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CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY
DEPUTY CLERK

Name/Nombre: Raul Frometa Cruz

A Number/Numero de A: [REDACTED]

Address/Direccion: 611 Frontage Road

McFarland, CA 93250

PRO SE

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Raul Frometa Cruz

[Full name/Nombre completo]
Petitioner,

V.

TONYA ANDREWS, Warden of the Golden

State Annex Detention Facility; **TODD**

BLANCHE, Attorney General of the United

States; **MARKWAYNE MULLIN**, Secretary

United States Department of security; **DAVID**

VENTURELLA, Acting Director of

Immigration and Customs Enforcement;

ICE/ERO, Fresno Field Office of Bureau of

Immigration and Customs Enforcement.

Respondents.

Case No.

1:26 CV 05097-KES-SAB

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Deja en blanco]*

**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 Eastern District of California, Petitioner in the above-captioned matter will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local Rule 231. Because Petitioner's ongoing immigration detention in Respondents' custody violates the Due Process Clause of the Fifth Amendment to the United States Constitution, and to the extent Petitioner is a *Garro Pinchi* class member, violates the binding order in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025), Petitioner respectfully requests that this Court (1) immediately release Petitioner from Respondents' custody and enjoin Respondents from re-detaining Petitioner absent further order of this Court; (2) in the alternative, immediately release Petitioner from Respondents' custody and 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 taking Petitioner into physical custody is required; (3) require Respondents to return Petitioner to conditions of release no stricter than those Petitioner was subject to prior to their re-detention; and (4) require Respondents to return all property confiscated from Petitioner during their arrest, processing, and/or detention, including but not limited to personal identification, employment authorization document, medical insurance cards, money, documents related to any legal proceedings, and personal effects. To preserve this Court's jurisdiction, Petitioner further seeks an order (5) prohibiting the government from transferring Petitioner out of this District and/or removing Petitioner from the country until these habeas proceedings have concluded.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, Petitioner's affidavit detailing notice, Petitioner's affidavit in support of existence of irreparable harm, Proposed Order, and TRO Checklist filed herewith; the papers, evidence, and records on file in this action; and any other evidence or argument Petitioner may present to the Court by the time this motion is taken under submission by the Court. This motion is also supported by the Pro Se Petition for Writ of Habeas Corpus.

1 Consistent with Civil Local Rule 231(b), Petitioner seeks relief at the earliest possible
2 opportunity. Taking due account of Petitioner's *pro se*, detained status, Petitioner is filing this
3 motion as soon as soon as feasible after filing their Petition for Writ of Habeas Corpus.

4 Pursuant to Civil Local Rules 142 and 231(c)(5), and as detailed in Petitioner's supporting
5 declaration below, Petitioner provided, or attempted to provide, counsel for Respondents with
6 notice of this Motion and of the emergency reasons requiring Petitioner to seek an *ex parte*
7 application for a temporary restraining order.

DECLARATION OF PETITIONER IN SUPPORT OF TRO

I [Yo], Raúl Frometa Cruz

[full name / nombre completo], declare under penalty of perjury the following is true and correct
[declaro, bajo pena de perjurio, que lo siguiente es verdadero y correcto]:

1. I have personal knowledge of the facts set forth in this declaration. [Tengo conocimiento personal de los hechos expuestos en esta declaración.]

2. I am detained at [Estoy detenido/a en] Golden State Annex [name of detention center where you are detained // escriba el nombre del centro de detención donde está detenido].

3. I am filing this habeas petition and motion for temporary restraining order (TRO) pro se. I do not have an attorney to represent me in this habeas petition. [Presento esta petición de habeas corpus y la moción de orden de restricción temporal (TRO) pro se. No cuento con un abogado que me represente en esta petición de habeas corpus.]

❖ Follow each of the steps as written below and, in paragraph 4, check the applicable boxes to indicate what happened [Siga cada uno de los pasos tal como se indica a continuación y, en el párrafo 4, marque la casilla correspondiente para indicar lo que sucedió]:

○ Call the phone number (916) 554-2700. This is the main phone number for the U.S. Attorney's Office for the Eastern District of California. [Llame al número de teléfono (916) 554-2700. Este es el número de teléfono principal de la Oficina del Fiscal de los EE.UU. para el Distrito Este de California.]

