

1 Jordan Weiner (SBN 356297)
2 jordan@lrcl.org
3 La Raza Centro Legal
4 474 Valencia St., Ste. 295
5 San Francisco, CA 94103
6 Telephone: (415) 553-3435

7 *Attorney for Petitioner*

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 JOSE IVAR PINEDA CAMPOS,

12 Petitioner,

13 v.

14 POLLY KAISER, Acting Field Office Director of
15 the San Francisco Immigration and Customs
16 Enforcement Office; TODD LYONS, Acting
17 Director of United States Immigration and Customs
18 Enforcement; KRISTI NOEM, Secretary of the
19 United States Department of Homeland Security,
20 PAMELA BONDI, Attorney General of the United
21 States, acting in their official capacities,

22 Respondents.

Case No. 3:25-cv-06920-JD

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITIONER'S MOTION FOR
PRELIMINARY INJUNCTION**

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
INTRODUCTION	8
BACKGROUND	10
ARGUMENT	12
I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.....	12
A. Petitioner’s detention violates substantive due process because he is neither a flight risk nor a danger to the community.....	12
B. The government violated procedural due process by depriving Petitioner of the opportunity to contest his arrest and detention before a neutral decisionmaker.....	14
II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE INJURY ABSENT A PRELIMINARY INJUNCTION.....	18
III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER’S FAVOR.....	19
SECURITY	19
CONCLUSION	20

TABLE OF AUTHORITIES

Cases

<i>A.E. v. Andrews</i> , No. 1:25-cv-00107, 2025 WL 1424382 (E.D. Cal. May 16, 2025)	15, 16
<i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	11, 17
<i>Baca v. Moreno Valley Unified Sch. Dist.</i> , 936 F. Supp. 719 (C.D. Cal. 1996).....	19
<i>Aceros v. Kaiser</i> 2025 U.S. Dist. LEXIS 159021, No. 1:25-cv-06924 (N.D. Cal. Aug. 16, 2025).....	9, 17
<i>California v. Azar</i> , 911 F.3d 558 (9th Cir. 2018).....	18
<i>Chuquillanqui v. Kaiser</i> No. 3:25-cv-06320 (N.D. Cal. July 29, 2025).....	9, 17
<i>Cnty. of Sacramento v. Lewis</i> , 523 U.S. 833 (1998).....	11
<i>Demore v. Kim</i> , 538 U.S. 510 (2003).....	12
<i>Diaz v. Kaiser</i> , No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025).....	16, 17, 18
<i>Diep v. Wofford</i> , 2025 WL 6047444 (E.D. Cal. Feb. 25, 2025).....	15
<i>Doe v. Becerra</i> , No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025)	15, 16
<i>Doe v. Noem</i> , __ F. Supp. 3d __, 2025 WL 1141279 (W.D. Wash. Apr. 17, 2025)	17
<i>Env't Prot. Info. Ctr. v. Carlson</i> , 968 F.3d 985 (9th Cir. 2020).....	18
<i>Garro Pinchi v. Noem</i> 2025 WL 1853763, (N.D. Cal. July 4, 2025).....	9, 17
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973).....	14
<i>Garcia v. Bondi</i> , No. 3:25-CV-05070, 2025 WL 1676855 (N.D. Cal. June 14, 2025).....	17

