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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EDUARDO RUIZ GARCIA,

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director, San Francisco Field Office, U.S. Immigration and Customs Enforcement, et al.,

Respondents.

CASE NO. 3:26-cv-12237-RFL

PETITIONER'S EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; MEMORANDUM OF POINTS AND AUTHORITIES

IMMEDIATE RELIEF REQUESTED

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that Petitioner Eduardo Ruiz Garcia moves ex parte, pursuant to Federal Rule of Civil Procedure 65(b), Civil Local Rule 65-1, and 28 U.S.C. §§ 2241 and 2243, for a temporary restraining order and an order to show cause why a preliminary injunction should not issue. Petitioner requests that the Court order Respondents:

(1) to release Petitioner from custody forthwith, and in any event by the close of business on the day of the Court's order;

(2) not to re-detain Petitioner unless his detention is ordered at a custody hearing before a neutral decisionmaker at which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community;

(3) not to transfer Petitioner outside the Northern District of California, and not to remove him from the United States, while this action is pending; and

(4) to show cause why a preliminary injunction should not issue on the same terms.

Petitioner requests that the Court set the shortest practicable schedule for Respondents' return and for a hearing. Petitioner is presently in custody. Every day of delay is a day of detention that Petitioner contends is unauthorized by statute and by the Constitution.

This motion is based on this Notice, the Memorandum of Points and Authorities below, the Verified Petition for Writ of Habeas Corpus ("Pet.") (Dkt. No. 1), the Declaration of Jazmín Preciado (attached hereto), the Declaration of Lorraine Van Kirk (attached hereto), ICE's Form I-200 dated July 2, 2026 (Ex. A hereto), the September 21, 2026 Minute Order of the San Francisco Superior Court (Ex. B hereto), and such argument as the Court may permit.

CERTIFICATION REGARDING NOTICE (Fed. R. Civ. P. 65(b)(1)(B); Civil L.R. 65-1(b))

Counsel certifies that on October 21, 2026, immediately after filing the habeas petition, counsel provided Civil Division Chief Ken Brakebill with a copy of the Petition via e-mail. On October 21, 2026, counsel also notified Civil Division Chief Ken Brakebill by e-mail that Petitioner would be filing a motion for a temporary restraining order in this District. *See*

Declaration of Lorraine Van Kirk ¶ 2. Counsel will serve this motion on the United States Attorney's Office upon filing. Respondents therefore have actual notice. To the extent the Court treats this as an ex parte application, notice should not be required because Petitioner is in custody now, is at risk of transfer out of this District, and the harm alleged accrues by the hour.

TABLE OF CONTENTS

Page(s)

NOTICE OF MOTION AND MOTION 2

CERTIFICATION REGARDING NOTICE 2

MEMORANDUM OF POINTS AND AUTHORITIES 8

I. INTRODUCTION 8

II. PETITIONER IS SUFFERING ONGOING AND IRREPARABLE HARM 9

III. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS 10

A. Petitioner's Arrest Violated 8 U.S.C. §§ 1226(a) and 1357(a)(2) and ICE's Regulations (Claim One). 11

B. Petitioner's Detention Violates the Immigration and Nationality Act (Claim Two). 13

C. Officers Seized and Arrested Petitioner Without Reasonable Suspicion or Probable Cause (Claim Three). 14

D. Petitioner's Detention Without an Individualized Determination Violates Procedural Due Process (Claim Four). 15

E. Petitioner's Detention Violates Substantive Due Process (Claim Five) 16

F. The Court Has Jurisdiction, and Exhaustion Is Not Required 17

IV. THE BALANCE OF THE HARDSHIPS AND THE PUBLIC INTEREST WEIGH IN PETITIONER'S FAVOR 18

V. NO SECURITY IS NEEDED HERE 18

VI. CONCLUSION 19

TABLE OF AUTHORITIES

Page(s)

