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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JENIFER NOHELIA HERNANDEZ LOPEZ,

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and Customs
Enforcement Office; CHRISTOPHER
CHESTNUT, Warden of the California City
Detention Facility, KRISTI NOEM, Secretary
of the United States Department of Homeland
Security; TODD LYONS, Acting Director of
United States Immigration and Customs
Enforcement; PAMELA BONDI, Attorney
General of the United States, acting in their
official capacities,

Respondents.

Case No.

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

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Northern District of California, that Petitioner Jenifer Nohelia Hernandez Lopez will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local Rule 231. Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this Court (1) order Petitioner's immediate release from Respondents' custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) order Petitioner's immediate release from Respondents' custody and, within 14 days, order a pre-deprivation bond hearing before the San Francisco Immigration Court, where Respondents shall bear the burden of proof to show, by clear and convincing evidence, that Petitioner is a danger or a flight risk. To preserve this Court's jurisdiction, Petitioner further seeks an order enjoining Respondents from transferring Petitioner out of this District or deporting her during the pendency of the underlying proceedings.

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

Consistent with Civil L.R. 231(b), Petitioner seeks relief at the earliest possible opportunity. Petitioner is filing this motion the same day she filed her Petition for Writ of Habeas Corpus.

Pursuant to Civil L.R. 231(c), and as detailed further in the Declaration of Corey Day, Counsel for Petitioner emailed a copy of the to-be-filed petition to Counsel for Respondents and the to-be-filed *ex parte* application for TRO. As of this filing, Respondents have not stipulated to a TRO.

1 DATED: December 16, 2025

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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 FRESNO DIVISION
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14

15 JENIFER NOHELIA HERNANDEZ LOPEZ,

16 Petitioner,

17 v.

18 SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and Customs
19 Enforcement Office; CHRISTOPHER
CHESTNUT, Warden of the California City
20 Detention Facility, KRISTI NOEM, Secretary
of the United States Department of Homeland
21 Security; TODD LYONS, Acting Director of
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22 Enforcement; PAMELA BONDI, Attorney
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23 official capacities,

24 Respondents.
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28

Case No.

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

1 **I. INTRODUCTION**

2 Petitioner Jenifer Nohelia Hernandez Lopez (“Ms. Hernandez Lopez” or “Petitioner”)
3 entered the United States in June of 2023 intending to seek asylum. She was detained by
4 Department of Homeland Security (“DHS”) officials at the border and released into the United
5 States on an Order of Recognizance to wait for her immigration court date.

6 On December 8, 2025, Petitioner reported as instructed for a routine Immigration and
7 Customs Enforcement (“ICE”) check-in appointment at the Intensive Supervision Appearance
8 Program (“ISAP”) office at 393 Blossom Hill Road in San Jose, California. ICE detained her at
9 that check-in without prior warning, and Petitioner is now in ICE custody.

10 Petitioner’s case is one of a growing number of cases where ICE unlawfully re-arrests
11 individuals at their ICE check-ins. These arrests are often based on allegations of minor,
12 technical violations of release conditions.

13 Petitioner’s summary arrest and indefinite detention flout the Constitution. The only
14 legitimate interests that civil immigration detention serves are mitigating flight risk and
15 preventing danger to the community. When those interests are absent, the Fifth Amendment’s
16 Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and
17 detaining Petitioner without making any affirmative showing of changed circumstances, the
18 government violated Petitioner’s procedural due process rights. At the very least, she was
19 constitutionally entitled to a hearing before a neutral decisionmaker at which the government
20 should have justified her detention.

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

27 In light of this irreparable harm, and because she is likely to succeed on the merits of her
28 due process claims, Petitioner respectfully requests that this Court issue a temporary restraining

1 order (“TRO”) immediately releasing from her custody and enjoining the government from re-
2 arresting her absent the opportunity to contest that arrest at a hearing before a neutral decision
3 maker. Confronted with similar facts and legal issues, numerous courts in this circuit have
4 recently granted the exact relief Petitioner seeks. *See Bernal v. Albarran*, No. 25-cv-09772-RS,
5 2025 U.S. Dist. LEXIS 232122, at *19 (N.D. Cal. Nov. 25, 2025); *Garro Pinchi v. Noem*, 2025
6 WL 1853763, *4 (N.D. Cal. July 4, 2025), converted to preliminary injunction at ___ F. Supp. 3d
7 ___, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10
8 (E.D. Cal. July 11, 2025) (granting preliminary injunction). To maintain this Court’s
9 jurisdiction, the Court should also prohibit the government from transferring Petitioner out of
10 this District and prohibit the government from removing her from the country until these
11 proceedings have concluded.

