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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 GERARDO ROMAN VALENCIA ZAPATA,
14 DAVID RAFAEL COLON SOLANO,
15 KEYMARIS ALVAREZ MIRANDA,
16 GABRIELA ALONDRA VARGAS PLASENCIA

17 Petitioners,

18 v.

19 POLLY KAISER, Acting Field Office Director of
20 the San Francisco Immigration and Customs
21 Enforcement Office; TODD LYONS, Acting
22 Director of United States Immigration and Customs
23 Enforcement; KRISTI NOEM, Secretary of the
24 United States Department of Homeland Security,
25 PAMELA BONDI, Attorney General of the United
26 States, acting in their official capacities,

27 Respondents.
28

Case No. 3:25-cv 07492

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

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INTRODUCTION

Petitioners went to the San Francisco Immigration Court on September 4, 2025, expecting routine preliminary hearings in which they would discuss their cases with the immigration judge and schedule further proceedings on the merits of their applications for relief. So they were surprised when, during the hearings, the Department of Homeland Security (“DHS”) lawyer orally moved to dismiss their cases altogether. The Immigration Judge did not grant the motions to dismiss. Instead, the judge gave Petitioners time to respond and reset their hearings for another date. Minutes after each Petitioner exited the courtroom, a group of DHS agents waiting outside arrested them before they could leave the courthouse.

Nothing about Petitioners’ immigration cases justified this arrest and detention. When Petitioners entered the country, federal immigration officers released them within days on their own recognizance and with no ankle shackle or intrusive supervision conditions. The government thus necessarily determined that they did not pose a flight risk or danger to the community—let alone one warranting detention. Since then, Petitioners’ exemplary conduct has only confirmed the government’s prediction. They complied with all of their ICE and immigration court obligations and all of them timely filed applications for asylum, withholding of removal, and protection under the Convention Against Torture. None of them have a criminal history.

None of this mattered to the government. Rather than determining that Petitioners posed a flight risk or danger to the community, federal immigration agents arrested them pursuant to a

1 new, sweeping, and unlawful policy targeting people for arrest at immigration courthouses for the
2 purpose of placing them in expedited-removal proceedings. This enforcement campaign is
3 specifically intended to increase ICE arrest numbers to satisfy internal agency quotas.

4 Petitioners' summary arrest and indefinite detention flout the Constitution. The *only*
5 legitimate interests that civil immigration detention serves are mitigating flight risk and
6 preventing danger to the community. When those interests are absent, the Fifth Amendment's
7 Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and
8 detaining Petitioners without making any affirmative showing of changed circumstances, the
9 government violated Petitioners' procedural due process rights. At the very least, they were
10 constitutionally entitled to a hearing before a neutral decisionmaker at which the government
11 should have justified his detention.

12 As a result of their arrest and detention, Petitioners are suffering irreparable and ongoing
13 harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes
14 irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
15 "[f]reedom from imprisonment—from government custody, detention, or other forms of physical
16 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*
17 *Davis*, 533 U.S. 678, 690 (2001). Petitioners also face numerous additional irreparable harms due
18 to her detention, including difficulties with vertigo and panic and being in enclosed spaces.

19 In light of this irreparable harm, and because they are likely to succeed on the merits of
20 her due process claims, Petitioners respectfully request that this Court issue an *ex parte* temporary
21 restraining order ("TRO") immediately releasing from them custody and enjoining the
22 government from re-arresting them absent the opportunity to contest that arrest at a hearing before
23 a neutral decision maker. Since DHS started this new policy, Courts in this circuit have repeatedly
24 granted preliminary relief when confronted with substantially identical facts and legal issues. *See*
25 *Cordero et al v Kaiser*, No. 25-cv-07286 (N.D. Cal. Aug. 29, 2025) (granting *ex parte* TRO in a
26 multi-petitioner habeas petition) (attached as Exhibit A), *Garcia v. Kaiser*, No. 3:25-cv-06916
27 (N.D. Cal. Aug. 29, 2025) (granting preliminary injunction); *Salazar v. Kaiser*, No. 1:25-CV-
28 01017-JLT-SAB, 2025 WL 2456232, at *2 (E.D. Cal. Aug. 26, 2025) (granting preliminary