Cases

Alfaro v. Mullin, No. 26-0766 (GRB), 2026 WL 734348 (E.D.N.Y. Mar. 16, 2026) 12
All. for the Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011) 11
Ashcroft v. al-Kidd, 563 U.S. 731 (2011) 11, 14
Baca v. Moreno Valley Unified Sch. Dist., 936 F. Supp. 719 (C.D. Cal. 1996) 18
Barbosa da Cunha v. Freden, 175 F.4th 61 (2d Cir. 2026) 14
Bernal v. Albarran, No. 25-cv-09772-RS, 2025 WL 3281422 (N.D. Cal. Nov. 25, 2025) 17
Brown v. Texas, 443 U.S. 47 (1979) 14
Caicedo Hinestroza v. Kaiser, No. 25-cv-07559-JD, Dkt. No. 8 (N.D. Cal. Sept. 9, 2025) 13
California v. Azar, 911 F.3d 558 (9th Cir. 2018) 18
Chaparro Ayala v. Albarran, No. 26-cv-09430-CRB, 2026 WL 2722780 (N.D. Cal. Sept. 15, 2026) 15, 16
Chiguil Chiguil v. Noem, No. 26-cv-1844 DAD CSK, 2026 WL 913195 (E.D. Cal. Apr. 3, 2026) 15
Chogllo Chafla v. Scott, 2025 WL 2688541 (D. Me. Sept. 21, 2025) 13
Claros v. Albarran, 811 F. Supp. 3d 1062 (N.D. Cal. 2025) 15
Cuy Comes v. DeLeon, No. 25-cv-09283 (AT), 2025 WL 3206491 (S.D.N.Y. Nov. 14, 2025) 13
Demore v. Kim, 538 U.S. 510 (2003) 17
Diaz v. Kaiser, No. 25-cv-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) 18
Dunaway v. New York, 442 U.S. 200 (1979) 14
Duong v. Kaiser, 800 F. Supp. 3d 1030 (N.D. Cal. 2025) 16
Env't Prot. Info. Ctr. v. Carlson, 968 F.3d 985 (9th Cir. 2020) 18
Garcia v. Albarran, No. 26-CV-04839, 2026 WL 1454512 (N.D. Cal. May 21, 2026) 14
Garro Pinchi v. Noem, 792 F. Supp. 3d 1025 (N.D. Cal. 2025) 16
Gilton A. v. Bondi, No. 26-cv-558 (D. Minn. Jan. 25, 2026) 13
Guillermo M. R. v. Kaiser, 791 F. Supp. 3d 1021 (N.D. Cal. 2025) 15, 16
Hernandez Alvarez v. Warden, 175 F.4th 1258 (11th Cir. 2026) 14
Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017) 9, 10, 15, 17, 18
Hurd v. District of Columbia, 864 F.3d 671 (D.C. Cir. 2017) 15
Index Newspapers LLC v. U.S. Marshals Serv., 977 F.3d 817 (9th Cir. 2020) 18
Izazaga Cardenas v. Albarran, No. 26-cv-06435-JD, Dkt. No. 10 (N.D. Cal. July 2, 2026) 11, 12, 13
Jackson v. Indiana, 406 U.S. 715 (1972) 16
J.A.C.P. v. Wofford, 2025 WL 3013328 (E.D. Cal. Oct. 27, 2025) 13