12 II. FACTUAL BACKGROUND

13 Petitioner is from Honduras. Petitioner was briefly detained by federal agents after
14 entering the United States in 2023. Petitioner’s Habeas Petition (“Pet.”) ¶ 2; Declaration of Elisa
15 Rivas (“Rivas Decl.”) ¶4.

16 After determining that she was not a flight risk or a danger to the community, DHS
17 agents released her on her own recognizance pursuant to 8 U.S.C. § 1226(a), with a Notice to
18 Appear for removal proceedings in the San Francisco Immigration Court. Pet. ¶¶ 2-4; Rivas
19 Decl. ¶ 6, 8.

20 Petitioner went to live in Northern California. Rivas Decl. ¶ 4. She is 21 years old and is
21 the mother of a six-year-old child. Rivas Decl. ¶ 4. Petitioner’s mother, three siblings, her
22 husband, and her child all live in Northern California and the child is in the second grade at a
23 public school. Rivas Decl. ¶ 4. Petitioner typically picks up, drops off, and attends parent-
24 teacher conferences for her child. Her husband works in construction in the area. Rivas Decl. ¶
25 4.

26 Petitioner fled Honduras, in part, due to [REDACTED]. She intends to
27 apply for asylum in the United States. Rivas Decl. ¶ 5.

28 In the more than two years since her release on parole, Ms. Hernandez Lopez has

1 complied with ICE's order of supervision. ICE placed Ms. Hernandez Lopez on a monitoring
2 program through ISAP, and she has dutifully appeared for in-all person check-ins with ICE and
3 ISAP as requested; has appeared for video check-ins with ISAP as requested; has submitted
4 photographs of herself through the BI SmartLINK application as requested; and has not been
5 arrested or convicted of any crime during this time. Pet. ¶ 51-53; Rivas Decl. ¶ 6.

6 Petitioner was informed by ICE that she needed to appear in person for a check-in because
7 she was moving from monthly photograph submittals to weekly photograph submittals. Rivas
8 Decl. ¶ 7. On December 8, 2025, Petitioner went to the ISAP office in San Jose for a routine ICE
9 check-in. Without prior notice, ICE suddenly arrested her at that check-in. Pet. ¶ 51; Rivas Decl.
10 ¶ 7.

11 Nothing has transpired since Petitioner's original release that makes her a flight risk or
12 danger. Petitioner has never missed an immigration court hearing. Rivas Decl. ¶ 8. Her detention
13 is thus not authorized under the Due Process Clause.

14 Petitioner suffers serious and ongoing harm every moment she remains in detention.

15 **III. ARGUMENT**

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

26 **A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.**

- 27 **1.** Petitioner's detention violates substantive due process because she is
28 neither a flight risk nor a danger to the community.

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

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

23 The Supreme Court has recognized that aliens may bring as-applied challenges to
 24 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
 25 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
 26 pursuing and completing deportation proceedings, it could become necessary then to inquire
 27 whether the detention is not to facilitate deportation, or to protect against risk of flight or
 28 dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019)

1 (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—
2 that is, constitutional challenges to applications of the statute as we have now read it.”).

3 Petitioner is neither a danger nor a flight risk. Therefore, her detention is both punitive and
4 not justified by a legitimate purpose, violating her substantive due process rights.

5 When Respondents chose to release Petitioner from custody, that decision represented
6 their finding that she was neither dangerous nor a flight risk. *See Singh v. Andrews*, No. 1:25-CV-
7 00801-KES-SKO (HC), 2025 WL 1918679, n.1 (E.D. Cal. July 11, 2025) (“by releasing him,
8 DHS necessarily determined . . . that he was not a flight risk”); *see also Saravia v. Sessions*, 280
9 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d
10 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is
11 not a danger to the community or a flight risk.”).