1	<i>Garcia v. Kaiser</i>	
2	No. 25-cv-06916 (N.D. Cal. Aug. 17, 2025).....	9, 17
3	<i>GoTo.com, Inc. v. Walt Disney Co.,</i>	
4	202 F.3d 1199 (9th Cir. 2000).....	17
5	<i>Hernandez v. Sessions,</i>	
6	872 F.3d 976 (9th Cir. 2017).....	passim
7	<i>Hernandez v. Wofford</i>	
8	No. 1:25-cv-00986, 2025 U.S. Dist. LEXIS 162801 (N.D. Cal. Aug. 21, 2025).....	9, 17
9	<i>Hurd v. D.C., Gov't,</i>	
10	864 F.3d 671 (D.C. Cir. 2017)	13
11	<i>Index Newspapers LLC v. U.S. Marshals Serv.,</i>	
12	977 F.3d 817 (9th Cir. 2020).....	18
13	<i>Jackson v. Indiana,</i>	
14	406 U.S. 715 (1972).....	12
15	<i>Jimenez v. Wolf,</i>	
16	No. 19-cv-07996-NC, 2020 WL 510347 (N.D. Cal. Jan. 30, 2020).....	15
17	<i>Johnson v. Ryan,</i>	
18	55 F.4th 1167 (9th Cir. 2022)	14
19	<i>Jones v. Blanas,</i>	
20	393 F.3d 918 (9th Cir. 2004).....	15
21	<i>Jorge M. F. v. Wilkinson,</i>	
22	No. 21-CV-01434-JST, 2021 WL 783561 (N.D. Cal. Mar. 1, 2021).....	16, 17, 18
23	<i>Jorgensen v. Cassiday,</i>	
24	320 F.3d 906 (9th Cir. 2003).....	19
25	<i>Mahdawi v. Trump,</i>	
26	No. 2:25-CV-389, 2025 WL 1243135 (D. Vt. Apr. 30, 2025).....	12
27	<i>Martinez v. Clark,</i>	
28	124 F.4th 775 (9th Cir. 2024)	15
	<i>Mathews v. Eldridge,</i>	
	424 U.S. 319 (1976).....	14
	<i>Melendres v. Arpaio,</i>	
	695 F.3d 990 (9th Cir. 2012).....	17
	<i>Morrissey v. Brewer,</i>	
	408 U.S. 471 (1972).....	14

1	<i>Nielsen v. Preap</i> ,	
2	586 U.S. 392 (2019).....	12
3	<i>Nieves v. Kaiser</i>	
4	No. 25-cv-06921 (N.D. Cal. Aug. 17, 2025).....	9, 17
5	<i>Nozzi v. Hous. Auth. of City of Los Angeles</i> ,	
6	806 F.3d 1178 (9th Cir. 2015).....	14
7	<i>Oliveros v. Kaiser</i>	
8	No. 5:25-cv-07117, 2025 U.S. Dist. LEXIS 164010 *10 (N.D. Cal. Aug. 22, 2025).....	9, 17
9	<i>Otero v. Kaiser</i>	
10	No. 5:25-cv-06536 (N.D. Cal. Aug. 3, 2025).....	9, 17
11	<i>Ortega v. Bonnar</i> ,	
12	415 F. Supp. 3d 963 (N.D. Cal. 2019)	14, 15, 16
13	<i>Padilla v. Immigr. & Customs Enf't</i> ,	
14	953 F.3d 1134 (9th Cir. 2020).....	18
15	<i>Padilla v. U.S. Immigr. and Customs Enf't</i> ,	
16	704 F. Supp. 3d 1163 (W.D. Wash. 2023).....	13
17	<i>People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency</i> ,	
18	766 F.2d 1319 (9th Cir. 1985).....	19
19	<i>Romero v. Kaiser</i> ,	
20	No. 22-CV-02508-TSH, 2022 WL 1443250 (N.D. Cal. May 6, 2022)	17
21	<i>Rosales-Mireles v. United States</i> ,	
22	585 U.S. 129 (2018)	18
23	<i>Saravia v. Sessions</i> ,	
24	280 F. Supp. 3d 1168 (N.D. Cal. 2017)	13
25	<i>Sequen v. Kaiser</i>	
26	No. 5:25-cv-06487, __ F.Supp.3d __, 2025 WL 2203419 *9 (N.D. Cal. Aug. 1, 2025).....	9, 17
27	<i>Singh v. Holder</i> ,	
28	638 F.3d 1196 (9th Cir. 2011).....	15
	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.</i> ,	
	240 F.3d 832 (9th Cir. 2001).....	11
	<i>Valdez v. Joyce</i> ,	
	No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025).....	16, 17
	<i>Vargas v. Jennings</i> ,	
	No. 20-CV-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020).....	17
	<i>Warsoldier v. Woodford</i> ,	

