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Karina Albino Tito

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Karina Albino Tito

Petitioner

vs.

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; TROY EDGAR, Acting Secretary and MARKWAYNE MULLIN, Acting Secretary-Designate of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

Case No. 3:26-cv-2178

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

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that as soon as it may be heard in the United States District Court for the Northern District of California, Petitioner Karina Albino Tito, will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local Rule 65-1. The TRO is necessary to prevent an imminent and unlawful deprivation of their physical liberty. Respondents' planned detention of Petitioner violates the binding order in *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 3691938, at *12 (N.D. Cal. Dec. 19, 2025), and the Due

Process Clause of the Fifth Amendment to the United States Constitution. Petitioner respectfully requests that this Court (1) immediately enjoin Respondents from re-detaining Petitioner absent further order of this Court; (2) in the alternative, enjoin Respondents from re-detaining Petitioner unless Respondents 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 Petitioner's physical custody is required; and (3) desclate Petitioner's supervision and return them to the status quo. To preserve this Court's jurisdiction, Petitioner further seeks an order to (4) prohibit the government from transferring Petitioner out of this District and/or removing Petitioner from the country until these habeas proceedings have concluded, in the event of an unlawful detention.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the supporting Declaration of Petitioner and Geri N. Kahn, the Proposed Order, and filed herewith; the papers, evidence, and records on file in this action; and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court. This motion is also supported by the Petition for Writ of Habeas Corpus and any exhibits attached thereto.

Pursuant to Civil Local Rule 65-1(a)(5) and as detailed further in the supporting Declaration of Geri N. Kahn, counsel for Petitioner called and provided counsel for Respondents with notice of this Motion and advised Respondents of the emergency reasons requiring Petitioner to seek an *ex parte* application for a temporary restraining order. As of this writing, counsel for Plaintiff has not received a reply.

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I. INTRODUCTION

Petitioner Karina Albino Tito files this motion for a temporary restraining order (TRO) to prevent an imminent and unlawful deprivation of their physical liberty. Petitioner is a member of the certified class in *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 3691938, at *12 (N.D. Cal. Dec. 19, 2025). On December 19, 2025, the *Garro Pinchi* court held that the Department of Homeland Security's (DHS) new policy of re-arresting and re-detaining class members despite no change in their individual circumstances as to their dangerousness or flight risk likely violates the Administrative Procedure Act (APA). *Id.* at *25. The *Garro Pinchi* court thus "stay[ed] DHS's re-detention policy pending final resolution of [the plaintiffs'] APA claims," and "postpone[d] the effective date of the re-detention policy within ICE's San Francisco area of responsibility until the entry of a final judgment in this action." *Id.* at *34. Thus, Respondents may not implement their policy of re-arresting and re-detaining noncitizens within ICE's San Francisco Area of Responsibility absent a material change in circumstances as to flight risk or dangerousness.

Despite this binding injunction, Respondents have ordered Petitioner to appear for an in-person check-in tomorrow, **Friday, March 13, 2026**, for the purpose of summary re-detention. Petitioner has been compliant with all supervision requirements for eighteen months. There has been no "material change" in their circumstances. To prevent the irreparable harm of unconstitutional incarceration and the severing of Petitioner's family unit, this Court must intervene and maintain the *status quo ante*.

Moreover, Respondents planned re-detention is unconstitutional under the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.").

Petitioner is filing this TRO as soon as possible, prior to detention. Because Petitioner is likely to succeed on the merits of their claims, Petitioner respectfully request this Court to intervene and enjoin respondents from escalating supervision and detaining respondent. In the event of an unlawful detention and to maintain this Court's jurisdiction, the Court should also prohibit the government from transferring

Petitioner out of this District and removing them from the country until these habeas proceedings have concluded.