injunction); *Ortiz Calderon v. Kaiser*, No. 3:25-cv-6695 (N.D. Cal. Aug. 22, 2025) (granting preliminary injunction); *Clavijo v. Kaiser*, 2025 WL 2419263, *25 (N.D. Cal. Aug. 21, 2025) (granting preliminary injunction); *Paz Hernandez v. Kaiser*, No. 1:25-cv-00986 (E.D. Cal. Aug. 21, 2025) (granting preliminary injunction); *Garcia Barrera v. Andrews*, 2025 WL 2420068, at *3 (E.D. Cal. Aug. 21, 2025); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425, at *12 (E.D. Cal. Aug. 14, 2025); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction); *Jaraba Oliveros v. Kaiser*, No. 25-cv-07117 (N.D. Cal. Aug. 22, 2025) (granting *ex parte* TRO); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921 (N.D. Cal. Aug. 17, 2025) (same); *Salcedo Aceros v. Kaiser*, No. 1:25-cv-06924 (N.D. Cal. Aug. 16, 2025) (same); *Pineda Campos v. Kaiser*, No. 25-cv-06920 (N.D. Cal. Aug. 15, 2025) (same); *Ruiz Otero v. Kaiser*, No. 5:25-cv-06536 (N.D. Cal. Aug. 3, 2025) (same); *Pablo Sequen v. Kaiser*, No. 5:25-cv-06487 (N.D. Cal. Aug. 1, 2025) (same); *Valera Chuquillanqui v. Kaiser*, No. 3:25-cv-06320 (N.D. Cal. July 29, 2025) (same). To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Petitioners out of this District and removing them from the country until these proceedings have concluded.

BACKGROUND

Petitioners fled their home countries and separately entered the United States between 2023 and 2024. Petitioner's Habeas Petition ("Pet.") ¶¶ 51–54. They were apprehended by immigration officials at the border. *Id.* The immigration officials determined that they posed little if any flight or danger to the community and released them into the community to wait for their immigration court dates. *Id.* They all moved to California. *Id.* All of them timely filed applications for asylum, withholding of removal, and protection under the Convention Against Torture. *Id.*; Declarations of Sandra Guzman, ¶¶ 15-16, and Alyosha Maggin, ¶¶ 6, 8, and 10. They also complied with all of their ICE and immigration court requirements. None of them have any criminal history. Pet. ¶¶ 51–54.

Petitioners were all scheduled for an immigration court hearing in San Francisco on

September 4, 2025 before Immigration Judge Patrick O'Brien. *Id.* ¶ 55. During their hearings, the government made a motion to dismiss. *Id.* Declaration of Sandra Guzman ("Guzman Dec."), ¶ 5. The Immigration Judge did not rule on the motions at those hearings. *Id.* ¶ 11. He gave Petitioners time to respond and reset their hearings for a future date. *Id.*

Upon leaving the courtroom, ICE agents immediately arrested Petitioners and took them into custody at 630 Sansome. Pet. ¶ 58; Guzman Dec. ¶¶ 12-13.

Petitioners' arrests did not have anything to do with their individual cases. Instead, they are part of a new, nationwide DHS strategy of sweeping up people who attend their immigration court hearings, detaining them, and seeking to re-route them to fast-track deportations.¹ Since mid-May, DHS has implemented a coordinated practice of immigration detention to strip people like Petitioner of their substantive and procedural rights and pressure them into deportation. DHS is aggressively pursuing this arrest and detention campaign at courthouses throughout the country, including Northern California. At the San Francisco Immigration Court, where Petitioners were arrested, dozens of people have been arrested in the last month after attending their routine immigration hearings.²

This "coordinated operation" is "aimed at dramatically accelerating deportations" by arresting people at the courthouse and placing them into expedited removal.³ The first step of the operation typically takes place inside the immigration court. When people arrive in court for their

¹ Joshua Goodman and Gisela Saloman, *ICE Agents Wait in Hallways of Immigration Court as 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>.

² Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron., 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/>.

³ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23, 2025, <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>; 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 master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without
2 any notice to the affected individual. Although DHS regulations do not permit such motions to
3 dismiss absent a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. §
4 239.2(a)(7), (c), DHS attorneys are not conducting any case-specific analysis of changed
5 circumstances before filing these motions to dismiss.

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

14 Petitioners suffer serious and ongoing harm every day they remains in detention. Prior to
15 their detention, Petitioners were living peacefully with their families and in their communities.

16 ARGUMENT

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

27 I. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS.

28

A. Petitioners' detention violates substantive due process because they are neither flight risks nor dangers to the community.

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

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

The Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the

1 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to
2 incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision today
3 on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional
4 challenges to applications of the statute as we have now read it.”).

5 Petitioners, who have no criminal record and who are diligently pursuing their immigration
6 cases, are neither dangers nor flight risks. Therefore, their detention is both punitive and not
7 justified by a legitimate purpose, violating their substantive due process rights. Indeed, when
8 Respondents chose to release Petitioners from custody, that decision represented their finding that
9 they were neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176
10 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)
11 (“Release reflects a determination by the government that the noncitizen is not a danger to the
12 community or a flight risk.”). Nothing has transpired since to disturb that finding.

13 *First*, because Petitioners have no criminal history, and have had no intervening criminal
14 history or arrests since their releases, there is no credible argument that they are dangers to the
15 community.

16 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
17 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
18 F.3d at 990-91. There is no basis to argue that Petitioners, who were arrested by Respondents *while*
19 *appearing in immigration court* for master calendar hearings, are flight risks. Petitioners have
20 attended all of their immigration court hearings and ICE check-ins. Moreover, Petitioners have a
21 viable path toward immigration relief and a pathway to lawful permanent residence, further
22 mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163,
23 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where
24 plaintiffs have bona fide asylum claims and desire to remain in the United States). At the time of
25 their arrests, almost all Petitioners had filed applications for asylum, withholding of removal, and
26 protection under the Convention Against Torture. They have every intention of continuing to pursue
27 their applications for immigration relief.

28 In sum, Petitioners’ actions since Respondents first released them confirm that they are

1 neither danger nor flight risks. Indeed, their ongoing compliance and community ties compel the
2 conclusion that they are even *less* of a danger or flight risk than when they were originally released.
3 Accordingly, Petitioners' ongoing detention is unconstitutional, and substantive due process
4 principles require their immediate release.

5 **B. The government violated procedural due process by depriving Petitioners the**
6 **opportunity to contest their arrest and detention before a neutral**
7 **decisionmaker.**

8 Noncitizens living in the United States like Petitioners have a protected liberty interest in
9 their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court
10 "usually has held that the Constitution requires some kind of a hearing *before* the State deprives
11 a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
12 cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C.
13 Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-
14 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
15 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482
16 (1972) (same, in parole context).

17 Accordingly, the Supreme Court has repeatedly held that individuals released from
18 custody on bond, parole, or other forms of conditional release have a protected interest in their
19 ongoing liberty, because "[t]he parolee has relied on at least an implicit promise that parole will
20 be revoked only if he fails to live up to the parole conditions." *Morrissey*, 408 U.S. at 482. "By
21 whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due
22 Process Clause]." *Id.* This liberty interest also applies to noncitizens, including those who have
23 been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d
24 963, 970 (N.D. Cal. 2019). Petitioners thus have a protected liberty interest in their freedom from
25 physical custody.

26 Once a petitioner has established a protected liberty interest, as Petitioners have done here,
27 courts in this circuit apply the *Mathews* test to determine what procedural protections are due. *See*
28 *Johnson v. Ryan*, 55 F.4th 1167, 1179-80 (9th Cir. 2022) (citing *Mathews v. Eldridge*, 424 U.S.

1 319, 335 (1976)). Under that test, the court weighs: (1) the private interest affected; (2) the risk
2 of erroneous deprivation and probable value of procedural safeguards; and (3) the government's
3 interest. *Id.* In this case, the factors weigh heavily in favor of releasing Petitioners and prohibiting
4 their re-detention without a custody hearing at which the government bears the burden of proof.