1	418 F.3d 989 (9th Cir. 2005).....	17
2	<i>Winter v. Nat. Res. Def. Council, Inc.</i> ,	
3	555 U.S. 7 (2008).....	11
4	<i>Wolff v. McDonnell</i> ,	
5	418 U.S. 539 (1974).....	11
6	<i>Young v. Harper</i> ,	
7	520 U.S. 143 (1997).....	14
8	<i>Zadvydas v. Davis</i> ,	
9	533 U.S. 678 (2001).....	8, 11, 12, 13
10	<i>Zinerman v. Burch</i> ,	
11	494 U.S. 113 (1990).....	13
12	Statutes	
13	8 U.S.C. § 1101(a)(27)(J).....	8
14	8 U.S.C. § 1182(a)(6)(A)(i).....	8
15	8 U.S.C. § 1255(h)(1)-(2).....	8
16	Regulations	
17	8 C.F.R. § 239.2(a)(7), (c).....	10
18	Other Authorities	
19	Arelis R. Hernández & Maria Sacchetti, <i>Immigrant Arrests at Courthouses Signal New Tactic in</i>	
20	<i>Trump's Deportation Push</i> , Wash. Post, May 23, 2025	10
21	Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, <i>How ICE is Seeking to Ramp Up</i>	
22	<i>Deportations Through Courthouse Arrests</i> , N.Y. Times, May 30, 2025.....	10
23	In re Geo Group, Inc., Cal. Occupational Safety and Health Appeals Bd., Inspection No.	
24	1609228, <i>Decision After Reconsideration</i> , Jan. 10, 2025	15
25	Joshua Goodman and Gisela Saloman, <i>ICE Agents Wait in Hallways of Immigration Court as</i>	
26	<i>Trump Seeks to Deliver on Mass Arrest Pledge</i> , LA Times, May 22, 2025	9
27	Margaret Kadifia, <i>Immigrants Fearful as ICE Nabs at Least 15 in S.F., Including Toddler</i> ,	
28	Mission Local, June 5, 2025	10
	Sarah Ravani, <i>ICE Arrests Two More at S.F. Immigration Court, Advocates Say</i> , S.F. Chron.,	
	June 12, 2025	10
	Tomoki Chien, <i>Undercover ICE Agents Begin Making Arrests at SF Immigration Court</i> , S.F.	
	Standard, May 27, 2025	10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

U.S. Dep’t of Homeland Sec. Off.of Inspector Gen., OIG 24-23, *Final Report: Results of an Unannounced Inspection of ICE’s Golden State Annex in McFarland, California* (Apr. 18, 2024) 15

INTRODUCTION

Petitioner Jose Ivar Pineda Campos went to the San Francisco Immigration Court on August 15, 2025, expecting a routine master calendar hearing in which he would discuss his case with the immigration judge and schedule further proceedings on his pending asylum application. So he was surprised when, during the hearing, the Department of Homeland Security (“DHS”) lawyer orally moved to dismiss his case altogether. The Immigration Judge did not grant the motion to dismiss. Instead, the Judge gave Petitioner time to respond and set a further hearing for November 7, 2025. Minutes after Petitioner exited the courtroom, a group of DHS agents arrested him before he could leave the courthouse.

Nothing about Petitioner’s immigration case justified this arrest and detention. When Petitioner first entered the country in April 2024, federal immigration officers released him within days on his own recognizance and with no ankle shackle or intrusive supervision conditions. The government thus necessarily determined that he did not pose a flight risk or danger to the community—let alone one warranting detention. Since then, Petitioner’s exemplary conduct has only confirmed the government’s prediction. He attended every court hearing and check-in. He filed an application for asylum, withholding of removal, and protection under the Convention Against Torture. He obtained a work permit. He has never been arrested in the United States.