Jennings v. Rodriguez, 583 U.S. 281 (2018) 17
Jorge M.F. v. Wilkinson, 2021 WL 783561 (N.D. Cal. Mar. 1, 2021) 16
Jorgensen v. Cassiday, 320 F.3d 906 (9th Cir. 2003) 18
Laing v. Ashcroft, 370 F.3d 994 (9th Cir. 2004) 17
Lopez-Campos v. Raycraft, 175 F.4th 713 (6th Cir. 2026) 14
Martinez v. Clark, 124 F.4th 775 (9th Cir. 2024) 17
Mathews v. Eldridge, 424 U.S. 319 (1976) 15, 16
McCarthy v. Madigan, 503 U.S. 140 (1992) 17
Melendres v. Arpaio, 695 F.3d 990 (9th Cir. 2012) 9
Morrissey v. Brewer, 408 U.S. 471 (1972) 15
Mountain High Knitting, Inc. v. Reno, 51 F.3d 216 (9th Cir. 1995) 11
Munaf v. Geren, 553 U.S. 674 (2008) 13
Norberto C.M. v. Warden, Cent. Valley Annex, No. 26-cv-04674-MWJS, 2026 WL 1992747 (E.D. Cal. July 9, 2026) 17
Padilla v. Immigr. & Customs Enf't, 953 F.3d 1134 (9th Cir. 2020) 18
People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency, 766 F.2d 1319 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985) 19
Perez Cruz v. Barr, 926 F.3d 1128 (9th Cir. 2019) 11
Ramirez Ovando v. Noem, 810 F. Supp. 3d 1209 (D. Colo. 2025) 12
Reid v. Georgia, 448 U.S. 438 (1980) (per curiam) 14
Reyes v. Santacruz Jr., No. ED CV 26-3394-E, 2026 WL 2069974 (C.D. Cal. July 13, 2026) 12
Rodriguez Vazquez v. Bostock, 183 F.4th 1160 (9th Cir. 2026) 13
Romero-Perez v. Blanche, No. 2:26-CV-01708-RFB-BNW, 2026 WL 1724752 (D. Nev. June 15, 2026) 12
Rosales-Mireles v. United States, 585 U.S. 129 (2018) 9
Sanchez v. Sessions, 904 F.3d 643 (9th Cir. 2018) 11
Santillan Quiroz v. Mullin, 2026 WL 1876709 (10th Cir. June 30, 2026) 14
Terry v. Ohio, 392 U.S. 1 (1968) 14
Torres v. Barr, 976 F.3d 918 (9th Cir. 2020) (en banc) 14
Urias v. Semaia, No. 5:26-CV-02753-DTB, 2026 WL 1710375 (C.D. Cal. June 10, 2026) 12
Vargas v. Jennings, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020) 16
Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005) 9
Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008) 11
Zadvydas v. Davis, 533 U.S. 678 (2001) 15, 16
Zamorano v. Garland, 2 F.4th 1213 (9th Cir. 2021) 17

Administrative Decisions

Matter of C-, 20 I. & N. Dec. 529 (BIA 1992) 17

Constitutional Provisions

U.S. Const. amend. IV 11
U.S. Const. amend. V 9, 15, 17

Statutes

8 U.S.C. § 1225 ..... 9, 13
8 U.S.C. § 1226 ..... 9, 11, 12, 13, 14, 17
8 U.S.C. § 1252 17
8 U.S.C. § 1357(a)(2) 9, 11, 12
28 U.S.C. § 2241 2
28 U.S.C. § 2243 2
Cal. Penal Code § 1001.36 ..... 10, 17

Regulations

8 C.F.R. § 236.1 13
8 C.F.R. § 287.8(c)(2)(ii) 11
8 C.F.R. § 1003.19 13
8 C.F.R. § 1236.1 13

Rules

Fed. R. Civ. P. 65(b) 2
N.D. Cal. Civil L.R. 65-1 2

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Eduardo Ruiz Garcia lives in Emeryville, has worked as a cleaner and a mover, participates in mental health treatment through La Clínica de La Raza in Oakland, and is under the ongoing supervision of the San Francisco Superior Court. Pet. ¶¶ 16–17, 50. An evaluating clinician found that Petitioner was actively engaged with his treatment and had insight into his emotional condition. *Id.* ¶ 17. On October 16, 2026, Petitioner was walking to lunch near his home in Emeryville when someone shouted "ICE." Pet. ¶ 18; Preciado Decl. ¶ 7. Confused and terrified by news reports of people killed and attacked by ICE, Petitioner ran. Preciado Decl. ¶ 7. About four plainclothes agents chased and seized him. Still unsure who the men were, Petitioner tried to pull free. Although Petitioner was already outnumbered and overpowered, a fifth agent tackled him from behind in a manner Petitioner believed was intended to hurt him, then sat on his chest. *Id.* ¶ 8. Petitioner suffered six fractured ribs and cuts, abrasions, and bruises across his face, arms, hands, and legs. *Id.* ¶ 9. His next clear memory is of lying in Highland Hospital, struggling to breathe, watched by ICE agents. *Id.* ¶ 10. The agent who tackled him and sat on his chest later sat at the foot of his hospital bed, grinning. *Id.* ¶¶ 6, 8. The trauma nurse practitioner who treated Petitioner described that agent as about 6 foot 3 inches tall and 280 pounds, and said that an agent of that size sitting on Petitioner's chest could have caused his injuries. *Id.* ¶ 16. As of this filing, Petitioner remains handcuffed to his hospital bed by his injured wrist. The wrist must be covered in gauze because the metal handcuff aggravates the injury. *Id.* ¶ 6.

