Martin B. Schwartz. Esq.
Law Offices of Martin Schwartz
Immigration and Civil Law, P.A.
1120 E. Kennedy Boulevard, Unit 231
Tampa, FL 33602-3578

In Removal Proceedings
DETAINED

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

MARIO SUAREZ-MAYA,
Plaintiff/Petitioner

File Number: [redacted]

vs.

PAMELA BONDI, United States Attorney General;
KRISTI NOEM, United States Secretary of Homeland Security;
and TODD M. LYONS, Acting Director of Immigration and Customs Enforcement, Washington, D.C., and
JOHN E. CANTU, Field Office Director at US Immigration and Customs Enforcement, Phoenix, Arizona

In Removal Proceedings

PLAINTIFF/PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

COMES NOW the Plaintiff/Petitioner, MARIO SUAREZ-MAYA, and prays the Honorable Court to enter Order compelling Defendants/Respondents to release him from custody, and restraining them from again arresting him until such time as his case has been heard in the appropriate Immigration Court.

I. INTRODUCTION AND STATEMENT OF FACTS

1) This motion is filed of even date with a Petition for Writ of Habeas Corpuse relating to the same Plaintiff/Petitioner, regarding which Petition counsel expects to succeed on the merits.

2) The Plaintiff/Petitioner entered the United States without inspection and has been resident in the United States for 24 years and has a stable address and has three children who are United States citizen.

3) Plaintiff/Petitioner previously was detained by immigration authorities, and was released from custody on $5,000 bond by Order of the Executive Office for Immigration Review, Miami Krome Immigration Court, on March 17, 2025, said Order being attached hereto as Plaintiff/Petitioner's Exhibit "1'.

4) Plaintiff/Petitioner was detained in 2025, in Florida, on no charge, and, without hearing, was transported to an ICE detention facility in Arizona, where he is detained at present.

5) One of Plaintiff/Petitioner's U.S. citizen children, Joshua Suarez, is engaged to marry a U.S. citizen named Araceli Caez. Araceli has two U.S. citizen children, whose names and dates of birth are as follows: E [redacted] born on [redacted] and M [redacted] born on [redacted]

6) Plaintiff/Petitioner has ties to the community and poses no danger to anyone, nor does he pose any flight risk. He has filed with the Miami Krome Immigration Court an application for cancellation of removal relief. This has made him eligible to obtain employment authorization. Thus, he has no reason not to report to court, as he is very motivated to be granted relief from removal, and to seek the

court's forgiveness for having, on some occasions over the years, driven a motor vehicle without a license.

7) The Plaintiff/Petitioner's arrest has caused sevcre economic distress to his family. He was the financial provider for his family, responsible for rent, groceries, utilities, insurance, and car payments.

8) The Plaintiff/Petitioner's son, A[redacted] has been forced to take a second job at Dunkin Donuts. He works long hours during the weekdays and the weekends to make ends meet. Because he must manage both work and school, he has been stressed and exhausted.

9) The Plaintiff/Petitioner's son, A[redacted] has missed tuition payments in the absence of his father's income. In addition, he has transportation difficulties because he must drive from his home in Gibson, Florida, to his college in Brandon. Without his father's support, he struggles to pay for gasoline and maintenance.

10) The Plaintiff/Petitioner's family reports that his 17-year-old son, A[redacted] has become withdrawn and depressed since his father's detention. He has isolated himself in his room and no longer socializes as much with his friends. In addition, he has shown visible signs of sadness and stress.

11) The Plaintiff/Petitioner's other U.S. citizen son, Josue, and his fiancée wish to marry, but are unwilling to do so until Plaintiff/Petitioner's immigration issues are resolved.

12) The Plaintiff/Petitioner's detention is unlawful and unconstitutional, and Plaintiff/Petitioner must be expeditiously granted a hearing before this Court related to his detention.

