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Claudio Zamora Zamora

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Claudio Zamora Zamora,

Petitioner,

v.

John Cantu, Field Office Director of  
Enforcement and Removal Operations,  
Phoenix Field Office, Immigration and  
Customs Enforcement;

Kristi Noem, Secretary, U.S. Department of  
Homeland Security;

Pamela Bondi, U.S. Attorney General;

Christopher Howard, Warden of Eloy  
Detention Center;

Todd Lyons, Acting Director, Immigration  
and Customs Enforcement and Removal  
Operations.

Respondents.

Case No. TBD

**EX PARTE  
MOTION FOR  
TEMPORARY  
RESTRAINING  
ORDER AND  
PRELIMINARY  
INJUNCTION**

**MEMORANDUM  
OF POINTS AND  
AUTHORITIES IN  
SUPPORT OF  
MOTION FOR  
TRO/PI**

**Challenge to Unlawful  
Incarceration; Request for  
Declaratory and Injunctive  
Relief**

Ex Parte Motion for TRO/PI; Points and Authorities in Support of  
Petitioner's Ex Parte Motion for TRO/PI

## NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local Rules of this Court, Petitioner moves this Court for an order that Respondents – John Cantu in his official capacity as Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement (“ICE”); Kristi Noem, in her official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”); Pamela Bondi, in her official capacity as the U.S. Attorney General with authority over the Executive Office for Immigration Review; Todd Lyons, in his official capacity as Acting Director of ICE Enforcement and Removal Operations; and Christopher Howard, in his official capacity as Warden of the Eloy Detention Center, where Petitioner is detained – be enjoined from continuing to detain Petitioner unlawfully and from re-detaining Petitioner without an individualized bond hearing at which the government bears the burden to prove by clear and convincing evidence that circumstances have changed since Petitioner received a grant of parole, such that he is now a danger to the community or a flight risk. Petitioner additionally seeks to enjoin Respondents from transferring the Petitioner outside the District of Arizona, where he is presently located, while this petition is pending. Such an order would maintain the status quo while habeas jurisdiction is litigated and ensure that Petitioner remains close to legal counsel during the pendency of his petition.

The reasons for this Motion are in the accompanying Memorandum of Points and Authorities. As this Motion shows, Petitioner warrants a temporary restraining order and a preliminary injunction due to his weighty liberty interest under the Due Process Clause Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner’s Ex Parte Motion for TRO/PI

of the Fifth Amendment in remedying his unlawful detention.

Petitioner is submitting a habeas petition for same, on the same grounds, and is also filing this motion for a temporary restraining order and preliminary injunction to prevent irreparable injury before a hearing on his Habeas may be held. Petitioner has provided a copy of his Petition for Writ of Habeas Corpus and Motions for Temporary Restraining Order and Motion for Preliminary Injunction to Katherine Branch, Civil Chief for the U.S. Attorney's Office, via email.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and preliminary injunction enjoining Respondents from continuing to detain him unlawfully, from re-detaining him without an individualized bond hearing, and from transferring him outside this judicial district while his habeas corpus petition is pending.

Dated: December 23, 2025

Respectfully Submitted,

/s/ Gregory Fay  
Attorney for Petitioner

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## I. INTRODUCTION


Petitioner Claudio Zamora Zamora seeks a Temporary Restraining Order (TRO) and Preliminary Injunction (PI) that requires Respondents to release him immediately from custody, and prior to any re-detention, to provide him with an individualized bond hearing at which the government bears the burden to prove that he is a danger to the community or a flight risk, and where the immigration judge must further consider possible alternatives to detention. Petitioner also seeks a TRO and PI enjoining Respondents from transferring Petitioner outside the District of Arizona, where he is presently located, while this petition is pending.

