25-CV-06783-RFL, 2025 WL 2322788 (N.D.
6 Cal. Sept. 5, 2025) (granting preliminary injunction); *Alva v. Kaiser*, No. 25-CV-06676-RFL,
7 2025 WL 2419262, (N.D. Cal. Aug. 21, 2025) (granting preliminary injunction); *Vargas v.*
8 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

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

19 * * * * *

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,” alongside
22 a “balance of hardships” tipping decidedly in his favor. *All. for the Wild Rockies*, 632 F.3d at
23 1135. Indeed, the constitutional concerns delineated above are of the weightiest order and beyond
24 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 irreparable injury. Indeed, he
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1 will face such injury every day that he remains in detention, in violation of his Fifth Amendment
2 rights. “It is well established that the deprivation of constitutional rights ‘unquestionably
3 constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695
4 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional right is involved,
5 most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v.*
6 *Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks omitted). More, the
7 unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*,
8 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that they
9 [we]re likely to be unconstitutionally detained for an indeterminate period of time”); *see also*,
10 *e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount
11 of actual jail time is significant, and has exceptionally severe consequences for the incarcerated
12 individual” (cleaned up)).
13

14
15 In addition to his constitutional injury, Petitioner will suffer other irreparable harms from
16 continued detention, including loss of income and livelihood interfering with his ability to access
17 counsel and present an asylum claim; inability to be with friends and family; and separation from
18 his community. Continued detention will pose a compounding psychological burden, in addition
19 to the physical hardships that he has to endure from prison conditions.
20

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

23 When the government is the party opposing the request for emergency relief, the balance
24 of the equities and the public interest merge. *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991
25 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance
26 of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing
27 constitutional violations and continued additional suffering if the TRO is not granted. *Hernandez*,
28 872 F.3d at 996 (when “[f]aced with ... preventable human suffering, ... the balance of hardships

1 tips decidedly in plaintiffs' favor") (internal citation omitted).

2 The public interest likewise weighs strongly in Petitioner's favor. As another California
3 district court recently concluded, "[t]he public has a strong interest in upholding procedural
4 protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the
5 public of immigration detention are staggering." *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M.*
6 *F.*, 2021 WL 783561, at *3). More fundamentally, "[i]t is always in the public interest to prevent
7 the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals Serv.*,
8 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134,
9 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

11 SECURITY

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

23 CONCLUSION

24 For the foregoing reasons, Petitioner respectfully requests that the Court grant a TRO to
25 restore the *status quo ante* by (1) ordering his immediate release from Respondents' custody,
26 without intrusive electronic monitoring, and enjoining Respondents from re-detaining him absent
27 further order of this Court; (2) in the alternative, ordering his immediate release from
28

1 Respondents' custody without intrusive electronic monitoring, and enjoining Respondents from
2 re-detaining him unless they demonstrate at a pre-deprivation bond hearing, by clear and
3 convincing evidence, that Petitioner is a flight risk or danger to the community such that his
4 physical custody is required; and (3) prohibiting the government from transferring him out of this
5 District or the Northern District of California, or removing him from the country, until these
6 habeas proceedings have concluded.
7

8
9 Date: December 5, 2025

Respectfully Submitted,

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