II. BACKGROUND

Petitioner is an asylum seeker who fled Peru in 2024. Immigration agents apprehended Ms. Albino Tito and her partner (now wife), after they crossed the border and detained them. (See Exhibit I, Notice to Appear.) On August 30, 2024, Respondents released Petitioner from Custody on Parole. (See Exhibit B, ICE Form I-830 and Interim Notice Authorizing Parole), with a Notice to Appear for removal proceedings at the Otero Immigration Court. (Venue was later changed to San Francisco.) On the Notice to Appear, DHS classified Petitioner as "an alien present in the United States who has not been admitted or paroled" and did not classify them as an "arriving alien." DHS charged her as inadmissible only under 8 U.S.C. §1182(a)(6)(A)(i), which applies to noncitizens physically present in the country without admission or parole and to noncitizens who enter the country in a location not designated by the Attorney General. (Exhibit I)

DHS agents issued Ms. Albino Tito an "Interim Notice Authorizing Parole." (*See Exhibit B*), using a standard DHS form, setting forth the conditions of Ms. Albino Tito's conditional parole. Among other requirements, the form stated that Ms. Albino Tito must attend "every scheduled hearing before the immigration court and every appointment as directed by ICE" and comply with State Federal or local laws. It also stated that they must comply with any other specified conditions if identified separately. The other conditions consisted of enrollment in the ATD (Alternatives to Detention) monitoring program and to report the ICE non-detained office in San Francisco. The ATD notice indicated that Petitioner's release was contingent upon participation in the program and that failure to comply with it would result in redetermination of release conditions or arrest and detention.

In granting Petitioner release into the interior of the country, Respondents necessarily determined that Petitioner posed no or little risk of flight or dangerousness to the community.

Petitioner relocated to San Francisco, California and built their life there. After their release from custody, they married their partner (See Exhibit D, marriage certificate) and have done everything immigration authorities required them to do. (See Exhibit A, Declaration of Karina Albino Tito.) Petitioner updated their address with the Immigration Court as required and on February 17, 2025, filed an application

for political asylum, withholding of removal, and protection against the Convention Against Torture with the Immigration Court, which remains pending. (See Exhibit E, screenshot showing application for political asylum is pending in the Immigration Court.) Petitioner applied for and received work authorization. Petitioner is now a caregiver for a disabled woman in Oakland. Petitioner has no criminal history.

Since Petitioner's release from detention on August 30, 2024, they have been in substantial compliance with all Intensive Supervision Appearance Program (ISAP) and ICE check-in requirements, both via the mobile app and in person. (Exhibit A) Upon their release from detention they were issued a monitoring bracelet which they wore until thier first in person ICE check in on August 29, 2025. After this appointment, they completed monthly check-ins using the BI SmartLINK app. On February 12, 2026, they changed their phone number and immediately reported this change within the app. However, they encountered technical difficulties reinstalling the app on their new device because it requested information they did not have (see Exhibit F). This technical discrepancy caused a temporary lapse in receiving notifications between February 12 and February 27, 2026. At their scheduled appointment on February 27, 2026, Petitioner ensured the ICE officer had their correct phone number, and the ICE officer assisted in downloading the app to Petitioner's new device. Since that appointment, Petitioner has fully complied with their new weekly reporting schedule, checking in every Monday for the last two weeks. (Exhibit A.)

For more than 40 years, the government's practice was to re-detain noncitizens like Petitioner whom it had previously released only after making an individualized determination that the noncitizen's circumstances had materially changed since their release, such that the noncitizen posed a flight risk or danger to the public. *See generally Garro Pinchi*, 2025 WL 3691938, at *20. In May 2025, that changed. Respondents began re-arresting and re-detaining noncitizens whom they had previously released, without first making any individualized determination of changed circumstances (the "Re-Detention Policy").

On October 10, 2025, three plaintiffs filed a class-action complaint challenging the Re-Detention Policy under the Administrative Procedure Act (APA). *Garro Pinchi v. Noem*, No. 5:25-cv-05632-PCP, Dkt. 38 (Class Action Complaint and Amended Petition for Writ of Habeas Corpus) (N.D. Cal. filed Oct. 10, 2025). The plaintiffs further filed a motion to "stay" the Re-Detention Policy pending final judgment on their claims and a motion for provisional class certification.

Respondents have scheduled Petitioner for an ISAP check-in appointment tomorrow morning, Friday March 13, 2026. It is their intention to escalate their supervision and possibly detain them. This escalation and potential re-detention would violate the Order in *Garro Pinchi*.

On December 19, 2025, the *Garro Pinchi* court issued an order granting the plaintiffs' motions for provisional class certification and to stay agency action. *Garro Pinchi*, 2025 WL 3691938, at *34. The court certified the following class: "All noncitizens in the jurisdiction of the San Francisco ICE Field Office who (1) entered or will enter the United States without inspection; (2) have been or will be charged with inadmissibility under 8 U.S.C. § 1182 and have been or will be released from DHS custody; and who (3) are in removal proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings that have been dismissed where the dismissal is not administratively final; and (4) are not subject to detention under 8 U.S.C. § 1226(c)." *Id.* at *12. Petitioner is a *Garro Pinchi* class member.