No agent used Petitioner's name or indicated they were looking for him. Pet. ¶ 19; Preciado Decl. ¶ 8. Before that day, Petitioner had never had any contact with immigration officers. Preciado Decl. ¶ 14. Two days later, an ICE agent told an attorney who came to meet Petitioner that a warrant existed but had not been served. *Id.* ICE's Form I-200 for Petitioner is dated July 2, 2026, lists no file number, and states that probable cause rests on "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence." Ex. A; Pet. ¶ 19 n.2. To Petitioner's knowledge, the men who arrested Petitioner never asked about

Petitioner's residence, work, community ties, or anything else bearing on flight risk or danger. Pet. ¶ 19. On information and belief, ICE has made no individualized determination that Petitioner is a danger or a flight risk. Pet. ¶¶ 1, 39.

Petitioner's release is required on several independent grounds: his arrest, which was not made on any warrant, violated 8 U.S.C. § 1357(a)(2) and ICE's regulations; ICE has not made the individualized custody determination that § 1226(a) requires, and § 1225 supplies no alternative authority; officers seized, harmed, and arrested him without reasonable suspicion or probable cause particularized to him; he has been deprived of his liberty without any individualized determination by a neutral decisionmaker (procedural due process); and his detention serves no legitimate governmental purpose because he is neither a danger nor a flight risk, and the government has made no finding otherwise (substantive due process).

II. PETITIONER IS SUFFERING ONGOING AND IRREPARABLE HARM

Petitioner is suffering irreparable harm every moment he remains held by ICE. He is deprived of his physical liberty, which lies at the heart of the Due Process Clause. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (internal quotation marks omitted). And the unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably harmed "by virtue of the fact that they [we]re likely to be unconstitutionally detained for an indeterminate period of time"); *see also, e.g., Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that "[a]ny amount of actual jail time is significant, and has exceptionally severe consequences for the incarcerated individual") (cleaned up).

This harm is especially acute here, because Petitioner's detention began with serious physical injury and continues to aggravate it. When agents tackled Petitioner and an agent of

roughly 280 pounds sat on his chest, they fractured six of his ribs and left cuts, abrasions, and bruises across his face, arms, hands, and legs. Preciado Decl. ¶¶ 8–9, 16; Pet. ¶ 18. Petitioner struggles to breathe, especially when he tries to breathe deeply, and is in extreme pain. Preciado Decl. ¶ 9. His ribs will take weeks to heal. Pet. ¶ 20. Yet ICE keeps him handcuffed to his hospital bed by the same wrist its agents injured, and the metal cuff further aggravates the wound. Preciado Decl. ¶ 6. When he is discharged, Petitioner may need to recover from six fractured ribs while detained. As the Ninth Circuit has recognized, the irreparable harms of immigration detention include "subpar medical and psychiatric care in ICE detention facilities." *Hernandez*, 872 F.3d at 995. For a man who cannot take a full breath, that risk is real and specific.

Detention also inflicts psychological harm on Petitioner, who already lives with trauma. Petitioner suffers from severe depression and post-traumatic stress disorder. Pet. ¶ 17; Ex. B. He is now guarded by the agents who injured him, including the agent who sat on his chest, fractured his ribs, and later watched him grinning beside his hospital bed. Preciado Decl. ¶¶ 6, 8. Petitioner described his fear at finding that agent, who treated him "worse than an animal," at his hospital bed. *Id.* ¶ 6.

Detention also cuts Petitioner off from the treatment his diversion requires, jeopardizing both his November 4, 2026 hearing and the potential dismissal of his charges. Pet. ¶¶ 17, 20, 50; Ex. B; Cal. Penal Code § 1001.36(h). Meanwhile, ICE has isolated him: agents took his phone and forbade hospital staff from helping him call his family or a lawyer. Preciado Decl. ¶ 11. He was taken into custody without notice, without being told why, and in an arrest that was not made on any executed warrant. Pet. ¶¶ 19, 36; Preciado Decl. ¶¶ 8, 14.

These harms will compound if Respondents transfer Petitioner. Immediate relief is necessary to prevent those harms.

III. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

To obtain a TRO, Petitioner need only show that (1) he is "likely to succeed on the merits," (2) is "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in his favor," and that (4) "an injunction is in the public interest." *All. for*

the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). Even if Petitioner were to only raise "serious questions" as to the merits of his claims, the Court can still grant relief because the balance of hardships tips "sharply" in his favor. *All. for the Wild Rockies*, 632 F.3d at 1135; *see Izazaga Cardenas*, No. 26-cv-06435-JD, Dkt. No. 10 (N.D. Cal. July 2, 2026), slip op. at 2–4 (applying the serious-questions standard to warrantless ICE arrests). Petitioner's claims, which are set out in full in his Verified Petition and incorporated here by reference, readily clear that standard.

A. Petitioner's Arrest Violated 8 U.S.C. §§ 1226(a) and 1357(a)(2) and ICE's Regulations (Claim One).

ICE's authority to arrest without a warrant is governed by 8 U.S.C. § 1357(a)(2). "Section 1357(a)(2) requires that the arresting officer reasonably believe that the alien is in the country illegally and that she is likely to escape before a warrant can be obtained for her arrest." *Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995). ICE's own regulations impose the same requirements: "A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii). The "reason to believe" standard is the Fourth Amendment's probable-cause standard, *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019), and an arrest is a seizure that "must be reasonable under the circumstances," *Ashcroft v. al-Kidd*, 563 U.S. 731, 735–36 (2011). Arrests in violation of the regulations are unlawful. *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz*, 926 F.3d at 1137.

Petitioner was not arrested on any warrant. No agent used Petitioner's name or indicated they were looking for him. Pet. ¶ 19; Preciado Decl. ¶ 8. On information and belief, the agents did not know who Petitioner was when they seized him and did not arrest him in execution of any warrant. Pet. ¶ 36. As of the filing of this motion, Petitioner has not been served with a warrant. *Id.* On information and belief, no officer made any individualized determination that Petitioner was likely to escape before a warrant could be obtained. Pet. ¶ 35. Indeed, no officer could reasonably have concluded that Petitioner—walking alone to lunch near

his home, and under the ongoing supervision of the San Francisco Superior Court—was likely to escape before a warrant could be obtained. *Id.* That is the type of record on which Judge Donato found that "each of the arrests violated 8 U.S.C. § 1357(a)(2)." *Izazaga Cardenas*, slip op. at 3.

Respondents may point to ICE's Form I-200 for Petitioner, dated July 2, 2026. Ex. A. It does not change the analysis. The arresting agents did not present it, did not call Petitioner by name, and two days later still had not served it. Preciado Decl. ¶¶ 8, 14. A warrant sitting in a file does not transform an arrest of an unidentified man on the street into one made "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). Pet. ¶ 36. The form identifies no evidence supporting its stated basis for probable cause, "statements made voluntarily by the subject to an immigration officer and/or other reliable evidence," and Petitioner had never spoken with an immigration officer. Ex. A; Preciado Decl. ¶ 14. If anything, the form's date confirms that ICE had three-plus months to serve a warrant, which forecloses any claim that Petitioner was "likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2).

Nor can ICE cure the violation based on after-the-fact reference to a warrant. Courts have consistently rejected such "post-arrest bootstrapping." *Izazaga Cardenas*, slip op. at 3–4. As one court explained, issuing warrants after an unlawful arrest "does nothing to cure the initial statutory violation"; otherwise ICE could stop anyone it suspects is undocumented, arrest without probable cause of flight risk, and "bring the arrest within the color of law by issuing a warrant at the field office," which would vitiate § 1357(a)(2)'s two-pronged requirement. *Ramirez Ovando v. Noem*, 810 F. Supp. 3d 1209, 1226 (D. Colo. 2025); *accord Alfaro v. Mullin*, No. 26-0766 (GRB), 2026 WL 734348, at *5 (E.D.N.Y. Mar. 16, 2026); *Reyes v. Santacruz Jr.*, No. ED CV 26-3394-E, 2026 WL 2069974, at *1–2 (C.D. Cal. July 13, 2026); *Romero-Perez v. Blanche*, No. 2:26-CV-01708-RFB-BNW, 2026 WL 1724752, at *4 (D. Nev. June 15, 2026) ("Respondents have not shown that ICE issued a proper warrant," and "Respondents cannot cure [their] violations by conducting a post-hoc bond hearing. . . . The Court will not bless Respondents' 'detain first, justify later' approach to peoples' liberty"); *Urias v. Semaia*, No. 5:26-CV-02753-DTB, 2026 WL 1710375, at *6 (C.D. Cal. June 10, 2026) ("Respondents violated 8 U.S.C. §

1226(a) . . . when they arrested Petitioner without a valid administrative warrant and without probable cause to believe that he posed a risk of escape.").