○ If someone picks up the phone or you are able to leave a voicemail, say, in English: "My full name is _____. I am detained by ICE in _____ Detention Center. I am calling to inform you that I am filing a pro se habeas petition and motion for temporary restraining order because my detention is unlawful. I plan to seek release under the Fifth Amendment and—to the extent I am a Garro Pinchi class member—under the December 19, 2025 Garro Pinchi order. Will the government agree to release me so I can avoid filing a TRO?" [Si alguien contesta el teléfono o si logra dejar un mensaje de voz, diga —en inglés— lo siguiente: «Mi

1 *nombre completo es _____ Me encuentro detenido por ICE en el Centro de*
 2 *Detención de _____. Llamo para informarles que estoy presentando, pro se,*
 3 *una petición de habeas corpus y una moción de orden de restricción temporal, dado*
 4 *que mi detención es ilegal. Tengo la intención de solicitar mi liberación en virtud*
 5 *de la Quinta Enmienda y —en la medida en que sea miembro de la clase Garro*
 6 *Pinchi— en virtud de la orden Garro Pinchi del 19 de diciembre de 2025.*
 7 *¿Aceptará el gobierno concederme la libertad para que pueda evitar la*
 8 *presentación de la orden de restricción temporal?».]*

9 *○ Listen carefully for any answer, and check the appropriate boxes in paragraph 4*
 10 *(below) to tell the Court what happened. [Escuche atentamente cualquier respuesta*
 11 *y marque las casillas correspondientes en el párrafo 4 (a continuación) para*
 12 *informar al Tribunal de lo sucedido.]*

13 *4. Pursuant to Local Rule 231 and Fed. R. Civ. P. 65(b), I made the following efforts*
 14 *to provide attorneys for the government with notice of my habeas petition and motion for a*
 15 *temporary restraining order. [De conformidad con la Regla Local 231 y la Regla Federal de*
 16 *Procedimiento Civil 65(b), realicé las siguientes gestiones para notificar a los abogados del*
 17 *Gobierno sobre mi petición de habeas corpus y mi moción de orden de restricción temporal.]*

18 *Check all boxes that apply to you [Marque todas las casillas que correspondan a usted]:*

19 ☒ *I dialed the following phone number from a telephone available to me in the*
 20 *detention facility for legal calls: (916) 554-2700. I understand this is the phone*
 21 *number for the E.D. Cal. U.S. Attorney's Office, based in Sacramento. [Marqué el*
 22 *siguiente número de teléfono desde un teléfono disponible para mí en el centro de*
 23 *detención para realizar llamadas legales: (916) 554-2700. Entiendo que este es el*
 24 *número de teléfono de la Oficina del Fiscal de los EE. UU. para el Distrito Este de*
 25 *California (E.D. Cal.), con sede en Sacramento.]*

26 ☒ *No one picked up the phone. [Nadie contestó el teléfono.]*

27 ☒ *I was not able to leave a voicemail. [No pude dejar un mensaje de voz.]*

1 ☐ I left a voicemail explaining I planned to file a habeas petition and motion for
2 temporary restraining order, but I could not leave a call-back number because I
3 cannot directly receive incoming calls while in detention. [*Déjé un mensaje de*
4 *voz explicando que tenía previsto presentar una petición de habeas corpus y*
5 *una moción de orden de restricción temporal, pero no pude dejar un número*
6 *de contacto, ya que no puedo recibir llamadas entrantes directamente mientras*
7 *me encuentro detenido.*]

8 ☐ A person answered the phone but did not agree to speak to me about my case or
9 transfer me to someone who could talk to me about my case. I was not able to
10 speak to anyone about my case. [*Una persona contestó el teléfono, pero no*
11 *accedió a hablar conmigo sobre mi caso ni a transferirme con alguien que*
12 *pudiera hacerlo. No logré hablar con nadie sobre mi caso.*]

13 ☐ A person answered the phone and agreed to speak with me. I told them I was
14 filing a pro se habeas petition and a motion for temporary restraining order
15 because I believe my detention is unlawful. I explained I would seek release
16 under the Fifth Amendment and—to the extent I am a Garro Pinchi class
17 member—under the December 19, 2025 Garro Pinchi order. I asked whether
18 the government would agree to release me so I could avoid filing a TRO. The
19 person I spoke to said “no” or that they could not provide me an answer. [*Una*
20 *persona contestó el teléfono y accedió a hablar conmigo. Le informé que estaba*
21 *presentando una petición de habeas corpus por derecho propio y una moción*
22 *de orden de restricción temporal, dado que considero que mi detención es*
23 *ilegal. Le expliqué que solicitaría mi liberación en virtud de la Quinta*
24 *Enmienda y—en la medida en que soy miembro de la clase Garro Pinchi— en*
25 *virtud de la orden Garro Pinchi del 19 de diciembre de 2025. Pregunté si el*
26 *gobierno accedería a liberarme para así evitar la presentación de la orden de*
27 *restricción temporal. La persona con la que hablé respondió que «no», o bien*
28 *que no podía ofrecerme una respuesta.*]

