

1 Winthrop Brian Hedrick, Esq. (SBN 321183)
Hedrick Law, P.C.
2 P.O. Box 1080
Windsor, CA 95492
3 Telephone: (916) 296-5343
Email: brian@hedricklawpc.com
4

5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

7 Ernesto Antonio AVILA PERLA,

8 Petitioner,

9 v.

10 Tonya ANDREWS, Warden of Golden State
11 Annex Detention Center; Sergio ALBARRAN,
Acting Field Office Director of Immigration
12 and Customs Enforcement, San Francisco Field
Office; David VENTURELLA, Acting Director,
13 Immigration and Customs Enforcement, U.S.
Department of Homeland Security; Markwayne
14 MULLIN, Secretary, U.S.
Department of Homeland Security; U.S.
15 DEPARTMENT OF HOMELAND
SECURITY; Todd W. BLANCHE, Acting U.S.
16 Attorney General; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW,

17 Respondents.
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Case No.

**PETITIONER'S EX PARTE MOTION
FOR TEMPORARY RESTRAINING
ORDER**

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INTRODUCTION

Petitioner Ernesto Antonio Avila Perla ("Petitioner") brings the present Ex Parte Application for a Temporary Restraining Order ("TRO") asking the Court to order Petitioner be immediately released from custody. Petitioner meets all the requirements that would merit the grant of the present application for a TRO.

Petitioner is 21 years old. He was born [REDACTED] in El Salvador. Petitioner entered the U.S. without inspection or admission on or about September 29, 2017 as a 13 year old unaccompanied child.

On June 29, 2026, Petitioner was detained by DHS Immigration and Customs Enforcement (ICE) near 825 Riverside Parkway Suite 100, West Sacramento, CA 95605. Approximately six armed ICE officers confronted Petitioner inside of the USCIS application support center. He was scheduled to complete his biometrics for a pending renewal of his work authorization application. Respondents did not present any warrant for Petitioner's arrest. Petitioner was not notified of the reason for his arrest and detention on June 29, 2026. Petitioner asked the arresting DHS officers "why are you detaining me?", and the officers did not provide any response to his question.

Without an explanation or alleged reason for his detention, Petitioner was arrested and placed in an ICE vehicle. He was detained and transported to an ICE Office for further processing. He was not provided any legitimate reason for his detention.

After hours of being detained, he was subsequently transported to the Golden State Annex Detention Center in McFarland, CA.

1 Petitioner has no criminal convictions, nor in any country in the world. DHS has not
2 submitted or provided any evidence to Petitioner stating the reason for his current detention.
3 Petitioner has not been provided any information to justify his unlawful arrest and detention.
4 Petitioner's arrest involved numerous armed DHS officers, with no judicial warrant for the
5 arrest. This type of arrest and detention reflects the same pattern identified by courts across the
6 country: DHS has increasingly relied on quota-driven enforcement tactics that prioritize arrest
7 numbers over individualized assessment or statutory criteria. This broader enforcement strategy
8 further underscores the arbitrary nature of Petitioner's arrest and detention, and the absence of
9 any legitimate governmental purpose served by keeping him confined.

10 As a result of his arrest and detention, Petitioner is suffering irreparable and ongoing
11 harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes
12 irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
13 "[f]reedom from imprisonment—from government custody, detention, or other forms of physical
14 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*
15 *Davis*, 533 U.S. 678, 690 (2001). Petitioner also faces numerous additional irreparable harms due
16 to his detention, including struggles with anxiety and emotional distress. The environment he has
17 been placed is traumatic and lacks adequate safeguards from dangerous encounters. This is the
18 earliest date on which Petitioner could reasonably bring this action because Petitioner's family
19 and Counsel had to locate Petitioner in the DHS locator. It also took a couple of days for
20 Petitioner's family to gather the necessary funds to retain undersigned counsel, as the arrest was
21 unexpected and the family lacked immediate financial resources to hire an attorney. Further,
22 Petitioner diligently filed the instant habeas petition and TRO upon retaining undersigned
23 counsel.