5 *First*, the private interest affected in this case is profound. When considering this factor,
6 courts look to “the degree of potential deprivation.” *Nozzi v. Hous. Auth. of City of Los Angeles*,
7 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation
8 here is high. Petitioner, who is an asylum seeker who suffered harm in Colombia, has been
9 completely deprived of her physical liberty. Petitioners’ detention has ripped from them the
10 “free[dom] to be with family and friends and to form the . . . enduring attachments of normal life.”
11 *Morrissey*, 408 U.S. at 482. Cutting someone off from the “core values of unqualified liberty”—
12 for Petitioners creates a “grievous loss.” *Id.* Moreover, because Petitioner faces *civil detention*,
13 “his liberty interest is arguably greater than the interest of the parolees in *Morrissey*.” *See Ortega*,
14 415 F. Supp. 3d at 970. As someone in civil detention, therefore, “it stands to reason that
15 [Petitioner] is entitled to protections at least as great as those afforded to a[n] . . . individual . . .
16 accused but not convicted of a crime.” *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

17 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
18 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
19 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No.
20 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*,
21 No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents grabbed
22 Petitioners by surprise as they left their immigration court hearings, detaining them with no notice
23 and no opportunity to contest their re-detention before a neutral arbiter. In such circumstances,
24 when Respondents have provided *no* procedural safeguards, “the probable value of additional
25 procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5. This is
26 especially true here, where there is no change in Petitioners’ circumstances suggesting that
27 Petitioners now pose a flight risk or danger to the community. Their re-detention instead appears
28 to be motivated instead by Respondents’ new arrest quotas and practice of leveraging detention

1 to secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality
2 Act, to initiate expedited removal. Pet. ¶¶ 35–46. Neither constitutes a lawful justification to re-
3 detain a person who does not pose a flight risk or danger to the community.

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

12 *Third*, the government’s interest in detaining Petitioners without first providing notice and
13 submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
14 hearings, which impose a “minimal” cost to the government. See *Doe*, 2025 WL 691664, at *6;
15 *A.E.*, 2025 WL 1424382, at *5. Petitioners have an impeccable record of complying with their
16 immigration obligations; there is no reason to believe that between the date of their release and
17 their custody hearings, their compliance will change. Indeed, courts regularly hold that the
18 government’s interest in re-detention without a custody hearing is low when the petitioner “has
19 long complied with his reporting requirements.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL
20 1676854, at *3-*4 (N.D. Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen
21 without a pre-deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021
22 WL 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting
23 habeas petition ordering the same); see also *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL
24 1707737, at *4-*5 (S.D.N.Y. June 18, 2025) (granting habeas petition and immediately releasing
25 petitioner who had been detained without process, who had “voluntarily attended his scheduled
26 immigration court proceedings” and “established ties” through his work and volunteering with
27 the church).

28 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without

1 a pre-deprivation hearing in which the government bears the burden of proof violates due process,
 2 and grants the emergency relief Petitioners seek here. *See Garro Pinchi v. Noem*, __ F. Supp. 3d
 3 __, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her
 4 immigration court hearing into preliminary injunction prohibiting the government from re-
 5 detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11,
 6 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO
 7 over one month after petitioner's initial detention); *see also, e.g., Diaz*, 2025 WL 1676854, at *3-
 8 *4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025);
 9 *Jorge M. F.*, 2021 WL 783561, at *4; *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL
 10 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
 11 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

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

20 * * * * *

21 For the foregoing reasons, Petitioners are likely to succeed on the merits of their claims.
 22 But even if the Court disagrees, they present at least “serious question[s] going to the merits,”
 23 alongside a “balance of hardships” tipping decidedly in their favor. *All. for the Wild Rockies*, 632
 24 F.3d at 1135. Indeed, the constitutional concerns delineated above are of the weightiest order and
 25 beyond colorable. This Court should therefore enter the requested TRO.