None of this mattered to the government. Rather than determining that Petitioner posed a flight risk or danger to the community, federal immigration agents arrested him pursuant to a new, sweeping, and unlawful policy targeting people for arrest at immigration courthouses for the purpose of placing them in expedited-removal proceedings. This enforcement campaign is specifically intended to increase ICE arrest numbers to satisfy internal agency quotas.

Petitioner’s summary arrest and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment’s Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without making any affirmative showing of changed circumstances, the government violated Petitioner’s procedural due process rights. At the very least, he was

1 constitutionally entitled to a hearing before a neutral decisionmaker at which the government
2 should have justified his detention.

3 If Petitioner is re-detained, he will suffer irreparable and ongoing harm. The
4 unconstitutional deprivation of “physical liberty” “unquestionably constitutes irreparable injury.”
5 *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, “[f]reedom from
6 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
7 the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678,
8 690 (2001).

9 In light of this irreparable harm, and because he is likely to succeed on the merits of his
10 due process claims, Petitioner respectfully requests that this Court issue a preliminary injunction
11 that enjoins the government from re-arresting him during these habeas proceedings absent the
12 opportunity to contest that arrest at a hearing before a neutral decision maker. Since DHS started
13 this new policy, Courts in this circuit have regularly granted preliminary relief when confronted
14 with substantially identical facts and legal issues. At least ten courts in this circuit have recently
15 granted the relief Petitioner seeks in the same context of immigration court arrests. *See Garro*
16 *Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary*
17 *injunction at* __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*,
18 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction); *Hernandez*
19 *v. Wofford*, 2025 U.S. Dist. LEXIS 162801, No. 1:25-cv-00986, *21 (N.D. Cal. Aug. 21, 2025)
20 (granting TRO); *Garcia v. Kaiser*, No. 25-cv-06916 (N.D. Cal. Aug. 17, 2025) (granting TRO);
21 *Nieves v. Kaiser*, No. 25-cv-06921 (N.D. Cal. Aug. 17, 2025) (granting TRO); *Aceros v. Kaiser*,
22 No. 1:25-cv-06924, 2025 U.S. Dist. LEXIS 159021, *9 (N.D. Cal. Aug. 16, 2025) (granting
23 TRO); *Chuquillanqui v. Kaiser*, No. 3:25-cv-06320 (N.D. Cal. July 29, 2025) (granting TRO);
24 *Sequen v. Kaiser*, No. 5:25-cv-06487, __ F.Supp.3d __, 2025 WL 2203419 *9 (N.D. Cal. Aug. 1,
25 2025) (granting TRO); *Otero v. Kaiser*, No. 5:25-cv-06536 (N.D. Cal. Aug. 3, 2025); *Oliveros v.*
26 *Kaiser*, No. 5:25-cv-07117, 2025 U.S. Dist. LEXIS 164010 *10 (N.D. Cal. Aug. 22, 2025)
27 (granting TRO). To maintain this Court’s jurisdiction, the Court should also prohibit the
28 government from transferring Petitioner out of this District and removing her from the country

1 until these proceedings have concluded.

2 BACKGROUND

3 Petitioner is a 30-year-old man from Nicaragua. Petitioner's Habeas Petition ("Pet.") ¶
4 11. He fled Nicaragua because he feared the Nicaraguan government would imprison and torture
5 him on account of his participation in anti-government strikes and protests. Declaration of P.F.
6 Gonzalez Montes De Oca ("Gonzalez Montes De Oca Declaration") ¶ 8.

7 Petitioner arrived in the United States in April 2024. Pet. ¶ 48. He was briefly detained by
8 federal agents after entering the United States. *Id.* Determining that he was not a flight risk or a
9 danger to the community, the agents released Petitioner on his own recognizance with a notice to
10 appear for removal proceedings in immigration court. *Id.*

11 Petitioner went to live in South San Francisco, California. *Id.* ¶ 49. He applied for asylum
12 in December 2025. *Id.* ¶ 50. He received employment authorization. *Id.* He attended all of his
13 immigration court hearings and ICE check-ins. *Id.* ¶ 51.