Petitioner should prevail on this motion because he is likely to succeed on the merits of his claims. Under the particular circumstances of Petitioner's case, his continued detention is unlawful because he received a grant of parole and was released from custody when he arrived in the United States over three years ago, and the Department of Homeland Security (DHS) re-detained him without showing changed circumstances at a pre-detention and revocation hearing. The ability of DHS to re-arrest someone following their release from detention is limited by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. Because a post-deprivation hearing does not provide a procedural safeguard against the ongoing, irreparable injury of Petitioner's unlawful detention, the proper remedy is immediate release from custody. Following Petitioner's release, the same principles must apply, such that in the future he must be provided with notice and a hearing, *prior to any re-detention*, at which DHS bears the burden of justifying his re-detention (to a neutral adjudicator such as an Immigration Judge).  
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as an Immigration Judge) and at which Petitioner will be afforded the opportunity to advance his arguments as to why he should not be re-detained.

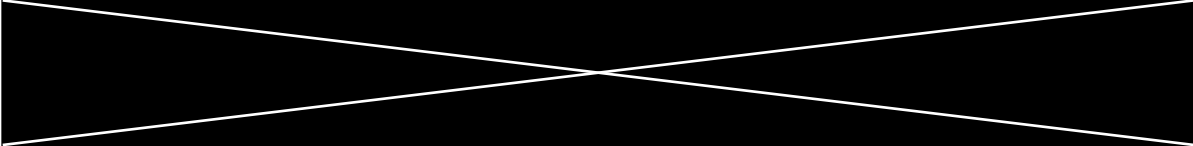
Petitioner also meets the standard for a temporary restraining order. He will continue to suffer immediate and irreparable harm stemming from his unlawful re-detention absent an order from this Court enjoining the government from further unlawful detention by ordering his release and enjoining future re-detention unless and until he receives a hearing before an Immigration Judge. Petitioner further seeks an order prohibiting Respondents from transferring him outside this judicial district while this petition is pending, to avoid unlawfully frustrating this tribunal's jurisdiction and Petitioner's access to counsel. Since holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Petitioner's favor. Prudential exhaustion is not required here due to futility, irreparable injury, and agency delay. Finally, there is no jurisdictional hurdle barring relief. This Court should thus grant this motion.

## II. STATEMENT OF THE FACTS

Petitioner, Claudio Zamora Zamora (Mr. Zamora), is an Ecuadoran national who seeks protection in the United States because he was persecuted in Ecuador, as were his wife and stepson, who are Venezuelan nationals. Exhibit A (Notice to Appear), Exhibit B (Form I-589 and Receipt Notices for Filing and Annual Fee Payment), C (Marriage Certificate), D (Declaration of Mr. Zamora). Mr. Zamora and his family fled from Ecuador to Venezuela in July 2022, and Mr. Zamora and his wife married that same month. Exhibits C, D. In Venezuela, 

and she was attacked on that basis. *Id.* Shortly thereafter, Mr. Zamora and his family fled

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On October 11, 2022, Mr. Zamora entered the United States, where he turned himself into immigration authorities in El Paso, Texas. Exhibit D. His wife and stepson were returned to Mexico but ultimately entered the United States in December 2022. *Id.*

Shortly after arriving in El Paso, Mr. Zamora received a grant of parole from the DHS and was released into the United States. Exhibit E (Form I-94), Exhibit F (Alternatives to Detention Sheet). He filed an Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture with United States Citizenship and Immigration Services (USCIS) on October 9, 2023. Exhibit B. Mr. Zamora diligently continued to pursue his asylum application, paying the \$100.00 annual filing fee as required on October 31, 2025. *Id.* He was issued a work permit on May 9, 2024, and to wit, began working at Sollid Cabinetry manufacturing furniture from January to October 2025, prior to his detention. Exhibit G.