12 Once an alien is released from custody, federal agents are prohibited from re-arresting
13 them without “evidence of materially changed circumstances — namely, evidence that the alien is
14 in fact dangerous or has become a flight risk, or is now subject to a final order of removal.”
15 *Saravia v. Sessions*, 280 F. Supp. 3d at 1197; *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th
16 Cir. 2021) (“Thus, absent changed circumstances . . . ICE cannot redetain Panosyan.”); *Rodriguez*
17 *Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *11-12 (N.D. Cal. Sept. 16, 2025).

18 The mere allegation of changed circumstances by ICE alone is not enough to justify re-
19 arrest, absent urgent concerns. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D.
20 Cal. 2025); *see also Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB (HC), 2025 WL
21 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (concluding that, “given the absence of evidence of
22 urgent concerns . . . a pre-deprivation hearing [was] required to satisfy due process,” and
23 collecting cases).

24 Numerous courts have granted TROs and preliminary injunctions in similar situations
25 where the government has failed to show a valid reason for detention, such as flight risk or danger
26 to the public.¹

27 ¹ *See Jocop v. Albarran*, No. 25-cv-09059-JD, 2025 U.S. Dist. LEXIS 209368, at *5-6 (N.D. Cal. Oct. 23,
28 2025); *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *43 (N.D. Cal. Sept. 16,
2025); *Leandro v. Albarran*, No. 3:25-cv-10042, 2025 U.S. Dist. LEXIS 228978, at *8-9 (N.D. Cal. Nov.

For example, a U.S. District Court for the Northern District of California recently analyzed Respondents' arguments for the re-detention of a 60-year-old grandmother of seven who was accused of "minor, technical violations" of her release on own recognizance. *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *19 (N.D. Cal. Nov. 25, 2025). The court found "detention is permitted under section 1226(a) only if [petitioner] is dangerous or a flight risk," and that Respondents had alleged only "minor, technical violations" of her release conditions, rather than suggesting that she was a danger or flight risk. *Id.* The court granted injunctive relief, concluding that "Respondents have not come close to showing that [petitioner is a danger or flight risk], and in fact, have hardly even tried." *Id.* A court in this District also recently considered the government's argument that a petitioner presented a flight risk for purportedly missing multiple check-ins, which the petitioner disputed. *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK (HC), 2025 U.S. Dist. LEXIS 211728, at *17 (E.D. Cal. Oct. 27, 2025). Noting that "no neutral arbiter has determined whether the facts show that petitioner is a flight risk or danger to the community" the court determined that petitioner was entitled to immediate release and enjoined the government from re-detaining petitioner unless it could demonstrate, by clear and convincing evidence at a hearing, that petitioner was a flight risk or danger to the community. *Id.*, at *17-18; 21.

Here, DHS did not claim upon re-detaining Petitioner that circumstances have changed so materially as to warrant her re-detention on the basis of danger. Nor could they have. Petitioner is not a danger. She has no criminal history or any intervening criminal arrests since her release.

As to flight risk, the question is whether custody is reasonably necessary to secure a

20, 2025); *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122 at *21 (N.D. Cal. Nov. 25, 2025); *Andundia-Carillo v. Albarran*, No. 3:25-cv-10380, 2025 LEXIS 544681, at *8-9 (N.D. Cal. Dec. 3, 2025)); *Paternina v. Albarran*, No. 4:25-cv-10378-YGR, 2025 LEXIS 555745, at *8 (N.D. Cal. Dec. 3, 2025); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706, at *19-20 (E.D. Cal., Oct. 14, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *12-13 (E.D. Cal., Oct. 17, 2025); *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2996577, at *13 (E.D. Cal. Oct. 24, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB, 2025 U.S. Dist. LEXIS 217645, at *17-18 (E.D. Cal. Nov. 4, 2025); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *20 (E.D. Cal. Nov. 6, 2025); *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *20-21 (E.D. Cal. Oct. 27, 2025); *Sharan S. v. Chestnut*, No. 1:25-cv-01427-KES-SKO, 2025 U.S. Dist. LEXIS 222923, at *29 (E.D. Cal. Nov. 12, 2025); *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK, 2025 U.S. Dist. LEXIS 224966, at *14 (E.D. Cal., Nov. 14, 2025).