Because Petitioner was not arrested "[o]n a warrant issued by the Attorney General," 8 U.S.C. § 1226(a), § 1226 supplies no authority for his detention. "[I]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *Chogllo Chafla v. Scott*, 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025); *accord J.A.C.P. v. Wofford*, 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025); *Gilton A. v. Bondi*, No. 26-cv-558, slip op. at 4–6 (D. Minn. Jan. 25, 2026). Release is the ordinary habeas remedy for detention without a lawful predicate. *Munaf v. Geren*, 553 U.S. 674, 693 (2008). So too here.

B. Petitioner's Detention Violates the Immigration and Nationality Act (Claim Two).

Even apart from the unlawful arrest, ICE has not complied with § 1226(a). That provision and its implementing regulations require an individualized custody determination as to whether the noncitizen poses a danger to persons or property or is unlikely to appear for future proceedings. 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *see* 8 C.F.R. § 1003.19. On information and belief, no such determination was made here. Pet. ¶ 39. There is "nothing to suggest that DHS exercised any discretion at all in detaining [Petitioner] . . . in contravention of the basic procedural requirements of § 1226(a)." *Cuy Comes v. DeLeon*, No. 25-cv-09283 (AT), 2025 WL 3206491, at *4 (S.D.N.Y. Nov. 14, 2025) (citation omitted).

Respondents may attempt to justify the detention under 8 U.S.C. § 1225(b)(2)(A). That fallback fails. First, it cannot cure the unlawful arrest. Courts in this District have rejected the same argument, "as many other district courts have," because the arrest of a noncitizen in the interior proceeds under § 1226, which requires a warrant. *Izazaga Cardenas*, slip op. at 4 (citing *Caicedo Hinestroza v. Kaiser*, No. 25-cv-07559-JD, Dkt. No. 8 (N.D. Cal. Sept. 9, 2025)).

Second, § 1225(b)(2)(A) does not govern interior arrests. The Ninth Circuit has held that noncitizens "present without admission who are apprehended in the interior of the United States are subject to the detention regime of § 1226, not § 1225(b)(2)(A)." *Rodriguez Vazquez v. Bostock*, 183 F.4th 1160, 1165 (9th Cir. 2026). Section 1225(b)(2)(A) "is best construed as

applying to aliens entering the United States at the border." *Id.* at 1172. The government's contrary reading makes the phrase "seeking admission" superfluous, is in "significant tension, if not outright conflict," *id.* at 1178, with *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020) (en banc), would render much of § 1226(c) redundant, and contradicts nearly thirty years of consistent Executive practice, *id.* at 1175–80, 1184–86, 1190–92. The Second, Sixth, Tenth, and Eleventh Circuits agree. *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026); *Lopez-Campos v. Raycraft*, 175 F.4th 713 (6th Cir. 2026); *Santillan Quiroz v. Mullin*, 2026 WL 1876709 (10th Cir. June 30, 2026); *Hernandez Alvarez v. Warden*, 175 F.4th 1258 (11th Cir. 2026); *see also Garcia v. Albarran*, No. 26-CV-04839, 2026 WL 1454512, at *2 (N.D. Cal. May 21, 2026). Petitioner was arrested in Emeryville near his home. Pet. ¶ 18; Preciado Decl. ¶ 7.

C. Officers Seized and Arrested Petitioner Without Reasonable Suspicion or Probable Cause (Claim Three).

When agents chased Petitioner down, tackled him, sat on his chest, and fractured six of his ribs, they seized him. Preciado Decl. ¶¶ 7–9. That seizure was an arrest, which "must be reasonable under the circumstances." *al-Kidd*, 563 U.S. at 735–36. An officer may briefly detain a person only on a reasonable, particularized, and objective basis for suspecting that the specific person is engaged in unlawful activity. *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). Suspicion must be particularized to the individual, not based on circumstances that would describe a very large category of presumably innocent people. *Brown v. Texas*, 443 U.S. 47, 51–52 (1979); *Reid v. Georgia*, 448 U.S. 438, 441 (1980) (per curiam). A custodial arrest requires probable cause. *Dunaway v. New York*, 442 U.S. 200, 212–16 (1979).