1 In light of these irreparable harms, and because he is likely to succeed on the merits of his
2 due process claims, Petitioner respectfully requests that this Court issue a temporary restraining
3 order (“TRO”) immediately releasing him from custody and enjoining the government from
4 rearresting him absent the opportunity to contest that arrest at a hearing before a neutral decision
5 maker. Confronted with substantially identical facts and legal issues, courts in this circuit have
6 repeatedly granted the exact relief Petitioner seeks. *See, e.g., Salazar v. Kaiser*, 2025 WL
7 2456232, at *2 (E.D. Cal. Aug. 26, 2025) (converting request for TRO to request for preliminary
8 injunction and granting relief); *Garcia Barrera v. Andrews*, 2025 WL 2420068, at *3 (E.D. Cal.
9 Aug. 21, 2025); *Jimenez Garcia v. Kaiser*, 2025 WL 2453970, at *3 (N.D. Cal. Aug. 17, 2025)
10 (granting TRO); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025),
11 converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24,
12 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting
13 preliminary injunction). To maintain this Court’s jurisdiction, Petitioner respectfully requests
14 that the Court prohibit the government from transferring Petitioner out of this District and
15 removing him from the country until these proceedings have concluded.

16 FACTUAL BACKGROUND

17 Petitioner is a 21 year old and alleged to be a citizen of El Salvador. Petitioner was born
18  in El Salvador. Petitioner entered the U.S. on or about September 29, 2017, as
19 an 13 year old unaccompanied child.

20 In 2017, Respondents (ICE) released Petitioner from custody on his own recognizance.

21 On October 18, 2023, an Immigration Judge granted Petitioner’s motion to
22 administratively close his removal proceedings.
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1 On September 13, 2023, a Judge for the Superior Court of California, County of
2 Sacramento, granted Petitioner's parentage petition and issued Special Immigrant Juvenile
3 Findings. In his Special Immigrant Juvenile Order, the Superior Court Judge found that
4 Petitioner was abandoned by his biological father and that it was not in the best interest of the
5 child [Petitioner] to be returned to El Salvador.

6 On October 18, 2023, an Immigration Judge granted Petitioner's motion to
7 administratively close his removal proceedings that were pending before the Executive Office for
8 Immigration Review.

9 On May 29, 2026, Petitioner graduated from Natomas High School in Sacramento, CA.

10 On June 29, 2026, Petitioner was detained by DHS Immigration and Customs
11 Enforcement (ICE) near 825 Riverside Parkway Suite 100, West Sacramento, CA 95605.
12 Approximately six armed ICE officer confronted Petitioner inside of the USCIS application
13 support center. He was scheduled to complete his biometrics for a pending renewal of his work
14 authorization application. Respondents did not present any warrant for Petitioner's arrest.
15 Petitioner was not notified of the reason for his arrest and detention on June 29, 2026. Petitioner
16 asked the arresting DHS officers "why are you detaining me?", and the officers did not provide
17 any response to his question.

18 Without an explanation or alleged reason for his detention, Petitioner was arrested and
19 placed in an ICE vehicle. He was detained and transported to an ICE Office for further
20 processing. He was not provided any legitimate reason for his detention.

21 After hours of being detained, Petitioner was subsequently transported to the Golden
22 State Annex Detention Center in McFarland, CA.

1 DHS has continuously failed to inform Petitioner of the reason for his detention that
2 began on June 29, 2026. Petitioner has not been served with any notice or documents explaining
3 why he was detained on that day.

4 As of June 30, 2026, Petitioners removal case remained administratively closed.

5 Petitioner was not provided a pre-deprivation hearing nor a post deprivation hearing.
6 Petitioner is neither a flight risk nor a danger to the community.

7 Since being detained, Petitioner has never received a hearing notice from the Executive
8 Office of Immigration Review (EOIR). Petitioner remains in detention.

9 Without relief from this Court, he faces the prospect of a prolonged unlawful detention in
10 immigration custody, separated from his family and community, without any trace of due
11 process. Petitioner's detention serves no legitimate government purpose and constitutes an
12 unlawful deprivation of liberty.

13 **ARGUMENT**

14 Ex parte applications are for extraordinary relief. *See Mission Power Engineering Co. v.*
15 *Continental Casualty Co.*, 883 F. Supp. 488 (C.D. Cal. 1995). Petitioner must show (i) that they
16 "will be irreparably prejudiced if the underlying motion is heard according to the regular noticed
17 motion procedures" and (ii) that they are "without fault in creating the crisis that requires ex
18 parte relief, or that the crisis occurred as a result of excusable neglect." *Mission Power*, 883 F.
19 Supp. At 293)¹.
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23 ¹ The Ex parte requirements and TRO requirements overlap because the "irreparable prejudice that would occur if
24 the motion is heard on the regular noticed motion procedures. Therefore, Petitioner will not separately address the ex
parte requirements of irreparable prejudice.