☐ Other (explain) [*Otro (explicar)*]:

N/A

5. I am detained in Respondents' custody and do not have access to email while detained. Therefore, I cannot provide email notice to attorneys for the government. I also cannot email them the documents I intend to file. [*Me encuentro detenido bajo la custodia de los Demandados y no tengo acceso al correo electrónico mientras permanezco detenido. Por consiguiente, no puedo notificar por correo electrónico a los abogados del gobierno. Tampoco puedo enviarles por correo electrónico los documentos que tengo la intención de presentar.*]

6. There has not been undue delay in bringing this TRO. I have prepared my habeas petition and motion for TRO as quickly as reasonably possible, given the fact that I am detained, have no or limited access to the Internet and legal resources, and do not have an attorney to assist me. [*No ha habido una demora indebida en la presentación de esta TRO. He preparado mi petición de habeas corpus y mi moción para la TRO tan rápidamente como ha sido razonablemente posible, dado el hecho de que me encuentro detenido, carezco de acceso a Internet y a recursos legales—o este es limitado—y no cuento con un abogado que me asista.*]

7. The irreparable harms I am experiencing from my ongoing detention are explained in my habeas petition. [*Los daños irreparables que estoy sufriendo a consecuencia de mi detención continuada se explican en mi petición de habeas corpus.*] See Petition for Writ of Habeas Corpus ¶¶ 53, 66–68.

8. I was able to complete this declaration because [*Pude completar esta declaración porque*]:

☐ I am able to read English and/or Spanish, and I could follow the directions in this declaration to fill it out myself. [*Soy capaz de leer inglés y/o español, y pude seguir las instrucciones de esta declaración para completarla por mí mismo.*]

☒ I am not able to complete this declaration independently, due to language barriers or other accessibility issues. Therefore, one or more persons assisted me. Their full name(s) is/are *[No puedo completar esta declaración de forma independiente debido a barreras lingüísticas u otros problemas de accesibilidad. Por lo tanto, una o más personas me han asistido. Su(s) nombre(s) completo(s) es/son]:*

Marco Bolarezo

I am executing this declaration at: *[check one / marque uno]:*

- ☐ Mesa Verde Detention Facility, 425 Golden State Ave, Bakersfield, CA 93301
- ☒ Golden State Annex, 611 Frontage Road, McFarland, CA 93250
- ☐ California City Detention Facility, 22844 Virginia Blvd., California City, CA 93505
- ☐ Central Valley Annex, 254 Taylor Avenue, McFarland, CA 93250

Respectfully submitted,

06/29/2026
Date *[Fecha]*

Raul Frometa Cruz

 Impreso]

Signature *[Firma]*

Pro se Petitioner

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INTRODUCTION

1
2 Petitioner Raúl Frometa Cruz [your full name /
3 *su nombre completo*] files this motion for a temporary restraining order (TRO) ordering their
4 immediate release.

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

11 In addition, Petitioner may be a member of the certified class in *Garro Pinchi v. Noem*,
12 813 F. Supp. 3d 973, 1010–11 (N.D. Cal. 2025). On December 19, 2025, the *Garro Pinchi* court
13 held that the Department of Homeland Security's (DHS) new policy of re-arresting and re-
14 detaining class members despite no change in their individual circumstances as to their
15 dangerousness or flight risk likely violates the Administrative Procedure Act (APA). *Id.* at 1027.
16 The *Garro Pinchi* court "stay[ed] DHS's re-detention policy pending final resolution of [the
17 plaintiffs'] APA claims," and "postpone[d] the effective date of the re-detention policy within
18 ICE's San Francisco area of responsibility until the entry of a final judgment in this action." *Id.* at
19 1039–40. Thus, Respondents may not implement their policy of re-arresting and re-detaining
20 noncitizens within ICE's San Francisco Area of Responsibility absent a material change in
21 circumstances as to flight risk or dangerousness. To the extent Petitioner is a *Garro Pinchi* class
22 member, Respondents appear to have re-detained Petitioner in violation of the December 19, 2025
23 *Garro Pinchi* order, which remains in effect.

