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**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF CALIFORNIA**
**SAN FRANCISCO DIVISION**

MARIA KHARITONOVA,

Petitioner,

v.

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

Respondents.

Case No. 26-1362

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

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## INTRODUCTION

Petitioner Maria Kharitonova is from Russia. She is a 66-year-old woman with a full-time nanny for a San Francisco family. She has no criminal history anywhere in the world. Shamieh Decl. at ¶ 10. She has significant health challenges and takes two medications twice daily. She entered the United States on December 5, 2012, on a tourist visa and applied for asylum on July 18, 2014. She was issued an NTA on July 16, 2014, and has been litigating her asylum claim since then. Throughout this period, Respondents allowed Petitioner to litigate her case from the freedom of the non-detained docket.

This morning, Respondents abruptly deprived Petitioner of her freedom without holding a hearing or showing any changed circumstance. Around 9 a.m. on today's date, Respondents unlawfully detained Petitioner on the street in front of her employer's home in San Francisco as she was walking in to her work as a full-time nanny. Arresting officers did not present her with an arrest warrant and provided no information to her regarding the basis of her arrest. Counsel went to 630 Sansome Street in San Francisco where it was confirmed she was taken after her arrest and was repeatedly denied access to speak with her. ICE Officers did not provide any reason for her arrest and did not provide counsel a copy of the arrest warrant. They only said that she was arrested because she was "in removal proceedings." She has been in removal proceedings for over ten years.

No evidence has been presented to Petitioner to document the grounds for detention. Nor was there any pre-deprivation hearing where she could confront the facts that supposedly justify her detention.

The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention.

As a result of her arrest and detention, Petitioner is suffering irreparable and ongoing

harm, especially in light of her significant health issues. She is at extreme risk of having a diabetic episode and having her health further deteriorate. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom 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).

In light of this irreparable harm, and because she is likely to succeed on the merits of her due process claims, Petitioner respectfully requests that this Court issue a temporary restraining order ("TRO") immediately releasing from her custody and enjoining the government from re-arresting her absent the opportunity to contest that arrest at a hearing before a neutral decision maker.

Confronted with substantially similar facts and legal issues, courts in this circuit have repeatedly granted the preliminary relief Petitioner seeks – including in the ICE check-in context. *See, e.g., J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728 (E.D. Cal., Oct. 27, 2025 (arrested at ICE check-in); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300 (E.D. Cal., Oct. 17, 2025) (same); *J.S.H.M v. Wofford*, 1:25-CV-01309 JLT SKO, 2025 U.S. Dist. LEXIS 204422 (E.D. Cal., Oct. 16, 2025) (same); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706 (E.D. Cal., Oct. 14, 2025) (same); s*ee also Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction). To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Petitioner out of this District and removing her from the country until these proceedings have concluded.

## BACKGROUND

Petitioner is an asylum seeker from Russia. Petitioner arrived in the United States on a B1/B2 visa on December 5, 2012. She was issued an NTA and placed in immigration proceedings on July 16, 2014.

Petitioner applied for asylum, withholding removal, and relief under the Convention Against Torture on July 18, 2014. She has been allowed to pursue her asylum case from a position of freedom since 2014. She has no criminal history and there are no changed circumstances.

Respondent has never previously objected to Petitioner being free while pursuing her asylum case, and her current detention is not related to either of the permissible justifications for civil immigration litigation. Her detention does not further any legitimate government interest.

There is no legitimate reason for ICE to detain Petitioner. Petitioner suffers serious and ongoing harm every day she remains in detention, especially because of her age and poor health, diabetes, high blood pressure, and kidney issues.

## ARGUMENT

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

### I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

#### A. Petitioner's detention violates due process.

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

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

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

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

When Respondents issued a visa to Petitioner to enter the country and, again, when Respondents met repeatedly with Petitioner, they allowed her to remain free to pursue her case from the non-detained docket, a decision that represented their finding that she was neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). At that point, Petitioner gained a protected liberty interest in her ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. 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). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

Accordingly, the Supreme Court has repeatedly held that individuals released from custody on bond, parole, or other forms of conditional release have a protected interest in their ongoing liberty, because "[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." *Morrissey*, 408 U.S. at 482. "By whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due Process Clause]." *Id.* This liberty interest also applies to noncitizens, including those who have been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

Once a petitioner has established a protected liberty interest, as Petitioner has done here, courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424

U.S. 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk of erroneous deprivation and probable value of procedural safeguards; and (3) the government's interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioner and prohibiting his re-detention without a custody hearing at which the government bears the burden of proof.

*First*, the private interest affected in this case is profound. When considering this factor, courts look to "the degree of potential deprivation." *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation here is high. Petitioner has been completely deprived of her physical liberty. Petitioner's detention has ripped from her the "free[dom] to be with family and friends and to form the . . . enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Cutting someone off from the "core values of unqualified liberty"—for Petitioner creates a "grievous loss." *Id.* Moreover, because Petitioner faces *civil detention*, "h[er] liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *See Ortega*, 415 F. Supp. 3d at 970. As someone in civil detention, therefore, "it stands to reason that [Petitioner] is entitled to protections at least as great as those afforded to a[n] . . . individual . . . accused but not convicted of a crime." *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

*Second*, "the risk of an erroneous deprivation [of liberty] is high" where, as here, "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No. 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). ICE arrested Petitioner by surprise as she arrived home from dropping off her kids at school. She had no notice and no opportunity to contest her re-detention before a neutral arbiter. In such circumstances, when Respondents have provided *no* procedural safeguards, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5. This is especially true here, where there is no change in Petitioner's circumstances suggesting that Petitioner now poses a flight risk or danger to the community. This does not

constitute a lawful justification to re-detain a person.