Despite his pending asylum application, in October 2025, Mr. Zamora was apprehended by the DHS and detained in immigration custody at Eloy Detention Center in Eloy, Arizona. *See* Exhibit A. On October 24, 2025, the DHS served Petitioner with a Notice to Appear (NTA) charging that he was removable from the United States under 8 U.S.C. § 1182(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, was not in possession of a valid entry document required by the Immigration and Nationality Act (INA). *Id.*

On December 18, 2025, the DHS filed a motion to pretermit Mr. Zamora's asylum application in Immigration Court, alleging that he is barred from relief and protection in the United States subject to Asylum Cooperative Agreements between the United States and the countries of Honduras and Uganda. Exhibit H (Motion to Pretermit). Mr. Zamora's individual hearing before the Eloy Immigration Court is scheduled for January 7, 2026. Exhibit H (Motion to Pretermit, Cover Sheet with Individual Hearing Date).

Thus, Petitioner has been detained for well over two months, even though DHS previously permitted him to remain at liberty for over three years pursuant to a grant of parole, during which time he built a life in the United States with his wife and stepson. DHS did not provide Petitioner with a pre-deprivation hearing or indeed, with any indication that circumstances had changed to warrant his re-detention.

### III. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order and preliminary injunctive relief if he establishes that he is "likely to succeed on the merits, . . . 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); *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant relief if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d

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1127 (9th Cir. 2011).

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). As shown below, Petitioner overwhelmingly satisfies the standards for both a temporary restraining order and a preliminary injunction.

#### IV. ARGUMENT

#### **PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION BECAUSE HE IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS, AND HE SUFFERS IRREPARABLE INJURY EACH DAY HE REMAINS DETAINED.**

Petitioner should prevail on this motion because he is likely to succeed on the merits of his claims, he is likely to suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in his favor, and an injunction is in the public interest.

Petitioner is likely to succeed on his claim because in his particular circumstances, his re-detention and revocation of his parole violates his due process rights and runs afoul of the Administrative Procedures Act. Similarly, his constitutional and statutory rights would be violated if he were re-detained without an individualized hearing at which the government bears the burden to show changed circumstances such that he is a danger to the community or a flight risk. Mr. Zamora has already suffered irreparable injury in the form of unlawful incarceration and will continue to suffer irreparable injury each day he

remains detained without due process. Because holding federal agencies accountable to constitutional demands is in the public interest, and Petitioner has diligently pursued relief on behalf of himself and his family during his period of parole, the balance of equities and public interest are also strongly in Petitioner's favor. Prudential exhaustion is not required here due to futility, irreparable injury, and agency delay, and there is no jurisdictional hurdle barring relief. Finally, to ensure these claims are adjudicated in a manner consistent with Mr. Zamora's due process rights, the Court should enjoin his transfer outside this judicial district while his petition is pending. This Court should thus grant this motion.

**A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM THAT HIS RE-DETENTION VIOLATED HIS DUE PROCESS RIGHTS AND THE ADMINISTRATIVE PROCEDURES ACT.**

Petitioner is likely to succeed on his claim that his ongoing detention is unlawful because DHS granted him parole and released him over three years ago, and it did not provide him with a pre-deprivation hearing to show changed circumstances.

**1. Petitioner Is Likely to Succeed on the Merits of His Claim That He Was Entitled to a Hearing Prior to Reincarceration Following Release on Parole.**

In Mr. Zamora's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing before a neutral decision maker to determine whether circumstances have materially changed since his release on parole in October 2022, such that detention would now be warranted.

Federal district courts within the jurisdiction of the Ninth Circuit Court of Appeals have repeatedly recognized that "even when ICE has the initial discretion to detain or

release a noncitizen pending removal proceedings, after that individual is released from custody” on parole, he “has a protected liberty interest in remaining out of custody.”

*Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N. D. Cal. 2025); *see also Alberto R.C. v. Murray*, No. 25-1618, 2025 U.S. Dist. LEXIS 260211, \*13 (E.D. Cal. Dec. 16, 2025); *Chacon v. Hermosillo*, No. 25-2299, 2025 U.S. Dist. LEXIS 257776 (W.D. WA Dec. 12, 2025); *Ruhai Shen v. Larose*, No. 25-3235, 2025 U.S. Dist. LEXIS 256924 (S.D. Cal. Dec. 11, 2025); *N-E-M-B- v. Wamsley*, No. 25-989, 2025 WL 3527111 (D. Or. Dec. 9, 2025); *Gomez v. Doe*, No. 25-3255, 2025 WL 3269886 (D. Ariz. Oct. 31, 2025). “In fact, the government’s initial release of an individual from custody ‘creates an “implicit promise” that the individual’s liberty will be revoked only if they fail to abide by the conditions of their release.’” *Ruhai Shen*, 2025 U.S. Dist. LEXIS 256924 at \*11 (quoting *Calderon v. Kaiser*, No. 25-6695, 2025 WL 2430609, \*2 (N.D. Cal. Aug. 22, 2025)). “An initial release from ICE custody further reflects ‘a determination by the government that [an individual is] neither a flight risk nor a danger to the community.’” *Ruhai Shen*, 2025 U.S. Dist. LEXIS 256924 at \*11 (quoting *Pinchi*, 792 F. Supp. 3d at 1034. “Thus, DHS may generally not re-arrest a previously released noncitizen ‘absent a change in circumstances.’” *Id.* (quoting *Saucedo Aceros v. Kaiser*, No. 25-6924, 2025 WL 2637503, \*7 (N.D. Cal. Sept. 12, 2025)).

Where ICE revokes a noncitizen’s parole and detains the individual “without any rational individualized fact-finding or consideration of the effects of altering their prior decisions,” ICE “act[s] arbitrarily and capriciously in violation of the [Administrative Procedures Act, 5 U.S.C. § 706.]” *Sanchez v. Larose*, No. 25-2396, 2025 WL 2770629

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(S.D. Cal. Sep. 26, 2025); *see also N-E-M-B-*, 2025 WL 3527111, \*19-\*20 (same).

The demands of due process and the limitations on DHS's authority to revoke a noncitizen's parole both require a pre-deprivation hearing for a noncitizen on parole, like Mr. Zamora, *before* ICE re-detains him. *See, e.g., Ruhai Shan*, 2025 U.S. Dist. LEXIS 256924 at \*11 (ordering immediate release followed by a hearing at which the government will bear the burden of demonstrating by clear and convincing evidence that Petitioner is a flight risk or danger to the community); *N-E-M-B-*, 2025 WL 3527111 (same); *Alberto R. C.*, 2025 U.S. Dist. LEXIS 260211, \*16-\*17 (same). The courts have reached this conclusion by applying the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). *See id.* Under that test, courts consider: (1) "the private interest" at stake, (2) "the risk of an erroneous deprivation" without additional procedures and "the probable value . . . of additional or substitute procedural safeguards," and (3) the "Government's interest, including the function involved and the fiscal and administrative burdens imposed by the additional procedures." *Id.* 424 F.3d at 335.

Mr. Zamora did not receive a pre-deprivation hearing, nor did DHS provide any individualized fact-finding in his case or consideration of the effects of altering its previous decision to grant him parole and allow him to remain at liberty for a period of over three years. Thus, Mr. Zamora is likely to succeed in showing that DHS violated his due process rights and that it acted arbitrarily and capriciously in violation of the APA.

## 2. Petitioner Has a Protected Liberty Interest in His Release.

Mr. Zamora's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner's Ex Parte Motion for TRO/PI

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).

Since October 2022, Mr. Zamora exercised that freedom under DHS’s grant of parole. Exhibits E, F, G. Although he was released under the Alternatives to Detention program, Exhibit F, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring

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pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). When analyzing the issue of 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). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“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”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

Here, when this Court “compar[es] the specific conditional release in [Mr. Zamora’s case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Zamora’s release “enables him 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, care for his wife and stepson, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Mr. Zamora timely filed and pursued an application for asylum before USCIS. He obtained work authorization, and worked in the furniture manufacturing industry nearly a year to support his family. Exhibit G. His application for relief is meritorious, with an upcoming hearing, and thus, his liberty interest is strong.

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3. Petitioner's Liberty Interest Mandates His Immediate Release, Followed By Notice And a Hearing Prior to Any Re-Arrest.