The *Garro Pinchi* court further held that the Re-Detention Policy is likely unlawful because it is arbitrary and capricious in violation of the APA. *Id.* at *25. After finding that the rest of the factors favoring preliminary relief were satisfied, the court issued an order staying Respondents' Re-Detention Policy, effective immediately. *Id.* at *31-32. Under that order, Respondents may not implement their policy of re-arresting and re-detaining class members, unless Respondents first make an individualized determination that there are materially changed circumstances as to the class member's dangerousness or flight risk. While Petitioner had technical difficulties with the SmartLink App, they were minor and have been resolved. They do not justify an escalation in supervision and/or detention. No individualized determination has been made and Petitioner is not a flight risk.

III. STANDARD OF REVIEW

To warrant an ex parte TRO, a movant must show that: (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 (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 analyses for issuing a temporary restraining order and a preliminary injunction are substantially the same). Where the government is the opposing party, the third and fourth factors merge.

Nken v. Holder, 556 U.S. 418, 435 (2009). In this Circuit, 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.

IV. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

1. Respondents are Violating the *Garro Pinchi* Order

Petitioner is a member of the *Garro Pinchi* class. Specifically, Petitioner (a) is in the jurisdiction of the San Francisco ICE Field Office, (b) entered the United States without inspection, (c) was charged with inadmissibility under 8 U.S.C. § 1182 and was released from DHS custody; (d) is in removal proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings that have been dismissed where the dismissal is not administratively final; and (e) is not subject to detention under 8 U.S.C. § 1226(c). (See Exhibit C, Order of Release, Exhibit I, Notice to Appear.) \

Garro Pinchi held that Respondents' Re-Detention Policy is a final agency action and therefore is reviewable under the APA. *Garro Pinchi*, 2025 WL 3691938, at *20-23. The court concluded that no other bars precluded it from reaching the merits of Plaintiffs' APA challenge *Id.* at *23-25. On the merits, the court concluded that: Respondents failed to provide a reasoned explanation for its new policy at the time of its implementation; any post hoc rationalization Respondents provided for the Re-Detention Policy was based on legal error; Respondents failed to consider released noncitizens' serious reliance interests when implementing the new policy; and Respondents failed to adequately consider noncitizens' protected liberty interests when implementing the new policy. *Id.* at *25-31. Concluding that the entry of preliminary relief was warranted, the court stayed Respondents' implementation of the Re-Detention Policy within ICE's San Francisco Area of Responsibility pending final judgment. *Id.* at *31-34. Under the *Garro Pinchi* order now in effect, Respondents must revert to their longstanding prior policy of *not* re-arresting and re-detaining class members unless they first make an individualized determination that there are materially changed circumstances as to the class member's dangerousness or flight risk.

Yet, contrary to that order, Respondents have scheduled Petitioner for an ISAP check-in and to

escalate their supervision and possibly detain them, despite no materially changed circumstances as to their dangerousness or flight risk. Although Petitioner had some technical issues with the SmartLInk app, they have been resolved. These do not constitute material changes. Petitioner has been in substantial compliance with their supervision and is not a flight risk. The *Garro Pinchi* order applies to Petitioner and renders their escalation and possible detention unlawful. "Agency action taken under a void rule has no legal effect." *W.C. v. Bowen*, 807 F.2d 1502, 1505 (9th Cir.), *as amended on denial of reh'g*, 819 F.2d 237 (9th Cir. 1987). Accordingly, "when a court with jurisdiction finds that the plaintiffs before it were harmed by an agency decision issued under an illegal rule, the court should vacate that wrongful decision as a remedy." *D.A.M. v. Barr*, 486 F. Supp. 3d 404, 416 (D.D.C. 2020) (applying *W.C. v. Bowen*).

2. Petitioner's Possible Detention Violates the Fifth Amendment's Due Process Clause.

This Court need not reach Petitioner's procedural and substantive due process claims to grant a TRO. Nevertheless, Petitioner has established a likelihood of success on those constitutional claims as well.

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. Due process constrains even "mandatory" immigration detention. *See 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."); *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

a. Petitioner is likely to succeed on their procedural due process claim.