Because the private interest in freedom from immigration detention is substantial, due process also requires that in cases like this one, the government bears the burden of proving "by clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community." *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); *see Martinez v. Clark*, 124 F.4th 775, 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which government bears burden by clear and convincing evidence).

*Third*, the government's interest in detaining Petitioner without first providing notice and submitting to a custody hearing is minimal. Immigration courts routinely conduct custody hearings, which impose a "minimal" cost to the government. *See Doe*, 2025 WL 691664, at *6; *A.E.*, 2025 WL 1424382, at *5. Petitioner has a strong record of attending her immigration proceedings; there is no reason to believe that between the date of her release and her custody hearing, her compliance will change. Indeed, courts regularly hold that the government's interest in re-detention without a custody hearing is low when the petitioner "has long complied with his reporting requirements." *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D. Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing petitioner who had been detained without process, who had "voluntarily attended his scheduled immigration court proceedings" and "established ties" through his work and volunteering with the church).

In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without a pre-deprivation hearing in which the government bears the burden of proof violates due process, and grant the emergency relief Petitioner seeks here. *See, e.g Garro Pinchi v.*

*Noem*, __ F. Supp. 3d __, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her immigration court hearing into preliminary injunction prohibiting the government from re-detaining her without a hearing). This includes cases where petitioners were arrested at ICE check-ins. *See, e.g., C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO2025 U.S. Dist. LEXIS 216277, at *27 (E.D. Cal., Nov. 1, 2025).

In short, Respondents violated Petitioner's due process rights when they detained her without notice and without a custody hearing before a neutral arbiter. Here, only an order releasing Petitioner and enjoining re-detention—unless Respondents provide Petitioner with a custody hearing where the government bears the burden of proof—would return the parties to the "last uncontested status which preceded the pending controversy." *Doe v. Noem*, __ F. Supp. 3d __, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez*, 2025 WL 1707737, at *4-*5 (ordering petitioner's immediate release as remedy for procedural due process violation).

**B. Petitioner is not subject to mandatory detention under 8 USC § 1225(b)(2).**

To the extent that Respondents argue Petitioner is subject to mandatory detention under 8 USC § 1225(b)(2), due process prevents the unilateral reclassification of her detention authority years after she was released at the border. For decades, when immigration authorities arrested and released people on an Order of Recognizance at the border, those people were subject to discretionary detention under 8 USC § 1226(a). In the last few months, however, Respondents have reversed course and now take the dramatic and implausible new position that these individuals are subject to mandatory detention under 8 USC § 1226(b). *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (B.I.A. 2025). District courts in recent months have thoroughly rejected the government's new position. *See, e.g., Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC (N.D. Cal Sept. 21, 2025) at *13-21; *Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO, 2025 U.S. Dist. LEXIS 187233, at *n.5 (E.D. Cal., Sept. 23, 2025) (finding *Matter of Yajure Hurtado*

unpersuasive); *Cuevas Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO at *6-9 (E.D. Cal. Sep. 9, 2025); *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 at *10-13 (S.D. Cal. Sept. 3, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR at *9 (N.D. Cal. Aug. 29, 2025); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at *11–12 (S.D.N.Y. Aug. 13, 2025); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 LX 341363, at *15 (E.D. Cal. July 28, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *4 (D. Mass. July 24, 2025). Respondents cannot switch tracks mid litigation and suddenly reclassify Petitioner under a different detention authority. *See Salcedo Aceros v. Kaiser*, No. 3:25-cv-06924-EMC (N.D. Cal Sept. 21, 2025).

* * * * *

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

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

Without a temporary restraining order, Petitioner will suffer immense irreparable injury. Indeed, she faces such injury every hour she remains in detention in violation of her Fifth Amendment rights. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed "by

virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time"); *see also, e.g.*, *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that "[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual" (cleaned up)).

## III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER'S FAVOR.

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

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

## SECURITY

No security is necessary here. Courts "may dispense with the filing of a bond when," as here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond requirement in cases raising constitutional claims, because "to require a bond would have a

negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996). Finally, Plaintiff's showing of a high likelihood of success on the merits supports the court's waiving of bond in this case. *See, e.g.*, *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

**CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to restore the *status quo ante* that (1) immediately releases her from Respondents' custody and enjoins Respondents from re-detaining her absent further order of this Court; (2) in the alternative, immediately releases her from Respondents' custody and enjoins Respondents from re-detaining her unless they demonstrate at a pre-deprivation bond hearing, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that her physical custody is required; and (3) prohibits the government from transferring her out of this District and/or removing ger from the country until these habeas proceedings have concluded.

Respectfully submitted,

Date: February 13, 2026

*/s/ Ghassan Shamieh*
Ghassan Shamieh

*Attorney for Petitioner*