Mr. Zamora asserts that, here, (1) where his detention is civil, (2) where he has been at liberty for more than three years, (3) where he has a substantial application for asylum pending before the Immigration Court, with an upcoming hearing, and (4) where no change in circumstances exist that would justify his detention, due process mandates that he be immediately released and that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of parole.

“Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Mr. Zamora’s] liberty interest against the [government’s] interest in the efficient administration of” immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must balance: “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 probative 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 requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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The Supreme Court “usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the only remedies the State could be expected to provide” can a post-deprivation hearing satisfy due process. *Zinermon*, 494 U.S. at 985.

*a. Petitioner’s Interest in His Liberty Is Profound.*

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that 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—apply with even greater force to individuals like Mr. Zamora, who were released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Zamora retains a truly weighty liberty interest even though he was under conditional release.

What is at stake in this case for Mr. Zamora is one of the most profound individual

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interests recognized by our legal system: whether ICE may unilaterally nullify a prior parole decision and take away his physical freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“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.”).

Courts considering petitions like that of Mr. Zamora, filed by individuals who were re-detained following release on parole, have concluded that the petitioners’ liberty interests were “significant,” *Alberto R.C.*, 2025 U.S. Dist. LEXIS 260211 at \*14, as well as “sacred and profound.” *Rosado v. Figueroa*, No. 25-2157, 2025 WL 2337099, \*37 (D. Ariz. Aug. 11, 2025). Thus, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

*b. The Government’s Interest In Continuing to Detain Petitioner Without a Due Process Hearing Is Low, and the Risk of Erroneous Deprivation Is High Absent Immediate Release.*

The government’s interest in continuing to detain Mr. Zamora without a due process hearing is low, and when weighed against Mr. Zamora’s significant private interest in his liberty, the scale tips sharply in favor of requiring Respondents to release Mr. Zamora immediately and provide him with a pre-deprivation hearing at which the government will bear the burden of demonstrating by clear and convincing evidence that

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Petitioner is a flight risk or danger to the community.

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Mr. Zamora in October 2025 when he has lived at liberty since October 2022 while diligently pursuing asylum. *See Exhibits B, D.*

ICE implicitly determined that Mr. Zamora was not a danger to the community or a flight risk in October 2022, when it granted him parole and released him, and he has done nothing to undermine that determination. *See Pinchi*, 792 F. Supp. 3d at 1034 (reasoning that a grant of release represents "a determination by the government that [an individual is] neither a flight risk nor a danger to the community"); *see also Morrissey*, 408 U.S. at 482 ("It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)). "Where, as here, DHS determines that a petitioner is neither a flight risk nor a danger to the community, that determination strongly reduces any valid interest the Government has in the petitioner's continued detention." *Khorsheed v. Larose*, No. 25-3346, 2025 U.S. Dist. LEXIS 260080, \*4 (S.D. Cal. Dec. 15, 2025).

Furthermore, Mr. Zamora has a meritorious application for relief from removal and eagerly awaits the opportunity to present his case before the Immigration Court. *See Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner's Ex Parte Motion for TRO/PI*

Exhibit B. It is difficult to see how the government's interest in ensuring his presence at the moment of removal has materially changed since he was released in October 2022, where it has not alleged violation of any conditions of release, and where he has provided for his family and sought asylum before USCIS within one year of his arrival. The government's interest in detaining Mr. Zamora at this time is therefore low.

Additionally, "the administrative and financial burdens associated with detaining [a petitioner] for the remainder of his removal proceedings far surpasses the cost of providing him a hearing to decide if that detention is justified." *Chacon*, 2025 U.S. Dist. LEXIS 257776, \*11. Accordingly, "the government's interest in detaining [Mr. Zamora] without a pre-deprivation hearing is minimal." *Id.*

Furthermore, enjoining Mr. Zamora's re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Zamora is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5 million." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

"[D]ue process requires Petitioner to be released from custody and receive a bond hearing before an immigration judge before he can be re-detained" because "if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid." *Faizyan v. Casey*, No. 25-2884, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025) (quoting *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021)). Where, as here, a petitioner

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has not violated any conditions of 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. v. Wamsley*, 795 F. Supp. 3d 1316 (W.D. WA 2025).