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

11 I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS
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13 The likelihood of success factor weighs in Petitioner’s favor because (A) Petitioner’s
14 detention without a bond hearing violates the INA because the statute and legislative history
15 make clear that 8 U.S.C. § 1226(a) governs Petitioner’s detention., (B) Petitioner’s detention
16 violates substantive due process, and (C) The government violated procedural due process by
17 depriving Petitioner of the opportunity to contest his arrest and detention before a neutral arbiter.

18 A. Petitioner’s detention without a bond hearing violates the INA because the statute and
19 legislative history make clear that 8 U.S.C. § 1226(a) governs Petitioner’s detention

20 Two statutes govern the detention and removal of inadmissible noncitizens from the
21 United States: 8 U.S.C. § 1226 and 8 U.S.C. § 1225. The Government may “detain certain
22 [noncitizens] seeking admission into the country under § 1225(b), while § 1226 authorizes the
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1 Government to detain certain [noncitizens] *already in the country* pending the outcome of
2 removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

3 8 U.S.C. § 1226(a) states as follows:

4 (a) Arrest, detention, and release

5 On a warrant issued by the Attorney General, an alien may be arrested and
6 detained pending a decision on whether the alien is to be removed from the
7 United States. Except as provided in subsection (c) and pending such decision, the
8 Attorney General—

9 (1) May continue to detain the arrested alien; an

10 (2) May release the alien on—

11 (A) Bond of at least \$1,500 with security approved by, and containing
12 conditions prescribed by, the Attorney General; or

13 (B) conditional parole; but

14 (3) may not provide the alien with work authorization (including an “employment
15 authorized” endorsement or other appropriate work permit), unless the alien is
16 lawfully admitted for permanent residence or otherwise would (without regard
17 to removal proceedings) be provided such authorization.

18 8 U.S.C. § 1225(b)(2) states as follows:

19 (2) Inspection of other aliens

20 (A) In general Subject to subparagraphs (B) and (C), in the case of an alien who is
21 an applicant for admission, if the examining immigration officer determines
22 that an alien seeking admission is not clearly and beyond a doubt entitled to be
23 admitted, the alien shall be detained for a proceeding under section 1229a of
24 this title.

Petitioner was EWI when he last entered the United States on or about 2019.

There are no factual allegations in the record that Petitioner is an arriving alien, and his
Notice to Appear that was issued in 2017, alleges that he is “an alien present in the United States
who has not been admitted or paroled.”

8 U.S.C. § 1225(b)(2) applies to the inspection of aliens arriving in the United States and
arrested without a warrant at the border or other ports of entry. The Supreme Court recognized, §
1225 is concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S. 281,

297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Id.* at 287. The entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to “examining immigration officer[s],” 8 U.S.C. §1225(b)(2)(A), (b)(4), or officers conducting “inspection[s]” of people “arriving in the United States,” *id.* § 1225(a)(3), (b)(1), (b)(2), (d); see also *King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s] meaning”). 8 U.S.C. § 1225(b)(2)(A) clearly does not apply to Petitioner and does not apply to those who are arrested in the interior of the United States years later. Further, the distinction between persons already located inside the United States, like petitioner, and individuals attempting to enter the United States, like the petitioner in *Thuraissigiam* is important because “[i]t is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.” *Zadvydas*, 533 U.S. 678 at 693 (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269 (1990); *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950)). “But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Id.*

In 2017, Petitioner was released on his own recognizance and conditionally paroled into the U.S. pursuant to 8 U.S.C. § 1226(a). Therefore, Respondents understood that 8 U.S.C. § 1226 governed Petitioner’s detention in 2017.

Thus, § 1226(a) and its discretionary release and review of detention should apply to the Petitioner.

Further, the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585, also supports the conclusion that § 1226(a) applies to Petitioner, not § 1225. In passing the Act, Congress was focused on the perceived problem of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No. 469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, because prior to IIRIRA, people like Petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468-69 (2001). But, Congress explained precisely the opposite, noting that the new § 1226(a) merely “restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); see also H.R. Rep. No. 104-828, at 210.

Thus, Petitioner is likely to succeed on the merits of his claims. But even if the Court disagrees, he presents at least “serious question[s] going to the merits,” alongside a “balance of hardships” tipping decidedly in his favor. *All. for the Wild Rockies*, 632 F.3d at 1135. Indeed, the constitutional concerns delineated above are so high and beyond colorable. Therefore, this Court should grant the requested TRO.

1 B. Petitioner's detention violates substantive due process because he is neither a flight risk
2 nor a danger to the community.