13) Plaintiff/Petitioner's U.S. citizen children, and other dependents, are suffering severe emotional and economic hardships because of his detention. (Attached, as Plaintiff/Petitioner's Exhibit "2", are the birth certificates of his three U.S. citizen children.) Their names and dates of birth are as follows:

a) Josue Suarez, born on [redacted]

b) A[redacted] born on [redacted]

c) Mario Suarez, born on [redacted]

II. LEGAL BACKGROUND

The Honorable Court must first be aware that Plaintiff/Petitioner's case is governed not by 8 U.S.C. § 1225(b)(2)(A), which, under certain circumstances, *mandates* detention of a noncitizen *seeking entry* into the United States; but by 8 U.S.C. § 1226, which provides for *discretionary* detention of a noncitizen *already present* in the United States – and which also provides for the discretionary release of a noncitizen so detained on bond, or on parole.

The facts of the instant case are very similar to those of *Guzman v. Andrews,* United States District Court, Eastern District of California, Case No. 1:25-cv-01015-KES-SCO (HC); the District Court's order in which, dated September 9, 2025, is attached hereto as Plaintiff/Petitioner's Exhibit "3". Juan Guzman was a noncitizen who had been 30 years in the United States and had two children who were U.S. citizens. He was arrested on a warrant issued pursuant to 8 U.S.C. § 1226(a). An immigration judge ruled he was being held under 8 U.S.C. §

1226(a), and therefore was not entitled to a bond hearing under 8 U.S.C. § 1226(a). The District Court reversed, holding Guzman was being held under 8 U.S.C. § 1226(a). There are no distinguishing or dispositive differences of fact between the Guzman case and the instant case.

III. ARGUMENT

To obtain preliminary and injunctive relief, Plaintiff/Petitioner must demonstrate that (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Under the circumstances present herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

A. Plaintiff/Petitioner Is Likely to Succeed on the Merits.

i. Constitutional Claim

Petitioner argues that his re-detention without a bond hearing violates the Due Process Clause of the Fifth Amendment to the United States Constitution. The Court analyzes the claim "in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution." *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *2 (E.D. Cal. July 14, 2025) (*citing Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)). These two steps are examined in turn.

1. Protected Liberty Interest

A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. *See id.* (Due Process requires pre-deprivation hearing before revocation of preparole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). To determine whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific

> conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). In *Morrissey*, the Supreme Court explained that parole "enables [the parolee] to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home, work, and "be with family and friends and to form the other enduring attachments of normal life." Morrissey, 408 U.S. at 482. "Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens," such as monitoring and seeking authorization to work and travel, his "condition is very different from that of confinement in a prison." Id. "The parolee has relied on at least an implicit promise that parole will be revoked only if [she] fails to live up to the parole conditions." Id. The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." Id. (quotations omitted). Therefore, a parolee possesses a protected interest in his "continued liberty." *Id.* at 481–84.

Plaintiff/Petitioner's release is similar. An immigration judge released petitioner on bond in 2025 after determining that he did not pose a flight risk or danger to the community. Petitioner was able to provide for his three U.S. citizen children—undoubtedly one of the most "enduring attachments of normal life," *Id.* at 482. His situation since being released has been "very different from that of confinement in a prison." *Morrissey,* 408 U.S. at 482. Therefore, he has a protected liberty interest in his release.

2. *Mathews* Balancing

Due process "is a flexible concept that varies with the particular situation." *Zinermon v. Burch,* 494 U.S. 113, 127 (1990). The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. (quoting *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976)); see *Hernandez,* 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context). Petitioner argues that a proper weighing of these factors demonstrates that he should be afforded a pre-deprivation bond hearing where the government bears the burden of proof.

Turning to the first factor, petitioner has a significant private interest in remaining free from detention. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001). Petitioner had been out of custody, and during that time, raised and supported his children. His detention denies him that freedom. He is entitled to a determination as to whether ny violation on his passrt warrants modification of the immigration judge's decision to release him. *See Morrissey,* 408 U.S. at 482–84.

