

1 Jose F. Vergara 251342
2 Law Office of Jose F. Vergara
3 1990 North California Blvd., 8th Floor
4 Walnut Creek, CA 94596
5 Telephone: (925) 457-2090

6 Attorney for Petitioner
7 Jhon Jader Bornachera Florez
8
9
10
11

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **FRESNO DIVISION**
15

16 JHON JADER BORNACHERA FLOREZ

17 *Petitioner,*

18 v.

19 Timothy S. ROBBINS, Field Office Director of the
20 Los Angeles Field Office of U.S. Immigration and
21 Customs enforcement; Todd M. LYONS, Acting
22 Director of U.S. Immigration and Customs
23 Enforcement; U.S. DEPARTMENT OF HOMELAND
24 SECURITY, Kristi NOEM, Secretary of the U.S.
25 Department of Homeland Security, Christopher
26 CHESTNUT, Warden, California City Detention
27 Facility, and Pamela BONDI, Attorney General of the
28 United States

Respondents,

Case No. 25-1311

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Note on Motion Calendar:

ORAL ARGUMENT NOT REQUESTED

INTRODUCTION

Petitioner Jhon Jader Bornachera Florez (“Petitioner”) is a citizen and national of Colombia who was detained by Immigration and Customs Enforcement (ICE) at the ICE San Francisco field office, in San Francisco, California. Petitioner entered the United States in or around December 7, 2024, and he was subsequently released on parole after immigration officials found that Petitioner had demonstrated a credible fear of persecution or torture and made a finding that Petitioner was not a flight risk or a risk to the community. For the next ten months following his release from detention, Petitioner complied with what was asked of him: he filed an asylum application with the immigration court and he started saving money to hire an attorney to represent him in his immigration court removal proceedings. He also had adhered to the conditions of his release, which consisted in sending selfie-pictures at a date and time determined by ICE, and agreeing to attend in-person check-ins at the ICE field office as part of the Intensive Supervision Appearance Program (ISAP). Nevertheless, in or around October 30, 2025, Petitioner was arrested at a check-in at the San Francisco field office, without any notice or opportunity to respond to any allegation purportedly justifying his re-detention. Petitioner is currently in detention at the California City Detention Facility, in California City, California, separated from his sister and friends.

At no time prior to his arrest did Respondents provide Petitioner a hearing, let alone a hearing before a neutral decisionmaker, at which ICE was required to justify Petitioner’s re-detention and show that he now poses a flight risk or danger to the community. Indeed, Petitioner was not provided any notice as to the reason for her re-detention, much less the written notice required under 8 C.F.R. § 212.5(e)(2) that must accompany a revocation of parole. Nor has he received any meaningful opportunity to respond to any allegations triggering her re-detention.

By denying him any notice and hearing, Respondents violated Petitioner’s right to due process. As a number of Federal District courts recently held, her ongoing detention is therefore unlawful, and her immediate release is required. (See e.g., *E.A. T.-B. v. Wamsley*, No. 25-cv-1192-KKE, --- F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering immediate release because “a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and

cannot prevent an erroneous deprivation of liberty”); *Vilela v. Robbins*, No. 1:25-CV-01393-KES-HBK (HC), 2025 U.S. Dist. LEXIS 219172 *, 2025 LX 474205, at *19-20 (E.D. Cal. Nov. 6, 2025) (“Petitioner’s immediate release is required to return her to the status quo ante—the last uncontested status which preceded the pending controversy.”); also see *Valdez v. Joyce*, 25 Civ. 4627, 2025 U.S. Dist. LEXIS 117131, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025) (ordering immediate release of unlawfully detained noncitizen.) Accordingly, Petitioner respectfully seeks immediate relief from this Court to vindicate her right to liberty under the Fifth Amendment’s Due Process Clause.¹