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

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

3 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
4 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
5 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
6 pursuing and completing deportation proceedings, it could become necessary then to inquire
7 whether the detention is not to facilitate deportation, or to protect against risk of flight or
8 dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420
9 (2019) (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied
10 challenges—that is, constitutional challenges to applications of the statute as we have now read
11 it.”).

12 First, as to flight risk, the question is whether custody is reasonably necessary to secure a
13 person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
14 F.3d at 990–91. Here, Petitioner’s immigration court case was administratively closed.
15 Therefore, his arrest and detention were not for the purpose of securing his appearance at any
16 immigration court hearing. Importantly, in 2017, Respondents decided that Petitioner was not a
17 flight risk when they released him on his own recognizance. Petitioner has complied with all
18 requirements of DHS after his release on parole from immigration custody in 2017.

19
20 Second, because Petitioner has no criminal convictions, there is no credible argument that
21 he is currently a danger to the community.

1 Thus, Petitioner is not a flight risk or a danger to the community and his ongoing
2 detention is unconstitutional, and substantive due process principles require his immediate
3 release.

4 C. The government violated procedural due process by depriving petitioner of the
5 opportunity to contest his arrest and detention before a neutral decision maker.

6 Noncitizens living in the United States like Petitioner have a protected liberty interest in their
7 ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court “usually
8 has held that the Constitution requires some kind of a hearing before the State deprives a person
9 of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases
10 where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d 671, 683 (D.C. Cir.
11 2017).

12 Petitioner entered the U.S. as an unaccompanied child (UAC). Petitioner was released
13 from Federal custody by ORR pursuant to section 462 of the Homeland Security Act of 2002 and
14 section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act
15 (“TVPRA”) of 2008. The TVPRA provides that, in making custody determinations, Health and
16 Human Services (HHS) should consider “danger to self, danger to the community, and risk of
17 flight.” 8 U.S.C. § 1232(c)(2)(A). In releasing Petitioner in 2017, HHS must have determined
18 that he was neither a flight risk nor a danger to the community. *Saravia v. Sessions*, 280 F.
19 Supp.3d 1168, 1176, 1178 (N.D. Cal. 2017) (“[Immigration officials] may release the minor to a
20 ‘sponsor’ . . . so long as the minor is not dangerous . . . Release [therefore] reflects a
21 determination by the government that the noncitizen is not a danger to the community or a flight
22 risk.”), *aff’d* 905 F.3d 1137 (9th Cir. 2018). The TVPRA statutes further contemplate using the
23 “least restrictive setting” regarding placement for minors in HHS custody and placement for
24

1 minors in DHS custody after turning 18 years old. *See* 8 U.S.C. § 1232(c)(2)(A)–(B). Therefore,
2 Petitioner has a protected liberty interest requiring a pre-deprivation hearing prior to his
3 detention on June 29, 2026.

4 Once a petitioner has established a protected liberty interest, as Petitioner has done here,
5 courts in this circuit apply the *Mathews* test to determine what procedural protections are due.
6 *See Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424
7 U.S. 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the
8 risk of erroneous deprivation and probable value of procedural safeguards; and (3) the
9 government’s interest. *Id.*

10 First, the private interest affected in this case is profound. When considering this factor,
11 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
12 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of
13 deprivation here is severe.

14 Here, Petitioner was apprehended in a parking lot in West Sacramento, CA and was not
15 given any reason nor presented with a warrant for his arrest. Since Petitioner’s arrest and
16 detention, he has not been given any hearing nor hearing date before a judge. Petitioner has been
17 deprived of his freedom from unlawful detention and also his constitutional right to be heard and
18 contest his detention.

19 Therefore, Petitioner has a substantial private interest in being out of custody and his
20 detention denies him of that liberty. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom
21 from imprisonment—from government custody, detention, or other forms of physical restraint—
22 lies at the heart of the liberty that [the Due Process] Clause protects.”). Moreover, Because the
23 private interest in freedom from immigration detention is substantial, due process also requires
24

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

8 Second, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
9 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
10 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*,
11 No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); see also *Diep v.*
12 *Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). On June 29,
13 2026, Respondents apprehended Petitioner in West Sacramento, CA after he completed his
14 biometrics appointment. Since that day, Respondents have not released Petitioner, provided him
15 a bond hearing, nor scheduled any hearing at all. The government has never informed the
16 Petitioner why he is detained.

17 Therefore, in this case, the risk of erroneous deprivation is high where Petitioner has been
18 denied answers by immigration officials, threatened by immigration officials, and has not been
19 given any review of his detention.