Petitioner's procedural due process claim is likely to succeed. "[A] noncitizen released from custody pending removal proceedings has a protected liberty interest in remaining out of custody."

Cordero Pelico v. Kaiser, No. 25-CV-07286-EMC, 2025 WL 2822876, at *6 (N.D. Cal. Oct. 3, 2025); *see also, e.g.*, *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), --- F. Supp. 3d ---, 2025 WL 1918679, at *6 (E.D. Cal. July 11, 2025). This is 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 v. Brewer*, 408 U.S. 471, 482 (1972). The Constitution "usually . . . 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 when 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) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey*, 408 U.S. at 482 (same, in parole context).

Thus, Petitioner has a protected interest in their liberty. To determine what process is due, courts in this Circuit apply the three-part test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206-08 (9th Cir. 2022) ("assum[ing] without deciding" that *Mathews* applies in the immigration detention context, and applying it). 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. *Mathews*, 424 U.S. at 335. Here, the factors weigh heavily in prohibiting Petitioner's re-detention, absent a custody hearing at which the government bears a clear-and-convincing burden of proof.

First, the private interest affected in this case is great, for "the degree of potential deprivation" that Petitioner's loss of liberty represents is profound. *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). Petitioner has made a life in San Francisco. They are married and working full time. Petitioner is employed as a caregiver to an individual who is partially paralyzed. Moreover, Petitioner has a strong bond with the accompaniment team who has helped Petitioner navigate the Immigration Process. This interfaith accompaniment team has accompanied Petitioner to all in-person check ins and have included Petitioner and their wife in social and holiday gatherings. Petitioner and their wife are involved in religious and cultural activities with the members of the team.

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." *Singh*, 2025 WL 1918679 at *7 (citation modified). As Respondents have provided Petitioner *no* procedural safeguards, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." *Id.* (citation modified). Even assuming that Respondents will detain Petitioner because of alleged technical violations of Petitioner's supervision conditions, "[c]ourts have repeatedly rejected the argument that ICE can re-detain a noncitizen for technical violations 'without regard to whether that technical violation means that one is a flight risk or danger.'" *A.F.A.M. v. Albarran*, No. 25-CV-10492-AMO, 2025 WL 3752190, at *4 (N.D. Cal. Dec. 22, 2025) (collecting cases); *Tinoco v. Noem,* No. 1:25-CV-01762-DC-JDP (HC), 2025 WL 3567862, at *1, 6 (E.D. Cal. Dec. 14, 2025) (alleged violations of supervision conditions did not justify re-detention of noncitizen where "no neutral arbiter . . . has determined whether those facts show that Petitioner is a flight risk or danger to the community").

As "there has been no indication that Petitioner[] ha[s] become [a] flight risk[] or danger[] to the community" since their prior release, "[a]bsent a pre-detention hearing in front of a neutral arbiter, the risk of erroneous deprivation is high given the possibility that Petitioner['s] re-detention will not be pursuant to a valid state interest." *Valencia Zapata v. Kaiser*, 801 F. Supp. 3d 919, 938 (N.D. Cal. 2025).

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). "*Singh*'s constitutional holding . . . remains binding law of our court." *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1179 (9th Cir. 2023) (Paez, J., respecting the denial of rehearing en banc); *see Martinez v. Clark*, 124 F.4th 775, 784-86 (9th Cir. 2024) (confirming that the government bears the "clear-and-convincing burden of proof" at an immigration bond hearing ordered pursuant to the Due Process Clause); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering a pre-deprivation bond hearing in which the government bears the burden of proof by clear and convincing evidence).

Third, the government's interest in detaining Petitioner without first providing notice and an opportunity to be heard at a custody hearing is low. "In immigration court, custody hearings are routine

and impose a minimal cost. Nor would a hearing delay Respondents' efforts to remove Petitioner: "Any such delay would be minimal, and in any case, Petitioner[] [is] currently subject to full removal proceedings. . . . And detention for its own sake is not a legitimate governmental interest." *Cordero Pelico*, 2025 WL 2822876, at *15; *see also Ortega*, 415 F. Supp. 3d at 970 (concluding the government may have an interest in re-arresting the petitioner, "but its interest in doing so without a hearing is low").

b. Petitioner is likely to succeed on their substantive due process claim.