14 On August 15, 2025, as the government told him to do, Petitioner went to San Francisco
15 Immigration Court for a routine hearing before Immigration Judge Joseph Park, where the
16 government orally moved to dismiss his case. Pet. ¶ 52; Declaration of Diana Mariscal ("Mariscal
17 Dec.") ¶¶ 2–3. IJ Park did not grant the motion to dismiss. Mariscal Dec. ¶ 5. Instead, the Judge
18 gave Petitioner time to respond and set a further hearing for November 7, 2025. *Id.*

19 Minutes after Petitioner exited the courtroom, a group of ICE agents arrested him before
20 he could leave the courthouse. *Id.* ¶ 7. They did not present warrants, nor did they provide any
21 explanation for why he was being arrested. *Id.* ¶ 8.

22 Petitioner's arrest did not have anything to do with his individual case. Instead, it is part of
23 a new, nationwide DHS strategy of sweeping up people who attend their immigration court
24 hearings, detaining them, and seeking to re-route them to fast-track deportations.¹ Since mid-May,
25 DHS has implemented a coordinated practice of immigration detention to strip people like
26

27 ¹ Joshua Goodman and Gisela Saloman, *ICE Agents Wait in Hallways of Immigration Court as*
28 *Trump Seeks to Deliver on Mass Arrest Pledge*, LA Times, May 22, 2025,
<https://www.latimes.com/world-nation/story/2025-05-22/ice-agents-wait-in-hallways-of-immigration-court-as-trump-seeks-to-deliver-on-mass-arrest-pledge>.

1 Petitioner of their substantive and procedural rights and pressure them into deportation. DHS is
 2 aggressively pursuing this arrest and detention campaign at courthouses throughout the country,
 3 including Northern California. At the San Francisco Immigration Court, where Petitioner was
 4 arrested, dozens of people have been arrested in the last month after attending their routine
 5 immigration hearings.²

6 This “coordinated operation” is “aimed at dramatically accelerating deportations” by
 7 arresting people at the courthouse and placing them into expedited removal.³ The first step of the
 8 operation typically takes place inside the immigration court. When people arrive in court for their
 9 master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without
 10 any notice to the affected individual. Although DHS regulations do not permit such motions to
 11 dismiss absent a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. §
 12 239.2(a)(7), (c), DHS attorneys are not conducting any case-specific analysis of changed
 13 circumstances before filing these motions to dismiss.

14 The next step takes place outside the courtroom. ICE officers, in consultation with DHS
 15 attorneys and officials, station themselves in courthouse waiting rooms, hallways, and elevator
 16 banks. When an individual exits their immigration hearings, ICE officers—typically masked and
 17 in plainclothes—immediately arrest the person and detain them. The officers execute these arrests
 18 regardless of how the IJ rules on the government’s motion to dismiss. Once the person is detained,
 19 DHS attorneys often unilaterally transfer venue to a “detained” immigration court where they renew
 20 their motion to dismiss and seek to place individuals in expedited removal. That is what happened
 21

22 ² Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron.,
 23 June 12, 2025, <https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php>; Margaret Kadifia, *Immigrants Fearful as ICE Nabs at Least 15 in S.F., Including Toddler*, Mission Local, June 5, 2025, <https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/>; Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF Immigration Court*, S.F. Standard, May 27, 2025, <https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/>.

26 ³ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post, May 23, 2025,
 27 <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>;
 28 *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
<https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html> (updated June 1, 2025).

1 to Petitioner here. Mariscal Dec. ¶ 7. A group of ICE agents arrested Petitioner immediately after
2 he left the courtroom. *Id.*

3 Petitioner will suffer serious and ongoing harm if he were to remain in detention. Prior to
4 his detention, Petitioner was living in South San Francisco, California, supporting his two children
5 in Nicaragua. Pet. ¶¶ 49, 57. He is a law-abiding person and has come to the U.S. seeking safety
6 and protection. Gonzalez Montes De Oca Dec. ¶ 8.

