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8 *Attorney for Petitioner-Plaintiff*

9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Navareh Acin,

12 Petitioner-Plaintiff,

13 v.

14 John CANTU, Field Office Director of Phoenix
15 Office of Detention and Removal, U.S.
16 Immigrations and Customs Enforcement; U.S.
17 Department of Homeland Security;

18 Todd M. LYONS, Acting Director, Immigration
19 and Customs Enforcement, U.S. Department of
20 Homeland Security;

21 Kristi NOEM, in her Official Capacity,
22 Secretary, U.S. Department of Homeland
23 Security; and

24 Pam BONDI, in her Official Capacity, Attorney
25 General of the United States;

26 Respondents-Defendants.
27
28

Case No.



**MOTION FOR TEMPORARY
RESTRAINING ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

Petitioner applies to this honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain her based on an unlawful action by ICE, (2) ordering her immediate release from immigration detention; and (3) from re-arresting Petitioner-Plaintiff until she is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that her re-incarceration would be justified because there is clear and convincing evidence establishing that she is a danger to the community or a flight risk.

Dated: December 11, 2025

Respectfully submitted,

/s/ Bianca L. Torres
Bianca L. Torres, Esq.
Attorney for Petitioner-Plaintiff

1 **I. INTRODUCTION**

2 Respondents unlawfully re-detained Petitioner on June 23, 2025. ICE released Petitioner
3 from custody in 2000, to continue her asylum claim. The Petitioner was later granted Withholding
4 of Removal under the Convention Against Torture on February 15, 2001.

5 The Petitioner has lived in liberty for the past two decades, during which time she has
6 established herself as an exemplary resident and an asset to her community. She is a loving and
7 supporting wife and mother, and financial provider for her family. The Petitioner has raised her
8 two sons as two exemplary young men. Moreover, since her release the Petitioner has consistently
9 demonstrated her commitment to a law-abiding life, as she has not committed any crimes.

10 By statute and regulation ICE has the authority to detain a non citizen for 90 days of a
11 final removal order to seek a third safe country. INA 241(a)(6), 8 CFR 1241.14(f). ICE must
12 release a non citizen from detention if their removal is not reasonably foreseeable.

13 The Due Process Clause further limit's ICE's re-arrest authority: for there to be due
14 process, individuals released from incarceration have a liberty interest in their freedom, and to
15 protect that interest, including on the particular facts of Petitioner's case, due process mandates
16 that the government release Petitioner from her unlawful detention. That basic principle—that
17 individuals placed at liberty are entitled to process before the government imprisons them—has
18 particular relevance here, where Petitioner's detention was *already* found to be unnecessary to
19 serve its purpose. ICE released her in 2000 so she may pursue her asylum claim out of detention,
20 which she was later granted protection under the Convention Against Torture.

21 Therefore, at a minimum, to lawfully re-arrest Petitioner, the government must first
22 establish, by clear and convincing evidence and before a neutral adjudicator, that she is now a
23 danger to the community or a flight risk, such that her re-incarceration is necessary.

24 Petitioner meets the standard for a temporary restraining order. She will suffer immediate
25 and irreparable harm absent an order from this Court enjoining the government from continuing
26 her unlawful custody and prohibiting the government to re-arrest her at any future time, unless
27 and until she first receives a hearing before a neutral adjudicator, as demanded by the
28 Constitution. Because holding federal agencies accountable to constitutional demands is in the

1 public interest, the balance of equities and public interest are also strongly in Petitioner's favor.

2 **II. STATEMENT OF FACTS AND CASE**

3 Petitioner is a citizen and national of Iran who entered the U.S. in 2000, and has remained in
4 the United States since. On February 15, 2001, she and her husband were granted Withholding of
5 Removal under the Convention Against Torture. On June 23, 2025, ICE detained the Petitioner
6 and her husband in their neighborhood. Upon their arrest, ICE officers did not articulate why the
7 Petitioner was now a flight risk, a danger to her community, or how they had violated any
8 conditions of their release. This is because ICE cannot make such a statement. Over the two
9 decades that the Petitioner has lived in freedom, she has been a devoted wife and mother to her
10 sons. She is gainfully employed. She has had no criminal history. Petitioner through counsel has
11 asked ICE to release her on parole. ICE denied these multiple requests. Additionally, Petitioner
12 was denied bond due to lack of jurisdiction and in the alternative flight risk, on November 21,
13 2025. Intervention from this Court is therefore required to ensure that the Petitioner is released
14 from her current custody based on her unlawful arrest, returned to her home in Phoenix, Arizona.