STATEMENT OF FACTS

Petitioner Jhon Jader Bornachera (“Petitioner”) is an asylum seeker who fled Colombia due to threats and persecution against him due to his sexual orientation. (Declaration of Johanna Yiceth Bornachera Florez, ¶ 1.) After Petitioner arrived in the United States on December 7, 2024, federal agents detained him. (Id., ¶ 2.) In or around December 20, 2024, Petitioner underwent a Credible Fear Interview. (Id.) Following a determination by an asylum officer that Petitioner had established a credible fear of persecution on December 23, 2024, Respondent DHS paroled and released Petitioner from its custody into the United States under 8 U.S.C. § 1182(d)(5) on December 26, 2024. (Id.) As a condition of Petitioner’s release, he was required to enroll in the Intensive Supervision Appearance Program (ISAP), a program operated by a private contractor that ICE uses to monitor released noncitizens. (Id.) On that same day, DHS officials provided Petitioner with a Notice of Custody Determination (DHS Form I-286), stating that Petitioner was being released pursuant to section 236 of the Naturalization and Nationality Act. (Id.) DHS officials also provided him with an Interim Notice Authorizing Parole. (Id.) In addition, DHS officials also provided Petitioner with a Notice to Appear in Immigration Court (DHS Form I-862). (Id.) The Notice to Appear stated that Petitioner would be appearing for a Master Calendar Hearing with the San Francisco Immigration Court, on a February 26,

¹ Together with the filing of the habeas petition and motion, counsel certifies that they are providing concurrent notice regarding this filing to the U.S. Attorney’s Office for the Eastern District of California via email to USACAE.ECF2241@usdoj.gov.

2025. (Id.) The same document also stated that the Notice to Appear was being issued after an asylum officer had found that Petitioner had demonstrated a credible fear of persecution or torture. (Id.) In addition, the Notice to Appear also stated that the Section 235(b)(1) order was vacated pursuant to 8 CFR § 208.30. (Id.)

On December 26, 2024, Petitioner was released from DHS' custody. (Id., ¶ 3.) At the time of his release, after Petitioner informed the ICE officers she would be relocating to Oakland, California to live his sister, Johanna Yiceth Bornachera Florez, immigration officials instructed Petitioner to present himself to the ICE Field Office in San Francisco in early January 2025. (Id.) They also placed an ankle monitor on Petitioner. (Id.)

In or around January 6, 2025, pursuant to the instructions provided to him by ICE, Petitioner appeared at the ICE San Francisco field office for his check-in visit, where ICE officials conducted an interview. (Id., ¶ 4.) After the interview, Petitioner was instructed to return for another in-person check-in visit on December 18, 2025. (Id.) In addition, the ICE officers removed Petitioner's ankle monitor and provided him with a monitoring app. (Id.) The ICE officers instructed Petitioner to send selfie-pictures to ICE once a month, whenever ICE sent an alert to Petitioner on his cell phone monitoring app. (Id.)

Although Petitioner expected to appear at his scheduled Master Calendar hearing of February 26, 2025, he was notified on that same day that his Master Calendar hearing had been rescheduled for August 5, 2025. (Id., ¶ 5.) Prior to August 5, 2025, Petitioner was once again informed that his Master Calendar Hearing was rescheduled once again to May 26, 2026. (Id.) Knowing that he had one year from the date of his entry into the United States in which to file an asylum application, Petitioner retained the services of a legal provides, who proceeded with preparing an asylum application for Petitioner. (Id.) In or around June or July 2025, Petitioner filed the asylum application with the San Francisco Immigration Court. (Id.)

Between Petitioner's release from detention on December 26, 2024, and October 30, 2025, Petitioner continued living his life. (Id., ¶ 6.) Petitioner's sister introduced him to many of her friends, and they attended services at Sain Mary's Catholic church on most Sundays. (Id.) Due to the fact

Petitioner had no employment authorization permit, Petitioner spent his time helping his sister by cleaning their residence and cooking while she was at work. (Id.) In addition, Petitioner started taking English classes at an adult school. (Id.) To the best of his knowledge, Petitioner complied with all of his monitoring requirements during the ten months following his release. These requirements included selfie-photo check-ins through the ISAP mobile phone application (ISAP app). (Id.) Petitioner submitted a photo via the app every time he was instructed via text to do so. Petitioner was informed he was expected to send a selfie-picture on a monthly basis. (Id.) Knowing that he had an in-person check-in visits at the ICE San Francisco field office on December 18, 2025, Petitioner made a note in his calendar. (Id.)

Unfortunately, during the monitoring process, on one occasion on July 15, 2025, Petitioner was late in taking a selfie-picture by one day due to the fact that at the scheduled day and time to take the picture, Petitioner was helping his sisters with moving from Oakland to a new address in Walnut Creek. (Id., ¶ 7.) At the time the alert text was sent, Petitioner had left his cell phone at their old address. (Id.) When Petitioner picked up his cell phone during the evening, he did not see that a text message by ICE had been sent. (Id.) Still, as soon as Petitioner received a notification by phone from ICE the next day, he proceeded with taking and sending a selfie-picture immediately. (Id.) Petitioner also informed ICE about his new address. (Id.)