1 person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
 2 F.3d at 990-91. Petitioner has made a good faith effort to comply with all the terms of her release,
 3 which have largely been virtual or remote check-ins. Any concerns about flight risk are mitigated
 4 by the fact that Petitioner was arrested *while attending the ICE check-in* Respondents directed her
 5 to attend. The fact that Petitioner appeared at her check-in despite widespread news that ICE was
 6 regularly detaining people that appeared voluntarily is further evidence that she poses no flight
 7 risk. Although Respondents have not yet stated their reason for the re-arrest, any allegation that
 8 Petitioner missed an ICE check-in or otherwise violated a "minor, technical" term of her release
 9 would be insufficient justify her re-detention. *See Bernal v. Albarran*, No. 25-cv-09772-RS, 2025
 10 U.S. Dist. LEXIS 232122, at *19.

11 Moreover, Petitioner reasonably fears a return to Honduras where she faces legitimate
 12 threats of violence. She intends to seek asylum here and has established herself and her family in
 13 the community, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs*
 14 *Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate
 15 concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the
 16 United States). Petitioner's protected liberty interest is indeed strengthened by her ties to the
 17 community and her family's dependence on her. *See Vilela v. Robbins*, No. 1:25-cv-01393-KES-
 18 HBK (HC), 2025 U.S. Dist. LEXIS 219172, at *15 (E.D. Cal. Nov. 6, 2025) (holding petitioner
 19 who, after being released from custody, lived with her sister, worked, and developed ties to the
 20 community, had a significant private interest in remaining free from detention); *Pinchi v. Noem*,
 21 No. 25-cv-05632, 2025 WL 2084921, at *3 (N.D. Cal. July 25, 2025) (finding Petitioner who had
 22 found a job, provided for her family and built community at work and at church had developed
 23 "extensive relations of support and interdependence" which "underscore[s] the high stakes of her
 24 liberty."); *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *10 (N.D.
 25 Cal. Sept. 16, 2025) (determining petitioner's work in construction full time and support of a son
 26 and infant daughter were factors contributing to petitioner's protected liberty interest).

27 In sum, Petitioner's actions since Respondents first released her confirm that she is neither
 28 a danger nor flight risk. Indeed, her ongoing compliance and community ties compel the

1 conclusion that she is even *less* of a danger or flight risk than when she was originally released.
2 Accordingly, Petitioner's ongoing detention is unconstitutional, and substantive due process
3 principles require her immediate release.

4 2. The government violated procedural due process by depriving Petitioner of
5 the opportunity to contest her arrest and detention before a neutral
6 decisionmaker.

7 Aliens living in the United States like Petitioner have a protected liberty interest in their
8 ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court
9 "usually has held that the Constitution requires some kind of a hearing *before* the State deprives
10 a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
11 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683
12 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention
13 after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*,
14 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408
15 U.S. 471, 482 (1972) (same, in parole context).

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

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.
27 *See Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424
28 U.S. 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the
risk of erroneous deprivation and probable value of procedural safeguards; and (3) the

1 government’s interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioner
 2 and prohibiting her re-detention without a custody hearing at which the government bears the
 3 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
 7 deprivation here is high. Petitioner has been completely deprived of her physical liberty.
 8 Petitioner’s detention has ripped from her the “free[dom] to be with family and friends and to
 9 form the . . . enduring attachments of normal life[.]” including her six-year-old child. *Morrissey*,
 10 408 U.S. at 482. Cutting someone off from the “core values of unqualified liberty”—for
 11 Petitioner creates a “grievous loss.” *Id.* Moreover, because Petitioner faces *civil detention*, her
 12 “liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” *See Ortega*,
 13 415 F. Supp. 3d at 970. As someone in civil detention, therefore, “it stands to reason that
 14 [Petitioner] is entitled to protections at least as great as those afforded to a[n] . . . individual . . .
 15 accused but not convicted of a crime.” *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

16 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
 17 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
 18 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*,
 19 No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v.*
 20 *Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents
 21 grabbed Petitioner by surprise as she appeared for the ICE check-in Respondents demanded,
 22 detaining her with no notice and no opportunity to contest her re-detention before a neutral
 23 arbiter. In such circumstances, when Respondents have provided *no* procedural safeguards, “the
 24 probable value of additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL
 25 1424382, at *5. This is especially true here, where there is no material change in Petitioner’s
 26 circumstances suggesting that Petitioner now poses a flight risk or danger to the community.