7 ARGUMENT

8 The standard for issuing a temporary restraining order is identical to the standard for
9 issuing a preliminary injunction. *See Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir.
10 2017). To warrant preliminary relief, a movant must show (1) they are “likely to succeed on the
11 merits,” (2) they are “likely to suffer irreparable harm in the absence of preliminary relief,” (3)
12 “the balance of equities tips in [their] favor,” and that (4) “an injunction is in the public interest.”
13 *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat.*
14 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see Stuhlbarg Int’l Sales Co. v. John D. Brush &*
15 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary restraining
16 order and a preliminary injunction is substantially the same). Even if the movant raises only
17 “serious questions” as to the merits of their claims, the court can grant relief if the balance of
18 hardships tips “sharply” in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. All factors here
19 weigh decisively in Petitioner’s favor.

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

21 A. Petitioner’s detention violates substantive due process because he is neither a 22 flight risk nor a danger to the community.

23 The Due Process Clause applies to “all ‘persons’ within the United States, including
24 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*,
25 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary
26 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of
27 power without any reasonable justification in the service of a legitimate government objective,”
28 *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from

1 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
2 that Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

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

25 Petitioner, who is diligently pursuing his immigration case, is neither a danger nor a flight
26 risk. Therefore, his detention is both punitive and not justified by a legitimate purpose, violating
27 his substantive due process rights. Indeed, when Respondents chose to release Petitioner from
28 custody in 2024, that decision represented their finding that he was neither dangerous nor a flight

1 risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia*
2 *for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the
3 government that the noncitizen is not a danger to the community or a flight risk.”). Nothing has
4 transpired since to disturb that finding.

5 *First*, because Petitioner has had no intervening criminal history or arrests since his release,
6 there is no credible argument that he is a danger to the community.

7 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
8 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
9 F.3d at 990-91. There is no basis to argue that Petitioner, who was arrested by Respondents *while*
10 *appearing in immigration court* for a master calendar hearing, is a flight risk. He has diligently
11 attended all of his immigration court hearings and ICE check-ins. Moreover, Petitioner has a viable
12 path toward immigration relief and a pathway to lawful permanent residence, further mitigating
13 any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163, 1173 (W.D.
14 Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona
15 fide asylum claims and desire to remain in the United States). At the time of his arrest, Petitioner
16 had filed applications for asylum, withholding of removal, and relief under the Convention Against
17 Torture. He has every intention of continuing to pursue his applications for immigration relief.

18 In sum, Petitioner’s actions since Respondents first released him confirm that he is neither
19 a danger nor flight risk. Indeed, his ongoing compliance compels the conclusion that he is even *less*
20 of a danger or flight risk than when he was originally released. Accordingly, Petitioner’s ongoing
21 detention is unconstitutional, and substantive due process principles require his immediate release.

22 **B. The government violated procedural due process by depriving Petitioner of the**
23 **opportunity to contest his arrest and detention before a neutral decisionmaker.**

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

1 Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-
2 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
3 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482
4 (1972) (same, in parole context).

5 Accordingly, the Supreme Court has repeatedly held that individuals released from
6 custody on bond, parole, or other forms of conditional release have a protected interest in their
7 ongoing liberty, because “[t]he parolee has relied on at least an implicit promise that parole will
8 be revoked only if he fails to live up to the parole conditions.” *Morrissey*, 408 U.S. at 482. “By
9 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
10 Process Clause].” *Id.* This liberty interest also applies to noncitizens, including those who have
11 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
12 963, 970 (N.D. Cal. 2019). Petitioner thus has a protected liberty interest in his freedom from
13 physical custody.

14 Once a petitioner has established a protected liberty interest, as Petitioner has done here,
15 courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See*
16 *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S.
17 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk
18 of erroneous deprivation and probable value of procedural safeguards; and (3) the government’s
19 interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioner and prohibiting
20 his re-detention without a custody hearing at which the government bears the burden of proof.