Thus, ordering Mr. Zamora’s release and providing him with a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Zamora can be lawfully detained, he must receive a hearing before a neutral adjudicator at which the government is held to show by clear and convincing evidence that circumstances have changed such that Mr. Zamora is now a danger to the community or a flight risk.

**B. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION.**

Mr. Zamora will suffer irreparable harm if he remains unlawfully deprived of his liberty without being immediately released and provided the constitutionally adequate process (a future pre-deprivation hearing before an Immigration Judge) that this motion for a temporary restraining order seeks. Detainees in civil ICE custody are held in “prison-like conditions” which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). “The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to immigration detention,” including “subpar medical and psychiatric care

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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. Indeed, the government itself has documented alarmingly poor conditions in ICE detention centers.<sup>1</sup>

Mr. Zamora’s continued detention also prevents him from reuniting with his family members in the United States, in particular his wife and stepson, who live in Arizona. *See* Exhibit B. Mr. Zamora’s wife, in particular, suffered persecution that is highly relevant to Mr. Zamora’s asylum claim, and his continued separation from her may therefore hinder his ability to prepare for his hearing before the Immigration Court. Furthermore, the family relies on his employment to support themselves as they litigate these claims.

Further, it “is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005); *see also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (concluding that Plaintiffs who showed unconstitutional deprivation of physical liberty “also carried their burden as to irreparable harm.”).

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<sup>1</sup> *See, e.g.*, DHS, Office of Inspector General (“OIG”), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (violations of health and safety standards; staffing shortages affecting suicide watch, and detainees held in unauthorized restraints, without being allowed time outside their cell,). U.S. Dep’t of Homeland Security Office of Inspector General, OIG-24-23, Results of an Unannounced Inspection of ICE’s Golden State Annex in McFarland, California (Sept. 24, 2024), available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>.

Petitioner will also suffer irreparable harm if he is transferred outside this judicial district while his petition is pending. Because habeas review is governed by the district-of-confinement/immediate-custodian rule, transfer of a detainee to another judicial district can frustrate effective review. *See Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966). Furthermore, in a habeas action, the physical presence of a petitioner in the judicial district where the action is pending “facilitate[s]” the petitioner’s “ability to work with [his or] her attorneys, coordinate the appearance of witnesses, and generally present [his or her] habeas claims.” *Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025). These interests are particularly acute where, as in Mr. Zamora’s case, the habeas claim is “based on events that occurred in” the same geographic region as the judicial district of detention. *Id.*; *see also* Standing Order 2025-01, Misc. No. 00-308 (D. Md., May 21, 2025) (prohibiting, for at least two business days after the filing of all habeas petitions, removal of petitioners from the continental United States to preserve their ability to participate in court proceedings and access legal counsel); *Velasquez-Salazar v. Dedos*, 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sep. 17, 2025) (enjoining Respondents from transferring petitioner outside judicial district during pendency of habeas action upon a finding that petitioner showed a likelihood of irreparable harm absent injunction). Thus, a temporary restraining order and preliminary injunctive relief are necessary to prevent Petitioner from suffering irreparable harm by remaining unlawfully detained, by being re-detained without an individualized hearing, or by being moved outside this judicial district while the petition is pending.

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C. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR AND A TRO AND PI ARE IN THE PUBLIC INTEREST.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that the public interest factor weighs in his favor because his claim asserts that his detention violates federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Where a policy “is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) Further, any burden imposed by requiring the Respondents to release Petitioner from custody, when they previously determined that a grant of parole was warranted and have not shown changed circumstances, is both *de minimis* and clearly outweighed by the substantial harm Petitioner will suffer if he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.”).