Second, the risk of an erroneous deprivation of liberty in these circumstances is considerable. *See Ramirez Clavijo,* 2025 WL 2419263, at *6; *Lopez Benitez,* 2025 WL 2371588, at *12. Civil immigration detention, which is "nonpunitive in purpose and effect[,]" is justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas,* 533 U.S. at 690; *Padilla,* 704 F. Supp. 3d at 1172. "[B]ecause [p]etitioner's substantial liberty interest is at stake, due process [] requires [the government] to prove by clear and convincing evidence that [petitioner] is a flight risk or danger to the community before depriving [him] of that liberty," even though petitioner already has other procedures available to him. *Ramirez Clavijo,* 2025 WL 2419263, at *6 (emphasis added); *see Singh v. Holder,* 638 F.3d 1196, 1203 (9th Cir. 2011), abrogated on other grounds by *Jennings v. Rodriguez,* 583 U.S. 281 (2018) (invoking due process principles and explaining that "the substantial liberty interest at stake" warranted placing the burden on the government to "prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond."). While in detention he has limited ability to gather evidence and to contact his family and friends who would testify on his behalf at the hearing. These considerations create a significant risk that he

might be erroneously deprived of his protected liberty interest, even with the availability of a post-detention section 1226(a) bond hearing.

Third, the government's interest in detaining petitioner without a hearing is "low." *Ortega,* 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Becerra,* No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal. Mar. 3, 2025). In immigration court, custody hearings are routine and impose a "minimal" cost. *Doe,* 2025 WL 691664, at *6. Although the government does have an interest in detaining noncitizens who are a danger to the community, and "there may be [some] situations that urgently require arrest[,] . . . a pre-deprivation hearing is required to satisfy due process" absent those urgent concerns. *Guillermo M. R. v. Kaiser,* No. 25-CV-05436-RFL, 2025 WL 1983677, at *9 (N.D. Cal. July 17, 2025) (citing *Zinermon,* 494 U.S. at 127). The government has not demonstrated an urgent need to detain Plaintiff/Petitioner before a pre-deprivation bond hearing could be held. The government's interest in detaining him without a pre-deprivation hearing is therefore low.

On balance, the *Mathews* factors show that petitioner is entitled to a bond hearing, which should have been provided before petitioner was detained. "'[T]he root requirement' of the Due Process Clause" is "'that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest.'" *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut,* 401 U.S. 371, 379 (1971)); see *Zinermon,* 494 U.S. at 127 ("Applying [the *Mathews]* test, the Court usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty . . . ."). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. *See*

Morrissey, 408 U.S. at 480–86. The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. at 782.

Numerous district courts have held that these principles extend to the context of immigration detention. *See, e.g., Ramirez Clavijo*, 2025 WL 2419263, at *4–6; Garcia, 2025 WL 1927596, at *5; *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *1 (N.D. Cal. July 4, 2025); *Ortega*, 415 F. Supp. 3d at 970; Doe, 2025 WL 691664, at *6; *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *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).

With these considerations in mind, petitioner is likely to succeed on the merits.

b. Irreparable Harm

The government may argue that petitioner does not face irreparable harm because detention is statutorily authorized. Doc. 8 at 7. But the Ninth Circuit has recognized that, even though the statute authorizes detention, there may be numerous "irreparable harms imposed on anyone subject to immigration detention," such as "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995.

Petitioner has established, or at hearing will establish, that those harms are present here.

Additionally, many courts have concluded that the "loss of liberty" arising from immigration detention is a "severe form of irreparable injury." *See e.g., Romero,* 2025 WL 2403827, at *11 (quoting *Ferrara v. United States,* 370 F. Supp. 2d 351, 360 (D. Mass. 2005)).