21 *First*, the private interest affected in this case is profound. When considering this factor,
22 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
23 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
24 here is high. Petitioner has been completely deprived of his physical liberty. Petitioner’s detention
25 has ripped from him the “free[dom] to be with family and friends and to form the . . . enduring
26 attachments of normal life.” *Morrissey*, 408 U.S. at 482. Cutting someone off from the “core
27 values of unqualified liberty”—for Petitioner, who is fleeing a repressive government, creates a
28 “grievous loss.” *Id.* Moreover, because Petitioner faces *civil detention*, “his liberty interest is

1 arguably greater than the interest of the parolees in *Morrissey*.” See *Ortega*, 415 F. Supp. 3d at
2 970. As someone in civil detention, therefore, “it stands to reason that [Petitioner] is entitled to
3 protections at least as great as those afforded to a[n] . . . individual . . . accused but not convicted
4 of a crime.” See *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

5 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
6 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
7 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.
8 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); see also *Diep v. Wofford*,
9 No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents grabbed
10 Petitioner by surprise as he left his immigration court hearing, detaining him with no notice and
11 no opportunity to contest his re-detention before a neutral arbiter. In such circumstances, when
12 Respondents have provided *no* procedural safeguards, “the probable value of additional
13 procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5. This is
14 especially true here, where there is no change in Petitioner’s circumstances suggesting that
15 Petitioner now poses a flight risk or danger to the community. His re-detention instead appears to
16 be motivated instead by Respondents’ new arrest quotas and practice of leveraging detention to
17 secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality
18 Act, to initiate expedited removal. Pet. ¶¶ 35–46. Neither constitutes a lawful justification to re-
19 detain a person who does not pose a flight risk or danger to the community.

20 Because the private interest in freedom from immigration detention is substantial, due
21 process also requires that in cases like this one, the government bears the burden of proving “by
22 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community.”
23 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011); see *Martinez v. Clark*, 124 F.4th 775,
24 785-86 (9th Cir. 2024) (holding that government properly bore burden by clear and convincing
25 evidence in court-ordered bond hearing); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025
26 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (ordering pre-deprivation bond hearing in which
27 government bears burden by clear and convincing evidence).

28 *Third*, the government’s interest in detaining Petitioner without first providing notice and

1 submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
 2 hearings, which impose a “minimal” cost to the government. *See Doe*, 2025 WL 691664, at *6;
 3 *A.E.*, 2025 WL 1424382, at *5. Petitioner has an impeccable record of attending his immigration
 4 proceedings; there is no reason to believe that between the date of his release and his custody
 5 hearing, his compliance will change. Indeed, courts regularly hold that the government’s interest
 6 in re-detention without a custody hearing is low when the petitioner “has long complied with his
 7 reporting requirements.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D.
 8 Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-
 9 deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561,
 10 at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition
 11 ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-
 12 *5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing petitioner who
 13 had been detained without process, who had “voluntarily attended his scheduled immigration
 14 court proceedings” and “established ties” through his work and volunteering with the church).

15 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without
 16 a pre-deprivation hearing which the government bears the burden of proof violates due process,
 17 and grant the emergency relief Petitioner seeks here. *See Garro Pinchi v. Noem*, 2025 WL
 18 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __,
 19 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D.
 20 Cal. July 11, 2025) (granting preliminary injunction); *Hernandez v. Wofford*, 2025 U.S. Dist.
 21 LEXIS 162801, No. 1:25-cv-00986, *21 (N.D. Cal. Aug. 21, 2025) (granting TRO); *Garcia v.*
 22 *Kaiser*, No. 25-cv-06916 (N.D. Cal. Aug. 17, 2025) (granting TRO); *Nieves v. Kaiser*, No. 25-cv-
 23 06921 (N.D. Cal. Aug. 17, 2025) (granting TRO); *Aceros v. Kaiser*, No. 1:25-cv-06924, 2025
 24 U.S. Dist. LEXIS 159021, *9 (N.D. Cal. Aug. 16, 2025) (granting TRO); *Chuquillanqui v. Kaiser*,
 25 No. 3:25-cv-06320 (N.D. Cal. July 29, 2025) (granting TRO); *Sequen v. Kaiser*, No. 5:25-cv-
 26 06487, __ F.Supp.3d __, 2025 WL 2203419 *9 (N.D. Cal. Aug. 1, 2025) (granting TRO); *Otero*
 27 *v. Kaiser*, No. 5:25-cv-06536 (N.D. Cal. Aug. 3, 2025); *Oliveros v. Kaiser*, No. 5:25-cv-07117,
 28 2025 U.S. Dist. LEXIS 164010 *10 (N.D. Cal. Aug. 22, 2025) (granting TRO); *see also, e.g.,*