26 **II. PETITIONERS WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE**
 27 **INJURY ABSENT A TRO.**

28 Without a temporary restraining order, Petitioners will suffer immense irreparable injury.

Indeed, they face such injury every day they remain in detention in violation of their Fifth Amendment rights. “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (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)).

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONERS’ 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 Petitioners, who face irreparable injury in the form of ongoing constitutional violations and continued additional suffering if the TRO is not granted. *See* Section II, *supra*; *Hernandez*, 872 F.3d at 996 (when “[f]aced with ... preventable human suffering, ... the balance of hardships tips decidedly in plaintiffs’ favor”) (internal citation omitted).

The public interest likewise weighs strongly in Petitioners’ 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*, 2025 WL 1676854, at *3 (citing *Jorge M. F.*, 2021 WL 783561, at *3). 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,

1 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

2 SECURITY

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

12 CONCLUSION

13 For the foregoing reasons, Petitioners respectfully requests the Court grant a TRO to
 14 restore the *status quo ante* that (1) immediately releases them from Respondents’ custody without
 15 electronic monitoring and enjoins Respondents from re-detaining them absent further order of this
 16 Court; (2) in the alternative, immediately releases them from Respondents’ custody and enjoins
 17 Respondents from re-detaining them unless they demonstrate at a pre-deprivation bond hearing,
 18 by clear and convincing evidence, that Petitioners are a flight risk or danger to the community
 19 such that their physical custody is required; and (3) prohibits the government from transferring
 20 them out of this District and/or removing them from the country until these habeas proceedings
 21 have concluded.

22 Date: September 4, 2025

23 Respectfully submitted,

24 /s/ Nikolas De Bremaeker

25 Nikolas De Bremaeker (FL Bar 98372)

26 PRO HAC VICE

27 /s/ Alyosha Maggin

28 Alyosha Maggin (SBN 359420)

Attorneys for Petitioners

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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE CARLOS CORDERO PELICO, et al.,

Plaintiffs,

v.

POLLY KAISER, et al.,

Defendants.

Case No. 25-cv-07286-EMC (EMC)

**ORDER GRANTING PETITIONERS'
EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER**

Docket No. 5

Before the Court is Petitioners' *Ex Parte* Motion for Temporary Restraining Order. TRO Mot., ECF Nos. 5- 6. On August 28, 2025, Petitioners filed a Petition for Writ of Habeas Corpus against Respondents Acting Field Office Director Polly Kaiser, Acting Director of Immigration and Customs Enforcement Todd M. Lyons, Secretary of the Department of Homeland Security Kristi Noem, and United States Attorney General Pamela Bondi. ECF No. 1. On August 29, 2025, Petitioners filed an *Ex Parte* Motion for Temporary Restraining Order. ECF Nos. 5-6. Respondents opposed. *See* ECF No. 9. Petitioners ask this Court to (1) order their immediate release from Respondents' custody pending these proceedings, (2) enjoin Respondents from re-detaining them, and (3) enjoin Respondents from transferring them out of this District or deporting them during the pendency of the underlying proceedings. *See* TRO Mot., ECF No. 6.

For the foregoing reasons, the TRO is **GRANTED** as modified below.

I. BACKGROUND

According to the record before the Court, Petitioners are five non-citizens. Petitioners Adriana Patricia Lezcano Rondon and Fredy Andres Reyes Gonzales are asylum seekers from Columbia. Pet. for Writ of Habeas Corpus ¶ 10, 13, ECF No. 1. Petitioners Yessica Alejandra

1 Malagon Torres and Jacqueline Karina Mendoza Nunez are asylum seekers from Nicaragua. *Id.* ¶
2 11, 12. Petitioner Jose Carlos Cordero Pelico is a Guatemalan national. *Id.* ¶9. When each of
3 Petitioner arrived in the United States, he or she was apprehended by immigration officials at the
4 border. *Id.* ¶ 51- 56. There, federal official determined that each petitioner “posed little if any
5 flight or danger to the community and released [them] into the community to wait for [an]
6 immigration court date.” *Id.* Since that time, Petitioners have complied with the terms of their
7 release. *Id.* Petitioners have “no criminal history anywhere in the world.” *Id.*