24 Because Petitioner is likely to succeed on the merits of their claims and their ongoing
25 detention imposes irreparable harms, Petitioner respectfully requests that this Court order their
26 immediate release. To maintain this Court's jurisdiction, the Court should also prohibit the
27 government from transferring Petitioner out of this District or removing them from the country
28 until these habeas proceedings have concluded.

BACKGROUND

Petitioner is a noncitizen civilly detained by Respondents at Golden State Annex [name of the detention center where you are detained // escriba el nombre del centro de detención donde está detenido] ICE Detention Center. Petition for Writ of Habeas Corpus ("Pet.") ¶ 1.

Petitioner last entered the United States on/around August, 2021 [write the month and year when you entered the U.S. most recently // escriba el mes y el año en que ingresó a los Estados Unidos.]. *Id.* ¶ 42. Petitioner settled into life in the United States. *Id.* ¶¶ 3, 44. Respondents knew Petitioner was living in the United States and allowed Petitioner to remain at liberty. *Id.* ¶ 45. In releasing Petitioner from initial custody and/or allowing Petitioner to remain at liberty, Respondents necessarily determined that Petitioner was neither dangerous nor a flight risk. *Id.* ¶ 46–47.

Yet, despite no material change in circumstances as to Petitioner's flight risk or dangerousness, Respondents arrested Petitioner on or around May 14, 2026 [date of arrest // escriba la fecha aproximada en que ICE lo arrestó y lo volvió a detener], in Tampa, FL [city, state // escriba la ciudad y el estado donde fue arrestado]. *Pet.* ¶¶ 51–52.

On December 19, 2025, the *Garro Pinchi* 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)." *Garro Pinchi*, 813 F. Supp. 3d at 1010–11. The *Garro Pinchi* court held that the Re-Detention Policy is likely unlawful because it is arbitrary and capricious in violation of the APA. *Id.* at 1027. 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 1040. Under that order, Respondents may not implement their policy of re-arresting and re-

1 detaining class members, unless Respondents first make an individualized determination that there
 2 are materially changed circumstances as to the class member's dangerousness or flight risk.
 3 Petitioner may be a *Garro Pinchi* class member whose arrest violated the binding *Garro Pinchi*
 4 order.

5 Petitioner suffers ongoing irreparable harm every day they remain in detention. Pet. ¶¶ 12,
 6 53, 66–68. Prior to their current detention, Petitioner established ties in the United States that are
 7 disrupted by their ongoing detention. *Id.* ¶ 44.

8 STANDARD OF REVIEW

9 To warrant an ex parte TRO, a movant must show that: (1) they are “likely to succeed on
 10 the merits;” (2) they are “likely to suffer irreparable harm in the absence of preliminary relief;”
 11 (3) “the balance of equities tips in [their] favor;” and (4) “an injunction is in the public interest.”
 12 *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat.*
 13 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Where the government is the opposing party, the
 14 third and fourth factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In this Circuit, even if
 15 the movant raises only “serious questions” as to the merits of their claims, the court can grant relief
 16 if the balance of hardships tips “sharply” in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135.
 17 All factors here weigh decisively in Petitioner's favor.

18 ARGUMENT

19 **I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.**

20 **A. Petitioner's Detention Violates the Fifth Amendment's Due Process Clause.**

21 Petitioner has established a likelihood of success on their procedural and substantive due
 22 process claims. The Due Process Clause applies to “all ‘persons’ within the United States;
 23 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
 24 *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against
 25 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
 26 exercise of power without any reasonable justification in the service of a legitimate government
 27 objective,” *City of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from
 28 imprisonment—from government custody, detention, or other forms of physical restraint—lies at

1 the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. Due process constrains
2 even “mandatory” immigration detention. *See Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our
3 decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,
4 constitutional challenges to applications of the statute as we have now read it.”); *Demore v. Kim*,
5 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring).

6 **1. Petitioner is likely to succeed on their procedural due process claim.**

7 Petitioner’s procedural due process claim is likely to succeed. A noncitizen who has lived
8 freely in society and has developed ties to their community has “a protected liberty interest” under
9 the Due Process Clause in remaining out of custody. *Singh v. Andrews*, 803 F. Supp. 3d 1035,
10 1046 (E.D. Cal. 2025); *see also, e.g., Claros v. Albarran*, 811 F. Supp. 3d 1062, 1066 (N.D. Cal.
11 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). This is because “[t]he parolee
12 has relied on at least an implicit promise that parole will be revoked only if he fails to live up to
13 [release] conditions.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). The Constitution “usually
14 . . . requires some kind of a hearing *before* the State deprives a person of liberty or property.”
15 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even when that freedom is lawfully
16 revocable. *See Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (re-detention after release on
17 probation requires pre-deprivation hearing); *Morrissey*, 408 U.S. at 482 (same, for parole).