Following that episode, Petitioner continued living his life. (Id., ¶ 8.) Although Petitioner initially had not sought employment due to the lack of an employment authorization document, Petitioner was aware that he needed to start making money, not only to help his sister with the household expenses; but also to save money to hire an immigration attorney to represent him in immigration court. (Id.) Therefore, in early October 2025, Petitioner borrowed some money from his sister and started his own business, where he sold clothes through social media. (Id.)

On October 27, 2025, Petitioner received a notification from ICE through his phone app, instructing him to appear at the ICE field office in San Francisco for an in-person check-in visit. (Id., ¶ 9.) On October 30, 2025, Petitioner presented himself at the ICE Field Office in San Francisco for what he believed would be a routine visit, but he was promptly detained by ICE officers. (Id.) When Petitioner

asked for the specific facts and reason for the arrest, the only information provided by the ICE officer was that Petitioner had violated a number of immigration laws. (Id.) When Petitioner asked for more specific facts and evidence in support of the ICE officer's claim, the ICE official did not respond. (Id.) Instead, she told him that they had orders to arrest everyone who came to see them at their office. (Id.) Desperate for what was about to happen, Petitioner tried to explain that the only thing he believed he might have done wrong in regards to any violations was being late with taking a selfie-picture by one day. (Id.) Still, the ICE officers proceeded with arresting him. (Id.) On the same day, Petitioner was transferred to the California City Detention Center, in California City, California. (Id.)

Petitioner filed a habeas petition in this court along with the present motion. By means of the present motion, she now seeks immediate relief from her continued, unlawful detention.

ARGUMENT

Requirements for a preliminary injunction order

On a motion for a TRO or an injunction, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." (*Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical").) A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." (*All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified).) To succeed under the "serious question" test, Petitioner must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. (Id. at 1132.)

Petitioner is likely to succeed on the merits of her argument that his detention is unlawful because she was not afforded a pre-deprivation hearing

Due process requires Respondents to afford Petitioner a hearing before a neutral decisionmaker where ICE is required to justify re-detention *before* it occurs. In recent months, as DHS has detained many similarly-situated noncitizens, several courts—including District Courts in California—have held

1 the same and ordered the immediate release of noncitizens who had been re-detained by DHS without a
 2 pre-deprivation hearing. (*See, e.g., E.A. T.-B.*, 2025 WL 2402130; *Valdez v. Joyce*, No. 25 CIV. 4627
 3 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-
 4 deprivation hearing); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921
 5 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL
 6 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025
 7 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).) In light of this, Petitioner is likely to succeed on his
 8 claim and the Court should order his immediate release. If Respondents continue to assert that
 9 Petitioner’s detention is justified after his release, they may thereafter schedule a hearing where they
 10 bear the burden of presenting clear and convincing evidence that his re-detention is warranted.

11 In regards to cases involving an immigrant being re-detained, the U.S. District Court for the
 12 Western District of Washington recently explained in *E.A. T.-B.*, the three-factor test established in
 13 *Mathews v. Eldridge*, 424 U.S. 319 (1976) is the controlling framework for determining what process
 14 Petitioner is due. *Mathews* requires the Court to evaluate (1) “the private interest that will be affected by
 15 the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures
 16 used, and the probable value, if any, of additional or substitute procedural safeguard” and (3) “the
 17 Government’s interest, including the function involved and the fiscal and administrative burdens that the
 18 additional or substitute procedural requirement would entail.” (424 U.S. at 335; *see also Jorge M.F. v.*
 19 *Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (applying *Mathews* factors to assess right to pre-
 20 deprivation hearing); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee’s liberty
 21 interests and the state’s interests to assess what process is due a parolee). Here, those factors strongly
 22 favor Petitioner.

23 A. Petitioner Has a Weighty Private Interest.

24 Petitioner has an exceptionally strong interest in freedom from physical confinement and in a
 25 hearing prior to any revocation of her liberty. Indeed, his “interest in not being detained is ‘the most
 26 elemental of liberty interests[.]’” (*E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting
 27 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004))). “Freedom from imprisonment . . . lies at the heart of the
 28

liberty that [the Due Process] Clause protects.” (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).) Thus, “[d]etention, including that of a non-citizen, violates due process if there are not ‘adequate procedural protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally protected interest in avoiding physical restraint.’” (*Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690).) Similarly, the Ninth Circuit has held that “[i]n the context of immigration detention, it is well-settled that ‘due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” (*Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).)