1 *Diaz*, 2025 WL 1676854, at *3-*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at
 2 *3 (N.D. Cal. June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-
 3 CV-02508-TSH, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-
 4 CV-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

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

13 * * * * *

14 For the foregoing reasons, Petitioner is likely to succeed on the merits of his claims. But
 15 even if the Court disagrees, he presents at least “serious question[s] going to the merits,” alongside
 16 a “balance of hardships” tipping decidedly in their favor. *All. for the Wild Rockies*, 632 F.3d at
 17 1135. Indeed, the constitutional concerns delineated above are of the weightiest order and beyond
 18 colorable. This Court should therefore enter the requested TRO.

19 **II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE**
 20 **INJURY ABSENT A PRELIMINARY INJUNCTION.**

21 Without a preliminary injunction, Petitioner will suffer immense irreparable injury.
 22 Indeed, he faces such injury every day he remains in detention in violation of his Fifth Amendment
 23 rights. “It is well established that the deprivation of constitutional rights ‘unquestionably
 24 constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695
 25 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional right is involved,
 26 most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v.*
 27 *Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation marks omitted). And the
 28 unlawful deprivation of physical liberty is the quintessential irreparable harm. *See Hernandez*,

1 872 F.3d at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that they
 2 [we]re likely to be unconstitutionally detained for an indeterminate period of time”); *see also*,
 3 *e.g.*, *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount
 4 of actual jail time is significant, and has exceptionally severe consequences for the incarcerated
 5 individual” (cleaned up)).

6 As a result of his arrest and detention, Petitioner is also suffering additional ongoing
 7 irreparable harms. He was ripped from his life and community and can no longer support his two
 8 young children in Nicaragua.

9 **III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH** 10 **STRONGLY IN PETITIONER’S FAVOR.**

11 When the government is the party opposing the request for emergency relief, the balance
 12 of the equities and the public interest merge. *Env’t Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991
 13 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance
 14 of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing
 15 constitutional violations and continued additional suffering if the preliminary injunction is not
 16 granted. *See* Section II, *supra*; *Hernandez*, 872 F.3d at 996 (when “[f]aced with ... preventable
 17 human suffering, ... the balance of hardships tips decidedly in plaintiffs’ favor”) (internal citation
 18 omitted).

19 The public interest likewise weighs strongly in Petitioner’s favor. As another California
 20 district court recently concluded, “[t]he public has a strong interest in upholding procedural
 21 protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the
 22 public of immigration detention are staggering.” *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M.*
 23 *F.*, 2021 WL 783561, at *3). More fundamentally, “[i]t is always in the public interest to prevent
 24 the violation of a party’s constitutional rights.” *Index Newspapers LLC v. U.S. Marshals Serv.*,
 25 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf’t*, 953 F.3d 1134,
 26 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

27 **SECURITY**

28 No security is necessary here. Courts “may dispense with the filing of a bond when,” as

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

CONCLUSION

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

Respectfully submitted,

Date: August 26, 2025

/s/ Jordan Weiner

Jordan Weiner
La Raza Centro Legal
474 Valencia St., Ste. 295
San Francisco, CA 94103
Telephone: (415) 553-3435
E-mail: jordan@lrcl.org

Attorney for Petitioner