18 Respondents permitted Petitioner to live out of custody in the United States and develop
19 ties to their community. Pet. ¶¶ 44–45. Respondents’ decision constituted a determination that
20 Petitioner was neither a danger nor flight risk requiring physical custody. *See id.* ¶¶ 46–47. To the
21 extent Respondents allege Petitioner has any new criminal arrests, charges, or convictions; or any
22 new violations of ICE’s Intensive Supervision Appearance Program (ISAP) or supervision
23 conditions since Petitioner’s last encounter with Respondents, those new facts do not justify taking
24 Petitioner into custody without any process. *Id.* ¶¶ 48–49. Accordingly, Petitioner has a protected
25 interest in their liberty, and they have a right to due process before they can be deprived of that
26 interest.

27 To determine what process is due, courts in this Circuit apply the three-part test from
28 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189,

1 1206-08 (9th Cir. 2022) (“assum[ing] without deciding” that *Mathews* applies in the immigration
2 detention context, and applying it). Under that test, the court weighs: (1) the private interest
3 affected; (2) the risk of erroneous deprivation and probable value of procedural safeguards; and
4 (3) the government’s interest. *Mathews*, 424 U.S. at 335. Here, the factors weigh heavily in favor
5 of releasing Petitioner and prohibiting their re-detention, absent a custody hearing at which the
6 government bears a clear-and-convincing burden of proof.

7 First, the private interest affected in this case is great, for “the degree of potential
8 deprivation” that Petitioner’s loss of liberty represents is profound. *Nozzi v. Hous. Auth. of City of*
9 *Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). Petitioner
10 has established ties in the United States and contributed to their family and/or community. See Pet.
11 ¶ 44. Petitioner’s detention has ripped from them the “free[dom] to be with family and friends and
12 to form the . . . enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Petitioner may
13 also have medical conditions that are unaddressed in detention. See e.g., Pet. ¶ 53; see *Castellon*
14 *v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *9 (E.D. Cal. Aug. 14, 2025)
15 (finding petitioner “has a substantial private interest in being out of custody, which would allow
16 her to continue” obtaining necessary medical care). Respondents have deprived Petitioner of the
17 “core values of unqualified liberty,” inflicting “a ‘grievous loss’” on Petitioner. *Morrissey*, at 482.
18 Moreover, because Petitioner faces *civil detention*, “[their] liberty interest is arguably greater than
19 the interest of the parolees in *Morrissey*.” See *Ortega*, 415 F. Supp. 3d at 970; *Jones v. Blanas*,
20 393 F.3d 918, 932 (9th Cir. 2004).

21 Second, “the risk of an erroneous deprivation of liberty is high where, as here, the petitioner
22 has not received any bond or custody redetermination hearing.” *Singh*, 803 F. Supp. 3d at 1047
23 (citation modified). As Respondents have provided Petitioner with *no* procedural safeguards, “the
24 probable value of additional procedural safeguards, i.e., a bond hearing, is high.” *Id.* (citation
25 modified). This is so even if Petitioner allegedly has any new arrests, charges, or convictions since
26 their last encounter with Respondents. See, e.g., *Moises V. A. v. Wofford*, No. 1:25-cv-01419-SKO,
27 2026 WL 252237, at *4 (E.D. Cal. Jan. 30, 2026) (“Although Respondents assert that Petitioner
28 has been charged with several crimes, the charges remain pending, and Petitioner remains innocent

1 until proven guilty. No neutral arbiter has determined that Petitioner is a flight risk or danger to
2 the community. No neutral arbiter has determined that circumstances had materially changed
3 sufficiently to justify revocation of parole.”); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO,
4 2025 WL 2617256, at *6 (E.D. Cal. Sept. 9, 2025) (to comply with due process, a person who
5 sustains a conviction while released on conditional liberty is still “entitled to a determination as to
6 whether that violation warrants modification of [their prior] release order”); *Tinoco v. Noem*, No.
7 1:25-cv-01762-DC-JDP, 2025 WL 3567862, at *6 (E.D. Cal. Dec. 14, 2025) (misdemeanor DUI
8 conviction did not justify re-detention of noncitizen where “no neutral arbiter . . . has determined
9 whether those facts show that Petitioner is a flight risk or danger to the community”). And this is
10 so even if Petitioner allegedly technically violated any ISAP or supervision conditions since their
11 last encounter with Respondents. *See, e.g., A.F.A.M. v. Albarran*, No. 25-cv-10492-AMO, 2025
12 WL 3752190, at *4 (N.D. Cal. Dec. 22, 2025) (“Courts have repeatedly rejected the argument that
13 ICE can re-detain a noncitizen for technical violations ‘without regard to whether that technical
14 violation means that one is a flight risk or danger,’” and collecting cases); *Tinoco*, 2025 WL
15 3567862, at *1, *6 (alleged violations of supervision conditions did not justify re-detention of
16 noncitizen where “no neutral arbiter . . . has determined whether those facts show that Petitioner
17 is a flight risk or danger to the community”).