8 On August 28, 2025, Petitioners appeared in-person in San Francisco Immigration Court
9 for master calendar hearings. *Id.* ¶ 57. In each case, the government moved to dismiss its case
10 seeking each Petitioner’s removal. *Id.* Except in the case of Petitioner Nunez, the presiding judge
11 did not grant the motions; instead, he gave each of Petitioners time to respond to the motion and
12 continued their hearings. *Id.*; ECF No. 9 at 7. When Petitioners exited the courtroom,
13 Immigration and Customs Enforcement (“ICE”) agents immediately arrested Petitioners. ECF No.
14 1 ¶ 58. Petitioners are currently being detained at 630 Sansome Street in San Francisco,
15 California. *Id.*

16 On August 28, 2025, this Petition was filed. Soon after filing the habeas petition,
17 Petitioners’ counsel provided notice of the Petition and a forthcoming motion for a TRO, along
18 with a copy of the Petition, to Respondents’ counsel. Decl. of Jordan Weiner ¶¶ 5, ECF No. 6-3.
19 The next morning, counsel provided Respondent’s counsel with a copy of the TRO motion and
20 supporting documents. *Id.* In the motion for TRO, Petitioners contend that their arrest and
21 detention violate the Due Process Clause of the Fifth Amendment, both substantively (because
22 Respondents allegedly have no valid interest in detaining them) and procedurally (because they
23 were not provided with a pre-detention bond hearing). On August 29, Respondents filed a
24 response, arguing that Petitioners have not met the standard for a temporary restraining order
25 because they are subject to mandatory detention under 8 U.S.C. § 1225 and lack a cognizable
26 liberty interest. *See* ECF No. 9.

II. LEGAL STANDARD

The standard for issuing a temporary restraining order is substantially identical to the standard for issuing a preliminary injunction. *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). Thus, a party seeking a temporary restraining order must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). “[I]f a plaintiff can only show that there are serious questions going to the merits – a lesser showing than likelihood of success on the merits – then a preliminary injunction may still issue if the balance of hardships tips *sharply* in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted). “[W]hen the Government is the opposing party,” the final two factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

An injunction is a matter of equitable discretion and is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22. A “TRO ‘should be restricted to . . . preserving the status quo and preventing irreparable harm just so long as is necessary to hold a [preliminary injunction] hearing, and no longer.’” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)).

III. DISCUSSION

Petitioners have demonstrated a likelihood of success on the merits of their claim that their ongoing detention violates their procedural due process rights under the Fifth Amendment. Petitioners have a substantial interest in remaining out of custody, and the Due Process Clause entitles Petitioners to a bond hearing before an immigration judge prior to any arrest or detention. *Pinchi v. Noem*, No. 25-cv-05632-PCP, 2025 WL 2084921, at *2-6 (N.D. Cal. July 24, 2025) (applying the three-part test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976) to similar circumstances); *see also Pablo Sequen v. Kaiser*, No. 25-cv-06487-PCP, 2025 WL 2203419, at *2

(N.D. Cal. Aug. 1, 2025) (collecting cases).

Petitioners have also demonstrated a likelihood of irreparable injury in the absence of temporary relief. The likely unconstitutional deprivation of liberty that Petitioner faces is an immediate and irreparable harm. “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)); *see also Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). “[I]t follows inexorably from [the] conclusion” that Petitioners’ detention without a hearing is “likely unconstitutional” that they have “also carried [their] burden as to irreparable harm.” *Hernandez*, 872 F.3d at 995.

The final two *Winter* factors, the balance of the equities and public interest, also weigh heavily in favor of granting temporary relief. “[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.” *Jorge M. F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (cleaned up); *see Melendres*, 695 F.3d at 1002 (“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” (quotation omitted)); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”). As other courts in this district and others have concluded under similar circumstances, “the potential harm to [Petitioner] is significant, while the potential harm to the government is minimal.” *Pablo Sequen*, 2025 WL 2203419, at *3. At most, the government faces a short delay in detaining Petitioners if it ultimately demonstrates, by clear and convincing evidence, that their detentions are necessary to prevent danger to the community or flight. *See Jorge M. F.*, 2021 WL 783561, at *3; *Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025). The government is not “harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983). Faced with “a conflict between [administrative] concerns and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in [Petitioners’] favor.”