This principle applies with significant force given Petitioner’s initial release from detention on parole. “The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.” (*Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017).) As the *Hurd* court explains, this includes cases of “pre-parole conditional supervision,” *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); “probation,” (*Id.*) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and “parole,” (*Id.*) (citing *Morrissey*, 408 U.S. at 482).)

These principles apply with even more force here, where civil immigration detention is concerned, than in cases involving renewed incarceration in the criminal context. As one court has explained, “[g]iven the civil context, [a noncitizen’s] liberty interest is arguably greater than the interest of parolees in *Morrissey*.” (*Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).) Parolees and probationers have a diminished liberty interest because of their underlying convictions. (*See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001) (“Probation is one point on a continuum of possible punishments” (citation modified)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) (“To a greater or

1 lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not
 2 enjoy the absolute liberty to which every citizen is entitled” (citation modified).) Nonetheless, even
 3 in the criminal parole and supervised release context, courts have held that parolees cannot be re-
 4 arrested without a due process hearing affording them the opportunity to contest the legality of their re-
 5 incarceration. (See, e.g., *Hurd*, 864 F.3d at 684.)

6 Critically, in recent months and years, courts have repeatedly applied these principles to hold that
 7 noncitizens have a strong liberty interest in cases involving re-detention. A person re-detained after a
 8 prior release from ICE custody is “undoubtedly deprive[d] . . . of an established interest in his liberty.”
 9 (*E.A. T.-B.*, 2025 WL 2402130, at *3.) Other courts have reached the same conclusion. (See, e.g.,
 10 *Garcia*, 2025 WL 2420068, at *10) (“[P]arole allowed [the petitioner] to build a life outside detention,
 11 albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody
 12 which would allow him to continue in these life activities, including supporting his family.”); (*Pinchi*,
 13 2025 WL 2084921, at *4) (“[Petitioner] has a substantial private interest in remaining out of custody.
 14 She has an interest in remaining in her home, continuing her employment, providing for her family,
 15 obtaining necessary medical care, maintaining her relationships in the community, and continuing to
 16 attend her church.”); (*Maklad*, 2025 WL 2299376, at *8 (similar).)

17 As in these cases, Petitioner has a strong interest in his liberty. Prior to his re-detention, Petitioner
 18 resided in Alameda County, California for ten years, living with his sister, living a productive life
 19 attending English classes at an adult school, making friends, operating his own business in order to save
 20 enough money to hire a lawyer and work on his case, and complying with his ICE monitoring program
 21 requirements. (Decl. of Johanna Yiceth Bornachea Florez ¶¶ 1–9.). Petitioner has substantial
 22 connections to this country, and his sister and friends are suffering in his absence. These facts show not
 23 only that Petitioner’s freedom at stake, but that his absence is negatively affecting the life of his sister
 24 and friends.

25 B. The Risk of Erroneous Deprivation Is High.

26 Second, “the risk of erroneous deprivation of Petitioner’s liberty interest in the absence of a pre-
 27 detention hearing is high.” (*E.A. T.-B.*, 2025 WL 2402130, at *4.) “That the Government may believe it
 28

1 has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a
 2 manner that comports with due process.” (Id.) Her re-detention must still “bear[] [a] reasonable
 3 relation” to a valid government purpose—here, preventing flight or protecting the community against
 4 dangerous individuals. (*Zadvydas*, 533 U.S. at 690) (second alteration in the original) (quoting *Jackson*
 5 *v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must
 6 prove that re-detention is justified and that Petitioner poses a flight risk or danger—can ensure that this
 7 “reasonable relation” to a valid government purpose exists. But to date, only the “government
 8 enforcement agent” has made any decision about the propriety of detention, (*Coolidge v. New*
 9 *Hampshire*, 403 U.S. 443, 450 (1971)), a far cry from the hearing before a neutral decisionmaker that
 10 due process requires, (see, e.g., *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) (“Whatever else
 11 neutrality and detachment might entail, it is clear that they require severance and disengagement from
 12 activities of law enforcement.”); see also *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar).) In fact,
 13 Petitioner did not (and has not) even received a formal notice of the basis for his re-detention, much less
 14 any opportunity to respond to any allegations purporting to justify his re-detention or a hearing before a
 15 neutral decisionmaker.