18 Because the private interest in freedom from immigration detention is so great, due process
19 also requires that, in the event a bond hearing takes place, the government bears the burden of
20 proving “by clear and convincing evidence that the [noncitizen] is a flight risk or danger to the
21 community.” *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011). “*Singh*’s constitutional
22 holding . . . remains binding law of our court.” *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1179
23 (9th Cir. 2023) (Paez, J., respecting the denial of rehearing en banc); *see Martinez v. Clark*, 124
24 F.4th 775, 784–86 (9th Cir. 2024) (confirming that the government bears the “clear-and-
25 convincing burden of proof” at an immigration bond hearing ordered pursuant to the Due Process
26 Clause); *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1096 (E.D. Cal. 2025) (ordering a pre-deprivation
27 bond hearing in which the government bears the burden of proof by clear and convincing
28 evidence).

1 *Third*, the government's interest in detaining Petitioner without first providing notice and
 2 an opportunity to be heard at a custody hearing is low. "In immigration court, custody hearings are
 3 routine and impose a 'minimal' cost." *Singh*, 803 F. Supp. 3d at 1048. Nor would a hearing delay
 4 Respondents' efforts to remove Petitioner: "Any such delay would be minimal. . . . And detention
 5 for its own sake is not a legitimate governmental interest." *Cordero Pelico v. Kaiser*, No. 25-CV-
 6 07286-EMC, 2025 WL 2822876, at *15 (N.D. Cal. Oct. 3, 2025); *see also Ortega*, 415 F. Supp.
 7 3d at 970 (the government may have an interest in re-arresting the petitioner, "but its interest in
 8 doing so without a hearing is low").

9 "Petitioner's immediate release is required to return him to the status quo ante—the last
 10 uncontested status which preceded the pending controversy." *Singh*, 803 F. Supp. 3d at 1050. In
 11 cases raising similar claims as Petitioner, courts in this Circuit have repeatedly granted emergency
 12 relief in the form of petitioners' immediate release, and prohibited ICE from re-detaining the
 13 petitioners without a pre-deprivation hearing at which the government bears a clear and convincing
 14 burden of proof that physical custody is required. *See, e.g., id.* (collecting cases); *Garro Pinchi v.*
 15 *Noem*, 792 F. Supp. 3d 1025, 1038 (N.D. Cal. 2025); *Perez v. Albarrán*, No. 1:25-CV-01540-
 16 DAD-CSK, 2025 WL 3187578, at *5 (E.D. Cal. Nov. 14, 2025); *A.A.H. v. Chestnut*, No. 1:25-
 17 CV-01758-DJC-EFB, 2025 WL 3640677, at *3 (E.D. Cal. Dec. 16, 2025); *Weldemichael v.*
 18 *Warden of Golden State Annex*, No. 1:25-CV-01553-EFB, 2026 WL 84080, at *7 (E.D. Cal. Jan.
 19 12, 2026). The same result is warranted here.

20 **2. Petitioner is likely to succeed on their substantive due process claim.**

21 Petitioner's substantive due process claim is also likely to succeed. "Substantive due
 22 process requires that all forms of civil detention, including immigration detention, bear a
 23 'reasonable relation' to a non-punitive purpose." *A.F.A.M.*, 2025 WL 3752190, at *4 (citing
 24 *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). "The Supreme Court has recognized only two
 25 permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance
 26 at immigration proceedings and preventing danger to the community." *Id.* (citing *Zadvydas*, 533
 27 U.S. at 690–92); *see Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). When Respondents
 28 released Petitioner from custody (or, to the extent Petitioner was never detained, allowed them to

1 remain free), Respondents determined Petitioner was neither a flight risk nor danger. *See* 8 U.S.C.
 2 § 1226(c)(4); 8 C.F.R. §§ 212.5(b), 236.1(c)(8); 1236.1(c)(8); *Matter of Sugay*, 17 I. & N. Dec.
 3 637, 640 (BIA 1981); *Garro Pinchi*, 813 F. Supp. 3d at 993, (“No matter which [detention]
 4 provision[] applies to a given noncitizen, . . . release is available only where a DHS officer or
 5 immigration judge has first determined that a noncitizen neither poses a threat to the public nor is
 6 likely to abscond.”); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub*
 7 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination
 8 by the government that the noncitizen is not a danger to the community or a flight risk.”).