Hernandez, 872 F.3d at 996) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

A TRO immediately releasing Petitioners is appropriate to return them to the status quo. *E. Bay Sanctuary Covenant*, 932 F.3d at 779. The status quo refers to “the last uncontested status which preceded the pending controversy.” *Doe v. Noem*, 778 F. Supp. 3d 1151, 1166 (W.D. Wash. 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). That is the moment prior to Petitioners’ likely illegal detention. *See Kuzmenko v. Phillips*, No. 25-cv-00663, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025) (granting a temporary restraining order requiring immediate release of the petitioner back to home confinement from custody, as a restoration of the status quo).

Because Petitioners satisfy all requirements for temporary injunctive relief and such relief is necessary to restore the status quo, the TRO Motion is granted as detailed below. This Order accords with many other recent grants of temporary relief in similar circumstances. *See, e.g., Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2453968, at *3 (N.D. Cal. Aug. 16, 2025) (granting temporary restraining order); *Alva v. Kaiser*, No. 25-cv-06676, 2025 WL 2294917, at *3 (N.D. Cal. Aug. 7, 2025) (same); *Ramirez-Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2097467, at *4 (N.D. Cal. July 25, 2025) (same); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025) (granting temporary restraining order requiring release of asylum seeker and a pre-detention bond hearing before re-arrest); *Singh*, 2025 WL 1918679, at *10 (granting preliminary injunction); *Doe v. Becerra*, No. 25-cv-647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (granting temporary restraining order); *see also Diaz*, 2025 WL 1676854 (granting temporary restraining order requiring pre-detention hearing before re-detention of noncitizen out of custody five years); *Garcia v. Bondi*, No. 25-cv-5070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025) (granting temporary restraining order requiring pre-detention hearing before re-detention of noncitizen out of custody six years); *Enamorado v. Kaiser*, No. 25-cv-4072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025).

Finally, the Court exercises its discretion under Rule 65(c) to dispense with the filing of bond. “[T]here is no realistic likelihood of harm to the [Respondents] from enjoining [their] conduct.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). Therefore, no security is

needed to ensure that Respondents will be reimbursed for “costs and damages sustained by . . . hav[ing] been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c).

IV. ORDER

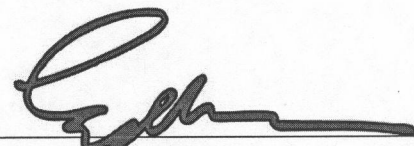
For the foregoing reasons, **IT IS HEREBY ORDERED** that Petitioners’ Motion for Temporary Restraining Order is **GRANTED** to preserve the status quo pending further briefing and a hearing on this matter. Respondents are **ORDERED** to immediately release Petitioners from Respondents’ custody and **ENJOINED AND RESTRAINED** from re-detaining Petitioners without notice and a pre-deprivation hearing before a neutral decisionmaker, and from removing Petitioners from the United States.¹ This Order shall remain in effect until **Friday, September 12, 2025**.

Respondents shall provide a status report confirming Petitioners release by **Saturday, August 30, 2025 at 3 p.m.**

Respondents are **ORDERED TO SHOW CAUSE** in-person at a hearing before Judge Edward M. Chen **on September 11 at 1:30 p.m.** why a preliminary injunction should not issue. Respondents shall file a response to Petitioner’s motion by no later than **September 5, 2025**. Any reply shall be filed by **September 9, 2025**.

IT IS SO ORDERED.

Dated: August 29, 2025



EDWARD M. CHEN
United States District Judge

¹ Petitioners also asks the Court to order that they remain within the Northern District of California in order to preserve this Court’s jurisdiction, but it is well-established that “when the Government moves a habeas petitioner after [he or she] properly files a petition naming [his or her] immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner’s release.” *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004).