Petitioner's substantive due process claim is also likely to succeed. "Substantive due process requires that all forms of civil detention, including immigration detention, bear a 'reasonable relation' to a non-punitive purpose." *A.F.A.M. v. Albarran*, No. 25-CV-10492-AMO, 2025 WL 3752190, at *4 (N.D. Cal. Dec. 22, 2025) (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). "The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community." *Id.* (citing *Zadvydas*, 533 U.S. at 690-92); *see Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("[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 Respondents released Petitioner, they determined that Petitioner posed no risk of flight or danger to the community. *See Garro Pinchi*, 2025 WL 3691938, at *2 ("No matter which [detention] provision[] applies to a given noncitizen, . . . release is available only where a DHS officer or immigration judge has first determined that a noncitizen neither poses a threat to the public nor is likely to abscond."); *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.").

The facts since Petitioner's release show that Petitioner continues *not* to pose any such risk. Petitioner is not a danger to the community because there is no criminal record. Petitioner is not a flight risk because they have substantially complied with all check-ins, are married, has stable employment and housing. (See Exhibit A, Declaration of Karina Albino Tito, Exhibit D, Marriage Certificate.) Petitioner

is part of an interfaith accompaniment team who has been with them at every single in-person check-in and who supports them. Petitioner participates in the religious communities of the team. (*See* Exhibit H, Letter of Support.) Moreover, Petitioner has a viable path toward immigration relief. Petitioner has applied for political asylum and that application is pending at the San Francisco Immigration Court. (*See* Exhibit E, screen shot of Immigration Court website and a pathway toward lawful permanent residence, further mitigating any risk of flight . *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States).

Because there are no new material facts since Respondents' prior release of Petitioner to suggest that Petitioner is now a danger or flight risk, Petitioner's detention would "lack[s] a valid basis and violate[s] Petitioner['s] right to be free from impermissible government custody." *Valencia Zapata*, 801 F. Supp. 3d at 939 (finding habeas petitioners have demonstrated "at least a serious question" as to whether their detention violates their substantive due process rights "by failing to serve any valid purpose").

* * * * *

For the foregoing reasons, Petitioner is likely to succeed on the merits of their claims. Alternatively, at a minimum, Petitioner presents at least "serious question[s] going to the merits" of their claims, alongside a "balance of hardships" tipping decidedly in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. This Court should enter the requested TRO.

B. PETITIONER WILL SUFFER IRREPARABLE INJURY ABSENT A TRO.

The threat to Petitioner is not speculative; the ISAP appointment is scheduled for 9:00 a.m. tomorrow (Friday), morning, March 13. If detained, Petitioner will face a loss of liberty. "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) (citation modified). The unlawful deprivation of physical liberty is a quintessential irreparable harm. *See Hernandez*, 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" (citation modified)).

In addition to their loss of liberty, Petitioner would also experience economic and social harm. Petitioner is a caregiver for a partially paralyzed individual. Their arrest would leave a vulnerable person without care and Petitioner's household without income.

V. 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 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") (citation modified).

The public interest likewise weighs strongly in Petitioner's favor. Respondents' possible detention of Petitioner violates federal law and the Constitution. Therefore, granting emergency relief will promote the public interest by upholding the rule of law. "[N]either equity nor the public's interest are furthered by allowing violations of federal law to continue." *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022); *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."); *Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process.").

VI. 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).

VII. CONCLUSION

For the foregoing reasons, and to restore the *status quo ante*, Petitioner respectfully requests the Court grant a TRO that (1) enjoins Respondents from re-detaining Petitioner absent further order of this Court; (2) if detained unlawfully despite this Motion, that Respondents provide at least 7 days' notice to Petitioner that they will seek a pre-deprivation bond hearing before a neutral arbiter where Respondents must prove, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that Petitioner's physical custody is required; (3) prohibits the government from imposing additional or more restrictive conditions, such as a GPS ankle monitor or wrist device, than those that were in place prior to Petitioner's unlawful re-arrest, unless such restrictions are determined to be necessary at a future pre-deprivation hearing; and (5) if detained unlawfully despite this Motion, prohibits the government from transferring Petitioner out of this District or removing Petitioner from the country until these habeas proceedings have concluded.

Dated: March 12, 2026

Geri N. Kahn, Esq.

/s/ Geri Kahn

By: _____
Geri N. Kahn

Attorney for Plaintiff
Karina Albino Tito