9 The facts since Petitioner’s release show that Petitioner continues *not* to pose any such risk.
 10 Petitioner is not a danger to the community. *See* Pet. ¶¶ 47–48, 54. Nor is Petitioner a flight risk.
 11 *See id.* ¶¶ 44–45, 49. Additionally, Petitioner may have pending applications for immigration relief
 12 and a record of appearing for immigration court and supervision appointments, further mitigating
 13 any risk of flight. *See* Pet. ¶ 44–45; *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023)
 14 (no legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to
 15 remain in the United States).

16 Because Respondents deprived Petitioner of their liberty despite the lack of materially
 17 changed circumstances to justify doing so, Petitioner’s detention “lack[s] a valid basis and
 18 violate[s] Petitioner[’s] right to be free from impermissible government custody.” *Valencia Zapata*
 19 *v. Kaiser*, 801 F. Supp. 3d 919, 939 (N.D. Cal. 2025) (finding habeas petitioners have demonstrated
 20 “at least a serious question” as to whether their detention violates their substantive due process
 21 rights “by failing to serve any valid purpose”).

22 **B. To the Extent Petitioner is a *Garro Pinchi* Class Member, Their Detention**
 23 **Likely Violates the Binding Order Prohibiting Their Re-Detention Without a**
 24 **Material Change in Circumstances.**

25 To the extent Petitioner is a member of the *Garro Pinchi* class, Respondents appear to have
 26 re-detained Petitioner in violation of the *Garro Pinchi* order. Petitioner is a *Garro Pinchi* class
 27 member if Petitioner: (a) is in the jurisdiction of the San Francisco ICE Field Office, (b) entered
 28 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). *Garro Pinchi*, 813 F. Supp. 3d at 1010–11.

Garro Pinchi held that Respondents' Re-Detention Policy is a final agency action and therefore is reviewable under the APA. *Garro Pinchi*, 813 F. Supp. 3d at 1019–24. The court concluded that no other bars precluded it from reaching the merits of Plaintiffs' APA challenge *Id.* at 1024–26. 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 1026–36. Concluding that 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 1037–40.¹ Under the *Garro Pinchi* order now in effect, Respondents within ICE's San Francisco Area of Responsibility 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, to the extent Petitioner is a *Garro Pinchi* class member, Respondents re-arrested Petitioner and now continue to detain them despite no materially changed circumstances as to their dangerousness or flight risk. Pet. ¶¶ 46–51. To the extent Respondents arrested Petitioner within ICE's San Francisco Area of Responsibility, the arrest violated the *Garro Pinchi* order. *Garro Pinchi*, 813 F. Supp. 3d at 1039–40. This renders Petitioner's arrest and ongoing 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

¹ A map depicting the geographic the jurisdiction of the San Francisco ICE Field Office is available at <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFieldOffices.pdf>.

1 issued under an illegal rule, the court should vacate that wrongful decision as a remedy.” *D.A.M.*
 2 *v. Barr*, 486 F. Supp. 3d 404, 416 (D.D.C. 2020) (applying *W.C. v. Bowen*).

3 The *Garro Pinchi* order was entered on December 19, 2025 at 3:43 p.m. If Respondents
 4 arrested Petitioner *before* then, Respondents’ *ongoing* detention of Petitioner since the order’s
 5 issuance is unlawful. If Respondents arrested Petitioner *after* the December 19, 2025 *Garro Pinchi*
 6 order, Petitioner’s arrest and subsequent re-detention are unlawful. Regardless of the precise
 7 sequence of events, Respondents violate the binding *Garro Pinchi* order every day that Petitioner
 8 continues to be detained. Petitioner should be immediately released.

9 * * * * *

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

14 **II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE**
 15 **INJURY ABSENT A TRO.**

16 Every day Petitioner is unlawfully detained in violation of the Fifth Amendment’s Due
 17 Process Clause inflicts an irreparable injury upon them.