Moreover, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez,* 872 F.3d at 994 (quoting *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) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)). Plaintiff/Petitioner has shown a likely deprivation of his due process rights, so he faces irreparable harm absent a preliminary injunction.

c. Balance of Hardships and Public Interest

When the government is the nonmoving party, "the last two *Winter* factors merge." *Baird v. Bonta,* 81 F.4th 1036, 1040 (9th Cir. 2023) (internal citations omitted). In immigration court, custody hearings are routine and impose a "minimal" cost. *Doe v. Becerra,* No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal. Mar. 3, 2025). Thus, faced with a choice "between [these minimally costly procedures] and preventable human suffering," as discussed above, the Court must conclude "that the balance of hardships tips decidedly in [petitioner's] favor." *Hernandez,* 872 F.3d at 996 (quoting *Lopez v. Heckler,* 713 F.2d 1432, 1437 (9th Cir. 1983)).

The public interest also weighs in Plaintiff/Petitioner's favor. "The public has a strong interest in upholding procedural protections . . ., and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz v. Kaiser,* No. 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (citing *Jorge M.F. v. Wilkinson,* No. 21-CV-01434-JST, 2021 WL 783561, at *3) (N.D. Cal. Mar. 1, 2021); see also *Index Newspapers LLC v. U.S. Marshals Serv.,* 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a party's constitutional rights.") (citing *Padilla,* 953 F.3d at 1147–48).

d. Remedy

The purpose of a preliminary injunction is to return the parties to the status quo ante, which is "not simply [] any situation before the filing of a lawsuit, but instead 'the last uncontested status which preceded controversy. *GoToi.com v. Walt Disney Co.*,202 F.3d 1199, 1210 (9th Cir. 2000). *Pinchi v. Noem,* 2025 WL 1853763, at *3; *Kuzmenko v. Phillips,* No. 2:25-cv-00663-DJC-AC, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025); *see also Valdez v. Joyce,* 25 Civ. 4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025) (ordering immediate release of unlawfully detained noncitizen); *Ercelik v. Hyde,* No. 1:25-CV-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025) (same); *Günaydın v. Trump,* No. 25-CV-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025) (same).

CONCLUSION

Therefore, the Honorable Court should order Respondents to release Plaintiff/Petitioner immediately. They should be ordered not to re-detain Plaintiff/Petitioner unless the government proves by clear and convincing evidence, at a bond hearing before a neutral arbiter, that Plaintiff/Petitioner is a flight risk or danger to the community. The bond requirement of Federal Rule of Civil Procedure 65(c) should be waived. Courts regularly waive security in cases like this one, and the government has not established a need to impose a security bond in this case. *See, e.g., Diaz v. Brewer,* 656 F.3d 1008, 1015 (9th Cir. 2011); *Garcia,* 2025 WL 1676855, at *3; *Pinchi,* 2025 WL 1853763, at *4; Singh, 2025 WL 1918679, at *9.

WHEREFORE, Plaintiff/Petitioner prays the Honorable Court to enter order Order compelling Defendants/Respondents to release him from custody, and restraining them from again arresting him until such time as his case has been heard in the appropriate Immigration Court.

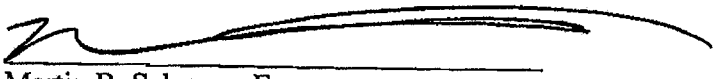
Respectfully Submitted By:

Martin B. Schwarz, Esq.
FL Bar ID #880371
1120 E. Kennedy Boulevard, Unit 231
Tampa, FL 33602
Cell: (813) 751-6777
O: (813) 269-7421; Fax (813) 269-7562
EM: martin@martinschwartzlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of December, 2025, I filed a true and correct copy of the foregoing via the Pacer electronic filing system, to PAMELA BONDI, U.S. Attorney General; KRISTI NOEM, U.S. Secretary of Homeland Security; TODD M. LYONS, Acting Director of Immigration and Customs Enforcement; JOHN E. CANTU, ICE Field Office,

Director, Arizona; and to the U.S. Department of Homeland Security, Office of the Principal Legal Advisor, 2409 La Brucherie Road, Suite 3, Imperial, CA 92251.



Martin B. Schwarz, Esq.