Officers here did not conduct a brief investigative stop. They chased, tackled, and arrested Petitioner—fracturing six of his ribs—without asking his name or who he was. Pet. ¶¶ 18–19, 43–44; Preciado Decl. ¶¶ 7–9. Respondents may contend that Petitioner's flight supplied suspicion. But Petitioner fled from a group of unidentified men shouting "ICE," at a time of widely reported violence by immigration agents. Preciado Decl. ¶ 7. No officer had probable cause particularized to Petitioner.

D. Petitioner's Detention Without an Individualized Determination Violates Procedural Due Process (Claim Four).

The Due Process Clause of the Fifth Amendment protects all "'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez*, 872 F.3d at 990 (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). Whether the process afforded to Petitioner was adequate is governed by *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which courts in this District apply to civil immigration detention. *See Claros v. Albarran*, 811 F. Supp. 3d 1062, 1066 (N.D. Cal. 2025) (collecting cases). Petitioner's interest in freedom from physical restraint "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

Respondents may argue that because ICE never previously detained or released Petitioner, he has no liberty interest for the Due Process Clause to protect. Courts in this District have rejected that argument. In *Chaparro Ayala v. Albarran*, No. 26-cv-09430-CRB, 2026 WL 2722780 (N.D. Cal. Sept. 15, 2026), the petitioner had lived in the Bay Area for roughly seven years without any encounter with immigration authorities before ICE arrested him. *Id.* at *1. The court held that the government's argument "oversimplifies" the petitioner's due process rights, *id.* at *3, and that the absence of any prior contact with the government "is not determinative," because "individuals can obtain liberty interests even without them," *id.* at *4. Under the government's view, a person's interest in being free "would depend on the government first depriving them of that freedom . . . . That cannot be right." *Id.*; *see also Chiguil Chiguil v. Noem*, No. 26-cv-1844 DAD CSK, 2026 WL 913195, at *5 (E.D. Cal. Apr. 3, 2026) (collecting cases).

A person who lives in the community acquires the "attachments of normal life" that the Due Process Clause protects. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). With the passage of time, "a protectable liberty interest can 'crystallize[ ].'" *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1030 (N.D. Cal. 2025) (quoting *Hurd v. District of Columbia*, 864 F.3d 671, 683–84 (D.C. Cir. 2017)). Courts therefore "routinely look to factors like the length of a person's residency, their work history, and their community ties." *Chaparro Ayala*, 2026 WL 2722780, at

*4. Petitioner lives in Emeryville, where he shares a home with a friend. Preciado Decl. ¶ 12. He has worked steadily as a cleaner and a mover. Pet. ¶ 16. He is enrolled in mental health treatment through La Clínica de La Raza in Oakland and is under the ongoing supervision of the San Francisco Superior Court, which has set a diversion progress hearing for November 4, 2026. Pet. ¶ 50. These are the kinds of attachments—residence in a single community, work, and ties—that led the *Chaparro Ayala* court to find a "significant liberty interest." 2026 WL 2722780, at *4.

The remaining *Mathews* factors confirm that Petitioner's detention is unlawful. The risk of erroneous deprivation is total where, as here, no one has assessed whether Petitioner poses a flight risk or a danger, because neither party has had an opportunity to test whether any valid basis for detention exists. *Chaparro Ayala*, 2026 WL 2722780, at *4–5; *Duong v. Kaiser*, 800 F. Supp. 3d 1030, 1040 (N.D. Cal. 2025). And the government's interest in proceeding without an individualized determination is minimal, because custody hearings are routine in immigration proceedings. *See Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020). Courts in this District have consistently required a hearing before a neutral decisionmaker before a noncitizen may be held, absent evidence of urgent circumstances, *Guillermo M. R.*, 791 F. Supp. 3d at 1036; *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 n.2 (N.D. Cal. 2025) (collecting cases), and whatever Respondents may say about the feasibility of a hearing before an unplanned arrest, nothing prevents them from providing one now. If the government believes Petitioner should be detained, "[i]t need only provide [him] with a routine custody determination before a neutral adjudicator." *Chaparro Ayala*, 2026 WL 2722780, at *6.