15 **III. LEGAL STANDARD**

16 Petitioner is entitled to a temporary restraining order if she establishes that she is "likely
17 to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
18 that the balance of equities tips in [her] favor, and that an injunction is in the public interest."
19 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D.*
20 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
21 temporary restraining order standards are "substantially identical"). Even if Petitioner does not
22 show a likelihood of success on the merits, the Court may still grant a temporary restraining order
23 if she raises "serious questions" as to the merits of her claims, the balance of hardships tips
24 "sharply" in her favor, and the remaining equitable factors are satisfied. *Alliance for the Wild*
25 *Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner
26 overwhelmingly satisfies both standards.

27 **ARGUMENT**

28 **A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER**

1 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
2 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
3 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
4 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
5 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Petitioner is likely
6 to remain in unlawful custody in violation of her due process rights without intervention by this
7 Court. Petitioner will continue to suffer irreparable injury if she continues to be detained without
8 due process.

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

12 Petitioner is likely to succeed on her claim that, in her particular circumstances, her current
13 detention is unlawful because the Due Process Clause of the Constitution prevents Respondents
14 from re-arresting her without first providing a pre-deprivation hearing before a neutral adjudicator
15 where the government demonstrates by clear and convincing evidence that there has been a
16 material change in circumstances such that she is now a danger or a flight risk. The Petitioner’s
17 particular circumstances, pursuant to INA § 241(a)(6), 8 C.F.R. §1241.14(f), the Department of
18 Homeland Security must remove or release a detained alien within 90 days of a final order of
19 removal when removal is not reasonably foreseeable.

20 Courts analyze procedural due process claims such as this one in two steps: the first asks
21 whether there exists a protected liberty interest under the Due Process Clause, and the second
22 examines the procedures necessary to ensure any deprivation of that protected liberty interest
23 accords with the Constitution. *See Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454,
24 460 (1989).

25 **a. Petitioner Has a Protected Liberty Interest in Her Conditional**
26 **Release**

27 The Petitioner’s liberty from immigration custody is protected by the Due Process Clause:
28 “Freedom from imprisonment—from government custody, detention, or other forms of physical

1 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*
2 *Davis*, 533 U.S. 678, 690 (2001).

3 Since 2000, Petitioner exercised that freedom under the ICE’s decision granting her
4 release from custody. Accordingly, she retains a weighty liberty interest under the Due Process
5 Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520
6 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*,
7 408 U.S. 471, 482-483 (1972).

8 In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
9 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of
10 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
11 form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the
12 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live
13 up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
14 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
15 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
16 valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S.
17 at 482.

18 This basic principle—that individuals have a liberty interest in their conditional release—
19 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
20 *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
21 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
22 deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released
23 on felony probation have a protected liberty interest requiring pre-deprivation process). As the
24 First Circuit has explained, when analyzing the issue of whether a specific conditional release
25 rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the
26 specific conditional release in the case before them with the liberty interest in parole as
27 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
28 (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864

1 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
2 that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
3 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
4 and *Morrissey*, 408 U.S. at 482).

5 In fact, it is well-established that an individual maintains a protectable liberty interest even
6 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
7 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
8 considerations support the notion that an inmate released on parole by mistake, because he was
9 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
10 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
11 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
12 (internal quotation marks and citation omitted).

13 Here, when this Court compares the release in the Petitioner’s case with the liberty interest
14 in parole as characterized by *Morrissey*,” they bear similar features in liberty interests. *See*
15 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enables him to do
16 a wide range of things open to persons,” including to live at home, work, care for his family, for
17 whom he is the financial provider, and “be with family and friends and to form the other enduring
18 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

19 The Petitioner is proud and responsible employee, and a financial provider for her two
20 sons. She has not committed any crimes for the past two decades since her release from custody.
21 She was granted Withholding of Removal under the Convention Against Torture.

22 **b. Petitioner’s Liberty Interest Mandates Her Release from**
23 **Unlawful Custody And A Hearing Before any Re-Arrest**

24 The Petitioner asserts that, here, (1) where her detention would be civil; (2) where she has
25 been at liberty for two decades, during which time she has complied with all conditions of release
26 and served as a financial provider for her family; (3) where she has been granted relief, with
27 Withholding of Removal and; (4) where no change in circumstances exist that would justify her
28 lawful detention; combined with ICE’s move to arrest as many people as possible under the new

1 administration's initiative, due process mandates that she be released from her unlawful custody
2 and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation
3 of her custody release.

4 "Adequate, or due, process depends upon the nature of the interest affected. The more
5 important the interest and the greater the effect of its impairment, the greater the procedural
6 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d
7 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
8 "balance [Petitioner's] liberty interest against the [government's] interest in the efficient
9 administration of" its immigration laws to determine what process she is owed to ensure that ICE
10 does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set forth in
11 *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first,
12 the private interest that will be affected by the official action; second, the risk of an erroneous
13 deprivation of such interest through the procedures used, and the probative value, if any, of
14 additional or substitute procedural safeguards; and finally the government's interest, including
15 the function involved and the fiscal and administrative burdens that the additional or substitute
16 procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,
17 424 U.S. 319, 335 (1976)).