Just as the government cannot be burdened by releasing Petitioner from custody, any burden imposed by requiring them to *maintain* custody in the District of Arizona for the duration of this case is clearly outweighed by the substantial harm Petitioner will face if his case cannot be heard at all because he is moved to a different jurisdiction. *See Ozturk v. Hyde*, 136 F.4th 382 (“[f]aced with such a conflict between the government’s unspecific financial and administrative concerns on the one hand, and the risk of substantial constitutional harm to [petitioner] on the other, we have little difficulty

concluding ‘that the balance of hardships tips decidedly’ in [the petitioner’s] favor”) (quoting *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984)).

Finally, if preliminary relief is not entered, the government would effectively be granted permission to detain Petitioner in violation of the requirements of Due Process and the APA.

#### D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

Prudential exhaustion does not require Petitioner to be forced to endure the very harm he is seeking to avoid by seeking bond before the Immigration Court. “[T]here are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will result.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Administrative exhaustion is not required where a request for relief before the agency would be futile because the agency has “predetermined the issue before it.” *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the exceptions regarding futility, irreparable injury, and agency delay warrant waiving any prudential exhaustion requirement.

First, “considering [petitioner’s] due process challenge to [his] detention without the opportunity for release on bond, this matter falls into the futility exception to the exhaustion requirement ‘carved for constitutional challenges to ... [DHS] procedures.’” *Ramirez v. Noem*, No. 25-2136, 2025 WL 3270137, \*15 (D. Nev. Nov. 24, 2025) (quoting *Iraheta-Martinez v. Garland*, 12 F.4th 942, 949 (9th Cir. 2021)). Additionally, “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,” and therefore waiver of Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner’s Ex Parte Motion for TRO/PI

exhaustion is necessary to redress irreparable harm. *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, (W.D. WA 2025). Finally, the agency’s delays in adjudicating bond appeals warrant excusing exhaustion. A court’s ability to waive exhaustion based on delay is especially broad here given the “fundamental” interest in physical liberty that is at stake for Petitioner. *Hernandez*, 872 F.3d at 993. The BIA’s months-long review is unreasonable and results in ongoing injury to Petitioner. *See, e.g., Perez*, 445 F. Supp. 3d at 286.

**E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF**

Finally, there is no jurisdictional bar under the INA because Petitioner does not seek review of a removal order, but of custody, and his challenge does not fall within the discrete actions specified in the bar to review at 8 U.S.C. § 1252(g). *Maldonado Bautista et al.*, No. 5:25-cv-01873-SSS-BFM, Order Granting TRO (addressing “zipper clause” at 8 U.S.C. § 1252(b)(9)); *see also Ibarra-Perez v. United States*, 154 F.4th 989, 991 (9th Cir. 2025) (re-affirming narrow reading of section 1252(g)).

**V. REQUIREMENTS OF FRCP 65(b)**

In compliance with Fed. R. Civ. P. 65(b)(1), Petitioner certifies that prior notice of this motion to counsel for Respondents should not be required because, as the associated habeas petition was only recently filed, no attorney has entered a notice of appearance for Respondents as of the time of this filing, and Petitioner has shown that immediate and irreparable injury, loss, or damage in the form of continued, unlawful detention will result to him before Respondents can be heard in opposition.

**VI. CONCLUSION**

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For these reasons, the Court should grant Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction.

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Dated: December 23<sup>rd</sup>, 2025

Respectfully Submitted,

*/s/ Gregory Fay*

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Attorney for Petitioner

**MOTION LENGTH CERTIFICATION**

The undersigned counsel of record for Petitioner certifies that this Memo exceeds seventeen pages, as allowed per LR Civ. 7.2, therefore an accompanying motion to extend page limit is simultaneously filed.

*/s/ Gregory P. Fay*

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Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I CERTIFY THAT I SEVED A COPY OF PETITIONER'S *EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION* by mail to the following individual:

Chief, Civil Division, U.S. Attorney's Office  
District of Arizona  
40 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004

*/s/ Gregory P. Fay*

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Attorney for Petitioner