16 The importance of a hearing before a neutral decisionmaker principle remains even though
 17 Petitioner might have initially been subject to mandatory detention under 8 U.S.C. § 1225(b)(1) or (b)(2)
 18 when he was processed for expedited removal. (See *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).)
 19 This is because, as this Court explained in *E.A. T.-B.*, “Petitioner does not claim to be entitled to a
 20 hearing consistent with a particular statute: he argues that the Due Process Clause requires it.” (2025
 21 WL 2402130, at *4.) And due process requires such a hearing because “Petitioner’s circumstances have
 22 changed materially” since her release in July 2022. (*Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777
 23 (N.D. Cal. 2019).) As noted above, Petitioner has formed deep connections to this country, residing first
 24 in Alameda County, then in Contra Costa County, with his sister, attending English classes at a local
 25 adult school, and starting his own business in order to help support himself and his sister. “These facts
 26 show that a[] [pre-deprivation] hearing provide[s] additional safeguards under these circumstances.”
 27 (Id.; see also, e.g., *Jorge M.F.*, 534 F. Supp. 3d at 1055) (“In any pre-detention hearing, the IJ would be
 28

1 required to consider any additional evidence from the eight-plus months since Petitioner was released.”);
 2 (*Garcia*, 2025 WL 2420068, at *10 (“[P]arole allowed [Petitioner] to build a life outside detention.”)).

3 C. The Government’s Interest Is Minimal.

4 Finally, “the government’s interest in detaining [Petitioner] or re-detaining [her] without a hearing
 5 is slight.” (*Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970) (“If the government
 6 wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in
 7 doing so without a hearing is low.”). “[A]lthough [a pre-deprivation hearing] would have required the
 8 expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP]
 9 violations before arresting and re-detaining her, those costs are far outweighed by the risk of erroneous
 10 deprivation of the liberty interest at issue.” (*E.A. T.-B.*, 2025 WL 2402130, at *5.) Notably, since his
 11 release, Petitioner “has continued to demonstrate that [she] poses neither a flight risk nor a danger to the
 12 community,” holding an honest job and helping both herself and his sister, and developing friendships,
 13 among other factors. (*Pinchi*, 2025 WL 2084921, at *5.)

14 The government may claim that its interest in enforcing immigration laws weighs heavily in its
 15 favor. But the government’s interest in immigration enforcement “is not at stake here; instead, it is the
 16 much lower interest in detaining [Petitioner] pending removal without a bond hearing.” (*Perera*, 598 F.
 17 Supp. 3d at 746.) Many other courts have observed the same. (See, e.g., *Zagal-Alcaraz v. ICE Field*
 18 *Office*, No. 3:19-CV-01358-SB, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) (“The government
 19 interest at stake here is not the continued detention of Petitioner, but the government’s ability to detain
 20 him without a bond hearing.”), *report and recommendation adopted*, 2020 WL 1855189 (D. Or. Apr. 13,
 21 2020). What is more, Petitioner has complied with the immigration laws: he was released on parole, and
 22 he was trying to save money and retain legal counsel to help him in his removal proceedings with the
 23 immigration court², as the Immigration and Nationality Act (INA) expressly permits. (8 U.S.C. § 1158.)
 24 Any claimed “enforcement” amounts to punishing and deterring people like Petitioner from asserting the
 25 statutory rights that the INA expressly provides, rather than enforcing those laws.

26
 27 ² It must be noted that the money which was being saved to retain the services of an immigration attorney are now being used
 28 for the legal representation in the present matter.

1 In addition, the government's interest is not limited to enforcement of the law; instead, it also
 2 encompasses the interest of the "public," including the administrative or financial burdens additional
 3 process requires. (*Mathews*, 424 U.S. at 348.) Here, any cost in holding a hearing, should the
 4 government choose to do so, is minimal. Moreover, any financial burden is outweighed by the costs of
 5 detaining Petitioner prior to such a hearing. The public's "interest lies on the side of affording fair
 6 procedures to all persons, even though the expenditure of governmental funds is required." (*Lopez v.*
 7 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).) This consideration also "cuts strongly in favor" of
 8 Petitioner because when "[w]hen the Government incarcerates individuals it cannot show to be a poor
 9 bail risk for prolonged periods of time, as in this case, it separates families and removes from the
 10 community breadwinners, caregivers, parents, siblings and employees." (*Velasco Lopez v. Decker*, 978
 11 F.3d 842, 855 (2d Cir. 2020).)