E. Petitioner's Detention Violates Substantive Due Process (Claim Five).

Substantive due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See 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. *Zadvydas*, 533 U.S. at 690–92; *see also*

Demore v. Kim, 538 U.S. 510, 519–20, 527–28, 531 (2003). "[T]he government may never detain an individual that enjoys the protection of the Due Process Clause without a legal basis to do so." *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 WL 3281422, at *6 (N.D. Cal. Nov. 25, 2025).

Petitioner is neither a flight risk nor a danger to the community. He lives in Emeryville, has worked steadily since his arrival, and is participating in court-ordered mental health treatment under the supervision of the San Francisco Superior Court, which has set a diversion progress hearing for November 4, 2026. Pet. ¶¶ 16–17, 50; Ex. B. He has not been convicted of any crime. The only charges against him are suspended pending completion of pretrial diversion, and he has every incentive to appear: completing diversion will result in dismissal of those charges. Cal. Penal Code § 1001.36. His detention serves neither permissible purpose, and the government has made no finding that it does. Pet. ¶¶ 56–57. Detention that serves neither permissible purpose is detention "to incarcerate for other reasons," *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring), and it violates the Fifth Amendment.

F. The Court Has Jurisdiction, and Exhaustion Is Not Required.

Sections 1252(g) and 1252(b)(9) do not bar challenges to the legal authority for detention, *Jennings v. Rodriguez*, 583 U.S. 281, 292–95 (2018) (plurality opinion), and § 1226(e) does not limit habeas jurisdiction over constitutional claims or questions of law, *id.* at 295–96; *Hernandez*, 872 F.3d at 987; *Martinez v. Clark*, 124 F.4th 775, 781 (9th Cir. 2024). Exhaustion is prudential and should be waived where, as here, it would be futile and the petitioner would "suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992); *Hernandez*, 872 F.3d at 986–88; *Laing v. Ashcroft*, 370 F.3d 994, 1000–01 (9th Cir. 2004). On information and belief, Respondents have made no individualized custody determination, and no immigration judge has authority to rule on the lawfulness of Petitioner's arrest or on his constitutional claims. *See Matter of C-*, 20 I. & N. Dec. 529, 532 (BIA 1992) (immigration judges and the Board "lack jurisdiction to rule upon the constitutionality of the Act and the regulations"); *Zamorano v. Garland*, 2 F.4th 1213, 1224 (9th Cir. 2021); *Norberto C.M. v. Warden, Cent. Valley Annex*, No. 26-cv-04674-MWJS, 2026 WL

1992747, at *3–4 (E.D. Cal. July 9, 2026).

IV. THE BALANCE OF THE HARDSHIPS AND THE PUBLIC INTEREST WEIGH IN PETITIONER'S FAVOR

When the government is the party opposing the request for emergency relief, the balance of the equities and the public interest merge. *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing constitutional violations, continued physical and psychological injury, interruption of court-ordered treatment, and separation from his community if the TRO is not granted. *Hernandez*, 872 F.3d at 996 (when "[f]aced with . . . preventable human suffering, . . . the balance of hardships tips decidedly in plaintiffs' favor") (internal citation omitted). Respondents, by contrast, suffer no cognizable harm from an order requiring them to comply with the law. If they believe Petitioner should be detained, they may seek that result at a custody hearing before a neutral decisionmaker.

The public interest likewise weighs strongly in Petitioner's favor. As another California district court recently concluded, "[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025). More fundamentally, "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf't*, 953 F.3d 1134, 1147–48 (9th Cir. 2020)) (internal quotation marks omitted).

V. NO SECURITY IS NEEDED 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, Petitioner's showing of a high likelihood of success on the merits supports waiving 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).

VI. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant this Motion and issue a Temporary Restraining Order directing Respondents to release Petitioner forthwith, and in any event by the close of business on the day of the Court's order; barring his re-detention absent a custody hearing before a neutral decisionmaker at which the government bears the burden of proving by clear and convincing evidence that he is a flight risk or a danger; barring his transfer outside this District or removal from the United States while this action is pending; and directing Respondents to show cause why a preliminary injunction should not issue.

Dated: October 21, 2026

Respectfully submitted,

By: */s/ Lorraine Van Kirk*
Lorraine Van Kirk
Pro Bono Attorney for Petitioner