18 “It is well established that the deprivation of constitutional rights ‘unquestionably
 19 constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994–95 (citing *Melendres v. Arpaio*, 695
 20 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional right is involved,
 21 most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v.*
 22 *Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (citation modified).

23 Moreover, the unlawful deprivation of physical liberty is a quintessential irreparable harm.
 24 *See Hernandez*, at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that
 25 they [we]re likely to be unconstitutionally detained for an indeterminate period of time”); *see also*,
 26 *e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount
 27 of actual jail time is significant, and has exceptionally severe consequences for the incarcerated
 28 individual” (citation modified)).

In addition to their loss of liberty, Petitioner is also suffering additional ongoing irreparable harms. Pet. ¶¶ 53, 66–68. To the extent Petitioner has experienced difficulty practicing their religion, “the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); see Pet. ¶¶ 44, 66–68. Petitioner’s continued detention may also inflict irreparable harm on their family, community, and well-being. See Pet. ¶ 67–68.

Finally, Petitioner could not reasonably have filed their habeas petition and motion for TRO sooner. When Respondents detained Petitioner, Petitioner had no access to counsel willing to file a habeas petition on their behalf. Petitioner worked diligently to file a habeas petition from detention with limited or no access to the Internet or other legal resources. Petitioner may have ongoing medical problems that are not being adequately addressed in detention and have delayed preparation and filing of their *pro se* habeas petition and motion for TRO. Pet. ¶ 53. Petitioner may also have language barriers or other accessibility issues that caused yet more delays. See Decl. of Petitioner in Support of TRO ¶ 8. Accordingly, any perceived delay was not due to a lack of diligence; it was due instead to Petitioner’s lack of access to habeas counsel and the daunting challenges of filing for *pro se* relief, particularly while detained. Meanwhile, every day that Petitioner is unlawfully detained only compounds Petitioner’s irreparable harm. Under these circumstances, Petitioner’s unconstitutional, unlawful, and unnecessary continued detention constitutes irreparable harm justifying this emergency relief.

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). Here, the balance of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing legal violations and 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).

1 The public interest likewise weighs strongly in Petitioner's favor. Respondents' ongoing
2 detention of Petitioner clearly violates federal law and the Constitution. Therefore, granting
3 emergency relief will promote the public interest by upholding the rule of law. "[N]either equity
4 nor the public's interest are furthered by allowing violations of federal law to continue." *Galvez v.*
5 *Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022); *see also Index Newspapers LLC v. U.S. Marshals Serv.*,
6 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a
7 party's constitutional rights.").

8 SECURITY

9 No security is necessary here. Courts "may dispense with the filing of a bond when," as
10 here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."
11 *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
12 requirement in cases raising constitutional claims, because "to require a bond would have a
13 negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other
14 members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
15 Cal. 1996). Finally, Plaintiff's likelihood of success on the merits supports the court's waiving of
16 bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan.*
17 *Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

18 CONCLUSION

19 For the foregoing reasons, and to restore the *status quo ante* pending these proceedings,
20 Petitioner respectfully requests the Court grant a TRO, ordering as follows: (1) Respondents must
21 immediately release Petitioner from custody on the same conditions that governed their liberty
22 prior to Petitioner's current detention; (2) Respondents are enjoined from re-detaining Petitioner
23 absent further order of this Court; *or, in the alternative*, are enjoined from re-detaining Petitioner
24 unless Respondents provide Petitioner at least 14 days' notice that they will seek a pre-deprivation
25 bond hearing before a neutral arbiter where Respondents must prove, by clear and convincing
26 evidence, that Petitioner is a flight risk or danger to the community such that Petitioner's physical
27 custody is required; (3) Respondents must return to Petitioner all property confiscated from
28 Petitioner during Petitioner's arrest, processing, and/or detention, including but not limited to any

1 personal identification, employment authorization document, medical insurance card, money,
2 legal documents, and other personal effects; (4) Respondents are enjoined from imposing upon
3 Petitioner additional or more restrictive conditions of release or supervision, absent notice and an
4 opportunity to be heard; (5) To preserve this Court's jurisdiction, Respondents are enjoined from
5 transferring Petitioner out of this District or removing Petitioner from the country until these
6 proceedings have concluded; and (6) No security shall be required.

7
8 Respectfully submitted,

9
10 06/29/2026
11 Date [Fecha]

Royal Frometa Cruz
12 Printed Name [Nombre Impreso]


13 Signature [Firma]

14 Pro se Petitioner
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