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

1 **clear and convincing evidence** that an alien is a flight risk or a danger to the community.”
 2 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (emphasis added); *see Martinez v.*
 3 *Clark*, 124 F.4th 775, 785-86 (9th Cir. 2024) (holding that government properly bore burden **by**
 4 **clear and convincing evidence** in court-ordered bond hearing); *Doe v. Becerra*, 787 F.Supp.3d
 5 1083, 1096-97 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which
 6 government bears burden **by clear and convincing evidence**).

7 *Third*, the government’s interest in detaining Petitioner without first providing notice
 8 and submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
 9 hearings, which impose a “minimal” cost to the government. *See Doe*, 787 F.Supp.3d at 1096-
 10 97; *A.E.*, 2025 WL 1424382, at *5. Petitioner has made a good faith effort to comply with all of
 11 her release requirements and was arrested *while attending her ICE check-in*; there is no reason
 12 to believe that between the date of her release and her custody hearing, her compliance will
 13 change. Indeed, courts regularly hold that the government’s interest in re-detention without a
 14 custody hearing is low when the petitioner “has long complied with his reporting requirements.”
 15 *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D. Cal. June 14, 2025)
 16 (granting TRO prohibiting re-detention of alien without a pre-deprivation bond hearing); *Jorge*
 17 *M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021)
 18 (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition ordering the same); *see also*
 19 *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18,
 20 2025) (granting habeas petition and immediately releasing petitioner who had been detained
 21 without process, who had “voluntarily attended his scheduled immigration court proceedings”
 22 and “established ties” through his work and volunteering with the church).

23 In similar cases, courts in this Circuit regularly hold that re-detaining aliens without a
 24 pre-deprivation hearing in which the government bears the burden of proof violates due process,
 25 and grant the emergency relief Petitioner seeks here. *See Pinchi v. Noem*, 792 F.Supp.3d 1025,
 26 1038 (N.D. Cal. July 24, 2025) (converting TRO requiring release of asylum seeker arrested at
 27 her immigration court hearing into preliminary injunction prohibiting the government from re-
 28 detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July

11, 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO over one month after petitioner’s initial detention); *see also, e.g., Diaz*, 2025 WL 1676854, at *3-*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

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

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

B. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE INJURY ABSENT A TRO.

Without a temporary restraining order, Petitioner will suffer immense irreparable injury. Indeed, she faces such injury every day she remains in detention in violation of her Fifth Amendment rights. “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation

marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time”); *see also, e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual” (cleaned up)). This injury is compounded by the forced separation from Petitioner’s six-year-old child, which inflicts profound emotional and psychological harm on both parent and child. Each day apart undermines the child’s well-being and development.

C. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER’S FAVOR.

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

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

1 **D. SECURITY**

2 No security is appropriate here. Courts “may dispense with the filing of a bond when,” as
3 here, “there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”
4 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). Until her recent re-detention, when she
5 responded to an ICE check-in, she was on her own recognizance. The government’s decision to
6 arrest her, remove her from Northern California, and confine her over 150 miles from the Fresno
7 courthouse and over 300 miles from the Sacramento courthouse makes execution of even an
8 unsecured bond impractical. It is also proper to waive the bond requirement in cases raising
9 constitutional claims, because “to require a bond would have a negative impact on plaintiff’s
10 constitutional rights, as well as the constitutional rights of other members of the public.” *Baca v.*
11 *Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996). Finally, Petitioner’s
12 showing of a high likelihood of success on the merits supports the court’s waiving of bond in this
13 case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l Plan. Agency*, 766
14 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

15 **IV. CONCLUSION**

16 For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to
17 restore the *status quo ante* that (1) immediately releases her from Respondents’ custody and
18 enjoins Respondents from re-detaining her absent further order of this Court; (2) in the
19 alternative, immediately releases her from Respondents’ custody and enjoins Respondents from
20 re-detaining her unless they demonstrate at a pre-deprivation bond hearing before a neutral
21 decisionmaker, by clear and convincing evidence, that Petitioner is a flight risk or danger to the
22 community such that her physical custody is required, and that no alternatives to detention can
23 sufficiently protect Petitioner’s interests, before the Respondents can re-detain; (3) prohibits the
24 government from transferring her out of this District and/or removing her from the country, or
25 subjecting Petitioner to solitary confinement, until these habeas proceedings have concluded;
26 and (4) requiring Respondents return to Petitioner all of her possessions and documents
27 confiscated at time of detention, including without limitation her identity documents.