18 The Supreme Court "usually has held that the Constitution requires some kind of a hearing
19 *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127
20 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the
21 only remedies the State could be expected to provide" can post-deprivation process satisfy the
22 requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the
23 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
24 preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally
25 to do the impossible by providing predeprivation process," can the government avoid providing
26 pre-deprivation process. *Id.*

27 Because, in this case, the provision of a pre-deprivation hearing is both possible and
28 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Petitioner

1 with notice and a hearing *prior* to any re-incarceration and revocation of her bond. *See Morrissey*,
2 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S.
3 at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d
4 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
5 proceedings may not constitutionally be held in jail pending the determination as to whether they
6 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of
7 [Petitioner’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

8 **i. Petitioner’s Private Interest in Her Liberty is Profound**

9 Under *Morrissey* and its progeny, individuals conditionally released from serving a
10 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
11 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
12 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles her to
13 constitutional due process before she is re-incarcerated—apply with even greater force to
14 individuals like Petitioner, who have been released pending civil removal proceedings, rather than
15 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
16 conviction. Parolees and probationers have a diminished liberty interest given their underlying
17 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
18 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
19 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
20 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
21 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest
22 even though she is under conditional release.

23 What is at stake in this case for Petitioner is one of the most profound individual interests
24 recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing a
25 non-citizen from custody and be able to take away her physical freedom, i.e., her “constitutionally
26 protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir.
27 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of
28

1 the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
2 *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody,
3 detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
4 Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

5 Thus, it is clear that there is a profound private interest at stake in this case, which must
6 be weighed heavily when determining what process she is owed under the Constitution. *See*
7 *Mathews*, 424 U.S. at 334-35.

8 **ii. The Government’s Interest in Re-Incarcerating Petitioner**
9 **Without a Hearing is Low and the Burden on the**
10 **Government to Refrain from Re-Arresting Her Unless and**
11 **Until She is Provided a Hearing is Minimal**

12 The government’s interest in maintaining an unlawful detention without a due process
13 hearing is low, and when weighed against Petitioner’s significant private interest in her liberty,
14 the scale tips sharply in favor of enjoining Respondents (1) from keeping her in unlawful custody;
15 (2) re-arresting Petitioner unless and until the government demonstrates to a neutral adjudicator
16 by clear and convincing evidence that she is a flight risk or danger to the community; and (3)
17 removing her from the United States in violation of an agency order and district court injunction.
18 It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that
19 the process she seeks—notice and a hearing regarding whether release from custody should be
20 revoked—is a standard course of action for the government. Providing Petitioner with a hearing
21 before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing
22 evidence that Petitioner is a flight risk or danger to the community would impose only a *de*
23 *minimis* burden on the government, because the government routinely provides this sort of hearing
24 to individuals like Petitioner.

25 As immigration detention is civil, it can have no punitive purpose. The government’s only
26 interests in holding an individual in immigration detention can be to prevent danger to the
27 community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*,
28 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for

1 detaining Petitioner when she was released from ICE custody in 2000, and since has lived at
2 liberty as a financial provider for her family, without any criminal infractions. Furthermore, she
3 was already granted relief from an Immigration Judge.

4 It is difficult to see how the government's interest in detaining Petitioner has materially
5 changed since she was released in 2000 or granted relief in 2001, absent any circumstances
6 indicating she is a danger to the community or a flight risk. The government's interest in detaining
7 Petitioner at this time is extremely low. That ICE has a new policy to make a minimum number
8 of arrests each day under the new administration does not constitute a material change in
9 circumstances or increase the government's interest in detaining her.¹

10 Moreover, the "fiscal and administrative burdens" that her immediate release and a lawful
11 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
12 Petitioner does not seek a unique or expensive form of process. As the Ninth Circuit noted in
13 2017, which remains true today, "[t]he costs to the public of immigration detention are
14 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5 million."
15 *Hernandez*, 872 F.3d at 996. Petitioner has already been granted relief since February 15, 2001,
16 which has not been reopened by the Immigration Judge to date. ICE's unlawful action of placing
17 her in custody is more of a financial burden than releasing her and providing any pre-custody
18 hearing before any future re-arrest occurs.