12 In sum, Petitioner has demonstrated—or is likely to be able to demonstrate—that he "has a protected
 13 liberty interest in his continuing release from custody, and that due process requires that Petitioner receive a
 14 hearing before an immigration judge before he can be re-detained." (*E.A. T.-B.*, 2025 WL 2402130, at *5.)

15 **Petitioner will suffer irreparable harm absent a temporary restraining order.**

16 Petitioner must also show she is "likely to suffer irreparable harm in the absence of preliminary
 17 relief." (*Winter*, 555 U.S. at 20.) Irreparable harm is the type of harm for which there is "no adequate
 18 legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068
 19 (9th Cir. 2014).

20 Here, Petitioner's unlawful detention constitutes "a loss of liberty that is . . . irreparable." (*Moreno*
 21 *Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated*
 22 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022);
 23 *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where
 24 "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because
 25 they are neither a danger nor a flight risk).) This is particularly true here, where Petitioner's detention
 26 also violates the Constitution. "Civil immigration detention violates due process outside of certain
 27 special and narrow nonpunitive circumstances." (*Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018)

(citation modified).) As detailed above, Petitioner’s detention is outside of those “special and narrow nonpunitive circumstances,” as the Due Process Clause forbids his detention without a pre-deprivation hearing. These constitutional concerns also counsel in favor of finding that Petitioner has demonstrated irreparable harm, for he has shown that his detention violates due process. (See *Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm”).)

Detention also inflicts substantial harm on Petitioner by separating him from his sister and friends. Absent a preliminary injunction, Petitioner has no hope of being reunited with his sister and their friends. Such “separation from family members” is an important irreparable harm factor. (*Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g., Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding “separated families” to be a “substantial injur[y] and even irreparable harm[]”); *cf. Hernandez*, 872 F.3d at 996 (recognizing that “government-compelled [family] separation” causes family members “trauma” and “other burdens”).)

In sum, Petitioner is suffering numerous and irreparable harms: detention itself, as well as separation from his sister and friends. All of these factors warrant a temporary restraining order and a preliminary injunction.

The balance of hardships and public interest weigh heavily in Petitioner’s favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—“merge when the Government is the opposing party.” (*Nken v. Holder*, 556 U.S. 418, 435 (2009).) Here, as previously discussed, Petitioner faces weighty hardships: loss of liberty and separation from family and friends. The government, by contrast, faces no hardship, as all it must do is release a person it previously released and who has since lawfully resided in Alameda County, California. Avoiding such “preventable human suffering” strongly tips the balance in favor of Petitioner. (*Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).)

What is more, “the public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process.”

(*Hernandez*, 872 F.3d at 996.) Indeed, “in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public interest in favor of granting a preliminary injunction.” (*Baird*, 81 F.4th at 1048.)

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents release Petitioner and to require a hearing before a neutral decisionmaker where the government must demonstrate he poses a flight risk or danger before any re-detention.

Immediate release is warranted.

As in *E.A. T.-B.*, this Court should order Petitioner’s immediate release. “[A] post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.” (*E.A. T.-B.*, 2025 WL 2402130, at *6.) In other words, Petitioner’s unlawful detention without a pre-deprivation hearing is *already* occurring, and only immediate release remedies that issue. Moreover, the evidence here demonstrates that Petitioner has made every effort to follow the law: receiving parole, preparing and filing an asylum application, and complying with the ICE monitoring requirements. As a result, the Court should order his immediate release and provide that Petitioner may only be re-detained if ICE justifies re- detention by clear and convincing evidence at a hearing where ICE is required to demonstrate Petitioner is a flight risk or danger to the community. (See e.g., *Pinchi*, 2025 WL 2084921, at *7; *Maklad* 2025 WL 2299376, at *10; *Garcia*, 2025 WL 2420068, at *13.)

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant his motion for a temporary restraining order and order his immediate release.

Respectfully submitted,

DATE: 12/17/2025

/S/ Jose F. Vergara
Jose F. Vergara
CA Bar No. 251342
vergarajf@hotmail.com

COUNSEL FOR PETITIONER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,156 words, in compliance with the Local Civil Rules.

/S/ Jose F. Vergara

Jose F. Vergara
CA Bar No. 251342
vergarajf@hotmail.com

COUNSEL FOR PETITIONER