1 DATED: December 16, 2025

STOEL RIVES LLP

2
3 /s/ Corey M. Day

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8 JENIFER NOHELIA HERNANDEZ LOPEZ

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JENIFER NOHELIA HERNANDEZ LOPEZ,
Petitioner,

v.

SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and Customs
Enforcement Office; CHRISTOPHER
CHESTNUT, Warden of the California City
Detention Facility, KRISTI NOEM, Secretary
of the United States Department of Homeland
Security; TODD LYONS, Acting Director of
United States Immigration and Customs
Enforcement; PAMELA BONDI, Attorney
General of the United States, acting in their
official capacities,

Respondents.

Case No.

DECLARATION OF COREY DAY

I, Corey Day, declare:

1. I have personal knowledge of the facts stated in this declaration and, if called as a
witness, could testify truthfully to those facts.

2. I am an attorney with the law firm Stoel Rives LLP. I submit this declaration pursuant to Civil L.R. 231(c)(5).

3 3. On December 11, 2025, I learned that Jenifer Nohelia Hernandez Lopez was
4 detained at her ICE check-in on December 8, 2025. I learned facts about her case through Pangea
5 Legal Services staff attorney Maria Renteria, who spoke with Ms. Lopez and her family, and my
6 colleague Elisa Rivas, who also spoke with Ms. Lopez to confirm what Ms. Renteria had learned.
7 Ms. Rivas spoke with Ms. Lopez on the phone while Ms. Lopez was detained at the ICE
8 Detention facility in California City, California.

9 4. According to publicly available information, as of the finalizing of this declaration,
10 Ms. Lopez is still in the California City Detention Facility.

11 5. At 4:13 PM, I e-mailed Edward A. Olsen, Civil Chief of the U.S. Attorney for the
12 Eastern District of California at Edward.Olsen@usdoj.gov, copying lead paralegal Cheri
13 Buxbaum at Cheri.Buxbaum@usdoj.gov. I informed him that my office would file a habeas
14 corpus petition in the Eastern District of California, Fresno Division, and attached a to be filed
15 copy. I also let him know that a motion for a temporary restraining order would be filed
16 concurrently and provided him a copy of that pleading as well.

17 6. As of this filing, the government has not stipulated to a TRO.

18 I declare under penalty of perjury that the foregoing is true and correct and that this
19 declaration was executed on December 16, 2025.

/s/ Corey Day
Corey Day

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HERNANDEZ LOPEZ*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

JENIFER NOHELIA HERNANDEZ LOPEZ,

Plaintiff,

v.

SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and Customs
Enforcement Office; CHRISTOPHER
CHESTNUT, Warden of the California City
Detention Facility; KRISTI NOEM, Secretary
of the United States Department of Homeland
Security; TODD LYONS, Acting Director of
United States Immigration and Customs
Enforcement; PAMELA BONDI, Attorney
General of the United States, acting in their
official capacities,

Respondent.

Case No.

DECLARATION OF ELISA RIVAS

I, Elisa Rivas, declare:

1. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could testify truthfully to those facts. Where I do not have personal knowledge, I believe and am informed for the following information to be true. Where I do not have personal knowledge, I believe and am informed for the following information to be true.

1 2. I am an attorney at the law firm of Stoel Rives LLP.

2 3. Beginning on December 12, 2025, I spoke with Jenifer Nohelia Hernandez Lopez
3 and her family on a few separate occasions.