20 Third, the government’s interest in detaining Petitioner without first providing notice and
21 submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
22 hearings, which impose a “minimal” cost to the government. See *Doe*, 2025 WL 691664, at *6;
23 *A.E.*, 2025 WL 1424382, at *5. Here, Petitioner was arrested and detained without any notice
24

1 given to him. Additionally, Respondents have yet to provide any bond or custody hearing before
2 a neutral arbiter to Petitioner.

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

11
12 II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE
13 INJURY ABSENT A TRO

14
15 Petitioner will continue to be unlawfully detained by the government for an indefinite
16 period of time, and deprived of his constitutional rights, absent a grant of a temporary restraining
17 order.

18 “The time spent in jail awaiting trial has a detrimental impact on the individual. It often
19 means a loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S.
20 514, 532-33 (1972). “When an alleged deprivation of a constitutional right is involved, most
21 courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*,
22 418 F.3d 989, 1001-02 (9th Cir. 2005)(quoting *Wright, Miller, & Kane, Federal Practice and*
23 *Procedure*, § 2948.1 (2d ed. 2004)). “Freedom from imprisonment—from government custody,
24 detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due

1 Process Clause protects. *Zadvydas*, 533 U.S. at 690. Detention constitutes “a loss of liberty that
2 is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020)
3 (*Moreno II*), aff’d in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez*
4 *v. Jaddou*, 52 F.4th 821 (9th Cir. 2022).

5 Petitioner is currently being detained unlawfully at the Golden State Detention Center in
6 McFarland, CA. Since his arrest on June 29, 2026, Petitioner remains unlawfully detained,
7 depriving him of his physical liberty, and without any hearing. Petitioner is suffering emotional
8 distress due to the harsh conditions in the facility, including mental anguish, and isolation.

9 Thus, if Petitioner continues to be unlawfully detained, he faces irreparable harm absent a
10 grant of a temporary restraining order.

11
12 III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH
13 STRONGLY IN PETITIONER’S FAVOR

14 When “the nonmoving party is the government, the last two *Winter* factors merge.” *Baird*
15 *v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). Petitioner has established that the public interest
16 factor weighs in his favor because classifying Petitioner under § 1225(b)(2) deprives him of due
17 process and is in violation of federal law. *Index Newspapers LLC v. U.S. Marshals Serv.*, 977
18 F.3d 817, 838 (9th Cir. 2020) (“It is always in the public interest to prevent the violation of a
19 party’s constitutional rights.”) (citing *Padilla*, 953 F.3d at 1147–48).

20 Because the policy, which prevents Petitioner from obtaining a release on bond, “is
21 inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in
22 favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218
23 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52 F.4th at 832 (affirming in part
24

1 permanent injunction issued in *Moreno II* and quoting approvingly district judge's declaration
2 that "it is clear that neither equity nor the public's interest are furthered by allowing violations of
3 federal law to continue"). "[I]t would not be equitable or in the public's interest to allow the
4 [government] . . . to violate the requirements of federal law, especially when there are no
5 adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)
6 (second alteration in original) (citation omitted).

7 Here, requiring the government to release Petitioner and ordering he not be re-detained
8 absent a bond hearing before a neutral arbiter would be consistent with federal law, providing
9 Petitioner with the due process rights that the U.S. Constitution requires.

10 Thus, the violation of Petitioner's rights under the U.S. Constitution and the violation of
11 Federal law causing Petitioner's continued detention without bond, tip the balance of the equities
12 and the public interest strongly in Petitioner's favor.

14 SECURITY

15 No security is necessary here. Courts "may dispense with the filing of a bond when," as
16 here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."
17 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
18 requirement in cases raising constitutional claims, because "to require a bond would have a
19 negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other
20 members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
21 Cal. 1996). Finally, Plaintiff's showing of a high likelihood of success on the merits supports the
22 court's waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v.*
23
24

1 *Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), amended, 775 F.2d 998 (9th Cir.
2 1985).

3
4 **CONCLUSION**

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

13
14 DATED this 6th of July 2026,

/s/ Winthrop Brian Hedrick
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with Petitioner, Ernesto Antonio Avila Perla, the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER are true and correct to the best of my knowledge.

Executed on this July 6, 2026, in Windsor, CA.

/s/Winthrop Brian Hedrick

Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2026, I filed the foregoing petition for EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated: July 6, 2026

/s/Winthrop Brian Hedrick

Attorney for Petitioner