19 **iii. Without a Due Process Hearing Prior to Any Re-Arrest, the**
20 **Risk of an Erroneous Deprivation of Liberty is High, and**
21 **Process in the Form of a Constitutionally Compliant**
22 **Hearing Where ICE Carries the Burden Would Decrease**
23 **That Risk**

23 ¹ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January
24 26, 2025), available at: [https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-
25 raids-trump-quota/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/); "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests,"
26 *Forbes* (June 9, 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-
27 order-likely-sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) ("At the end of May 2025, 'Stephen
28 Miller, a senior White House official, told Fox News that the White House was looking for ICE to
arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than
66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a
day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests
in a calendar year.").

1 Releasing Petitioner from unlawful custody and providing Petitioner a pre-deprivation
2 hearing would decrease the risk of her being erroneously deprived of her liberty. Before Petitioner
3 can be lawfully detained, she must be provided with a hearing before a neutral adjudicator at
4 which the government is held to show that there has been sufficiently changed circumstances;
5 that ICE's is going to remove the Petitioner within the reasonably foreseeable future.

6 The procedure Petitioner seeks—a hearing in front of a neutral adjudicator at which the
7 government must prove by clear and convincing evidence that circumstances have changed to
8 justify her detention *before* any re-arrest—is much more likely to produce accurate determinations
9 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
10 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when
11 “delicate judgments depending on credibility of witnesses and assessment of conditions not
12 subject to measurement” are at issue, the “risk of error is considerable when just determinations
13 are made after hearing only one side”). “A neutral judge is one of the most basic due process
14 protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other*
15 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that
16 the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
17 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf*
18 *II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

19 Due process also requires consideration of alternatives to detention at any custody
20 redetermination hearing that may occur. The primary purpose of immigration detention is to
21 ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
22 Detention is not reasonably related to this purpose if there are alternatives to detention that could
23 mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
24 detention must be considered in determining whether Petitioner's re-incarceration is warranted

25 As the above-cited authorities show, Petitioner is likely to succeed on her claim that the
26 current arrest and detention that ICE effectuated on June 23, 2025, is unlawful. The Due Process
27 Clause require notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration
28

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

3 **2. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief**

4 The Petitioner will suffer irreparable harm were she to remain detained after being
5 deprived of her liberty and subjected to unlawful incarceration by immigration authorities without
6 being provided the constitutionally adequate process that this motion for a temporary restraining
7 order seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831
8 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail
9 awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts
10 family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat’l*
11 *Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the
12 Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject
13 to immigration detention” including “subpar medical and psychiatric care in ICE detention
14 facilities, the economic burdens imposed on detainees and their families as a result of detention,
15 and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872
16 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention
17 centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced
18 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations
19 of environmental health and safety standards; staffing shortages affecting the level of care
20 detainees received for suicide watch, and detainees being held in administrative segregation in
21 unauthorized restraints, without being allowed time outside their cell, and with no documentation
22 that they were provided health care or three meals a day).²

23 Petitioner has been out of ICE custody for more than two decades. During that time, she
24 has worked hard to establish a stable life for herself, her husband, and her children. She is an
25 asset to her community. Since her release in 2000, she has not violated the law. Continued
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27
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² Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
(last accessed Feb. 6, 2024).

1 detention is bound to result in irreversible harm not only to Petitioner but will also significantly
2 affect her husband and two sons, particularly her youngest son who is only sixteen years old.

3 As detailed *supra*, Petitioner contends that her re-arrest absent a hearing before a neutral
4 adjudicator violates her due process rights under the Constitution. It is clear that “the deprivation
5 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695
6 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a
7 temporary restraining order is necessary to prevent Petitioner from suffering irreparable harm by
8 being subject to unlawful and unjust detention.

9 **3. The Balance of Equities and the Public Interest Favor Granting the** 10 **Temporary Restraining Order**

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

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

24 A temporary restraining order is in the public interest. First and most importantly, “it
25 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
26 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
27 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
28 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would

1 effectively be granted permission to detain Petitioner in violation of the requirements of Due
2 Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a
3 party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695
4 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an
5 injunction that ensures that individuals are not deprived of their liberty and held in immigration
6 detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v.*
7 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated
8 when a constitutional right has been violated, because all citizens have a stake in upholding the
9 Constitution.”).

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

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17 **IV. CONCLUSION**

18 For all the above reasons, this Court should find that Petitioner warrants a temporary
19 restraining order and a preliminary injunction ordering that Respondents (1) release her from her
20 unlawful custody; (2) refrain from re-arresting her unless and until she is afforded a hearing
21 before a neutral adjudicator on whether a change in custody is justified by clear and convincing
22 evidence that her removal is reasonably foreseeable; and (3) refrain from sending her to any
23 place outside of the United States.

24 Dated: December 11, 2025

Respectfully submitted,

25 /s/ Bianca L. Torres

26 Bianca L. Torres, Esq.
27 Attorney for Petitioner