4 4. I learned Ms. Hernandez Lopez has been present in the United States since
5 approximately June 2023. Based on the circumstances described by Ms. Hernandez Lopez and
6 her family, I believe that Ms. Hernandez Lopez was paroled into the United States. She is 21
7 years old, and is mother of a six-year-old child. Ms. Hernandez Lopez's mother, three siblings,
8 her husband, and her child all live in Northern California. Her child is in the second grade at a
9 public school. Ms. Hernandez Lopez typically picks up, drops off, and attends parent-teacher
10 conferences for her child. Her husband works in construction in the area.

11 5. She fled Honduras, in part, due to  She intends
12 to apply for asylum in the United States.

13 6. Upon information and belief, in the more than two years since her release on
14 parole, Ms. Hernandez Lopez has complied with Immigration and Customs Enforcement
15 ("ICE")'s order of supervision. ICE placed Ms. Hernandez Lopez on a monitoring program
16 through the Intensive Supervision Appearance Program ("ISAP"), and she has dutifully
17 appeared for in-all person check-ins with ICE and ISAP as requested; has submitted
18 photographs of herself through the BI SmartLINK application as requested; and has not been
19 arrested or convicted of any crime during this time.

20 7. Upon information and belief, Ms. Hernandez Lopez was informed by ICE that
21 she needed to appear in person for a check-in because she was moving from monthly
22 photograph submittals to weekly photograph submittals. Upon arrival ICE re-detained her for
23 failing to comply with the photograph requirements but did show proof of the noncompliance.

24 8. Ms. Hernandez Lopez has likewise never missed an immigration court hearing.
25 Furthermore, she is scheduled for a hearing at the San Francisco Immigration Court on October
26 25, 2027.

27 9. Using the ICE "Online Detainee Locator System" at [https://locator.ice.gov/](https://locator.ice.gov/odls/#/search)
28 [odls/#/search](https://locator.ice.gov/odls/#/search), she is detained at the California City Detention Facility located at 22844 Virginia

1 Boulevard California City, CA 93505.

2 I declare under penalty of perjury that the foregoing is true and correct and that this
3 declaration was executed on December 16, 2025.

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/s/ Elisa Rivas

Elisa Rivas

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JENIFER NOHELIA HERNANDEZ LOPEZ

10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12 FRESNO DIVISION
13
14

15 JENIFER NOHELIA HERNANDEZ LOPEZ,

16 Petitioner,

17 v.

18 SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and Customs
19 Enforcement Office; CHRISTOPHER
CHESTNUT, Warden of the California City
20 Detention Facility, KRISTI NOEM, Secretary
of the United States Department of Homeland
21 Security; TODD LYONS, Acting Director of
United States Immigration and Customs
22 Enforcement; PAMELA BONDI, Attorney
General of the United States, acting in their
23 official capacities,

24 Respondents.
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Case No.

**[PROPOSED] ORDER GRANTING
PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

1 Good cause having been shown, **IT IS HEREBY ORDERED** that Petitioner's Motion
2 for Temporary Restraining Order is **GRANTED**. Petitioner has adequately demonstrated that,
3 absent judicial relief, there will be irreparable harm to Petitioner due to the deprivation of her
4 physical liberty. Respondents are **ORDERED** to immediately release Petitioner from
5 Respondents' custody and return to Petitioner any possessions and documents confiscated upon
6 her detention, including without limitation her identity documents, and **ENJOINED AND**
7 **RESTRAINED** from re-arresting Petitioner, unless and until she is provided notice and a hearing
8 before a neutral decisionmaker to determine whether the government can show by clear and
9 convincing evidence that detention would now be warranted on the basis that she currently poses
10 a risk of flight or danger to the community. Respondents are further **ENJOINED AND**
11 **RESTRAINED** from removing Petitioner from the United States and/or from subjecting
12 Petitioner to solitary confinement. This Order shall remain in effect until _____.

13 Respondent shall provide a status report confirming Petitioner's release by

14 _____.

15 Respondents are **ORDERED TO SHOW CAUSE** in-person at a hearing in the
16 courtroom of the assigned Judge, or as otherwise ordered by that Judge, on
17 _____ why a preliminary injunction should not issue. Respondents shall file a
18 response to Petitioner's motion by no later than _____. Any reply shall be filed by

19 _____.

20 **IT IS SO ORDERED.**

21
22 **Dated:**

23 _____
24 **Hon.** _____

25 **United States District Judge**
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