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12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **FRESNO DIVISION**
15

16 KAROLAINE MONTEIRO DE SOUZA

17 *Petitioner,*

18 v.

19 Timothy S. ROBBINS, Field Office Director of the
20 Los Angeles Field Office of U.S. Immigration and
21 Customs enforcement; Todd M. LYONS, Acting
22 Director of U.S. Immigration and Customs
23 Enforcement; U.S. DEPARTMENT OF HOMELAND
24 SECURITY, Kristi NOEM, Secretary of the U.S.
25 Department of Homeland Security, Christopher
26 CHESTNUT, Warden, California City Corrections
27 Center, and Pamela BONDI, Attorney General of the
28 United States

Respondents,

Case No. 25-1124

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Note on Motion Calendar:

ORAL ARGUMENT REQUESTED

INTRODUCTION

Petitioner Karolaine Monteiro De Souza ("Petitioner") is a Brazilian noncitizen detained by Immigration and Customs Enforcement (ICE) at the California City Corrections Center, in California City, California. She entered the United States in or around October 12, 2024, and she was subsequently released on parole on November 4, 2024. For the next twelve months, Petitioner complied with what was asked of her: changing venue from the San Antonio to the San Francisco Immigration Court, and filing her asylum application. She also adhered to all the conditions of her release, including telephonic and video check-ins as part of the Intensive Supervision Appearance Program (ISAP) and in person visits at both ISAP and ICE's field offices. Nevertheless, on October 30, 2025, she was arrested at a check-in at the San Francisco ICE field office, without any notice or opportunity to respond to any allegation purportedly justifying her re-detention. She remains in detention at California city Corrections Center, separated from her immediate family and friends.

At no time prior to her arrest did Respondents provide Petitioner a hearing, let alone a hearing before a neutral decisionmaker at which ICE was required to justify her re-detention and show that she now poses a flight risk or danger to the community. Indeed, she was not provided any notice as to the reason for her re-detention, much less the written notice required under 8 C.F.R. § 212.5(e)(2) that must accompany a revocation of parole. Nor has she received any meaningful opportunity to respond to any allegations triggering her re-detention.

By denying her any notice and hearing, Respondents violated Petitioner's right to due process. As a number of Federal District courts recently held, her ongoing detention is therefore unlawful, and her immediate release is required. (See e.g., *E.A. T.-B. v. Wamsley*, No. 25-cv-1192-KKE, --- F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"). Accordingly, Petitioner respectfully seeks

1 immediate relief from this Court to vindicate her right to liberty under the Fifth Amendment's Due
2 Process Clause.¹

3 **STATEMENT OF FACTS**

4 Petitioner Karolaine Monteiro De Souza ("Petitioner") is an asylum seeker who fled Brazil due to
5 threats against her life and actual torture by her ex-partner who also happened to be a police officer in
6 Brazil. (Dec. of Nathaley Wesley Fernandes Barros, ¶ 1.) After Petitioner arrived in the United States
7 on October 12, 2024, federal agents detained her. On that same day, she was provided with a Notice and
8 Order of expedited removal, stating that pursuant to Section 235(b)(1) of the Immigration and
9 Naturalization Act, she was inadmissible and therefore subject to removal. (Id.) However, on
10 November 4, 2024, Petitioner was released from custody along with her spouse on her own
11 recognizance, after a determination that neither of them was a flight risk or a danger to the community.
12 (Id.) This occurred after Petitioner's spouse underwent a credible fear interview. (Id.) On the day of
13 Petitioner's release, DHS officials provided her with an Order of Release on Recognizance (Form I-
14 220A), which stated that Petitioner was being released pursuant to Section 236 of the Immigration and
15 Naturalization Act. (Id.) She was also served with a Notice to Appear, which indicated that the Notice
16 and Order of Expedited Removal which was served her n October 12, 2024 pursuant to Section
17 235(b)(1) was vacated pursuant to 8 C.F.R. §208.30. (Id.)

18 The following day, Immigration proceedings were commenced against Petitioner. She subsequently
19 filed a request for change of venue from the San Antonio to the San Francisco Immigration Court, which
20 was granted on March 10, 2025. (Id., ¶ 2.) She also had filed her asylum application on April 17, 2025.
21 (Id.) Prior to her detention, besides the Notice to Appear, Petitioner had received two Hearings Notices.
22 The first indicated a Master Calendar Hearing with the San Antonio Immigration Court on February 11,
23 2026, and the second indicated a Master Calendar Hearing with the San Francisco Immigration Court on
24 July 15, 2027. (Id.)

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27 ¹ Together with the filing of the habeas petition and motion, counsel certifies that they are providing concurrent notice
28 regarding this filing to the U.S. Attorney's Office for the Central District of California via fax (559-497-4099)

1 Since the date of her release on November 4, 2025, Petitioner has been residing along with her
2 spouse at [REDACTED] California, with whom she had been working
3 cleaning homes. (Id., ¶3.) She also has made numerous friends and she was an active member at her
4 local church. (Id.) Petitioner also did everything the government asked her to do in the next twelve
5 months, including complying with all terms of her monitoring program, which consisted in sending
6 pictures of herself to ICE on a weekly basis, and presenting herself in person at both ISAP and the ICE
7 Field office. In regards to her in-person visits at ISAP, she appeared at ISAP for her visit every three
8 months. (Id.) In regards to the ICE in-person visits, Petitioner was instructed to present herself at the
9 Ice Field Office in San Francisco on December 11, 2024. She appeared as instructed on that day along
10 with her spouse, and she was instructed to present herself again in person on October 30, 2025. (Id.)
11 Petitioner checked the ISAP app every day to ensure that she was complying with all requirements of
12 her monitoring program. In addition, since November 2024, both Petitioner and her spouse had resided
13 at [REDACTED] California. (Id.)

14 In the morning of October 30, 2025, Petitioner appeared for her annual in-person check in at the San
15 Francisco ICE Field Office and presented herself to her monitoring officer. (Id., ¶ 4.) At the time of her
16 visit, Petitioner was not aware about any acts or omissions by her which might have been considered to
17 be a violation of her monitoring program. Nevertheless, she was promptly detained by ICE officers,
18 who alleged she had missed an immigration court hearing. (Id.) Petitioner tried to explain that she had
19 not missed any hearings in court, as her Master Calendar Hearing with the San Francisco Immigration
20 Court was scheduled for July 15, 2027. But the ICE officers ignored her statements and proceeded with
21 detaining her. (Id.) On the next day, she was transferred to the California City Corrections Center, in
22 California City, California. (Id.)

23 Petitioner filed a habeas petition in this court along with the present motion. By means of the
24 present motion, she now seeks immediate relief from her continued, unlawful detention.

25 ARGUMENT

26 Requirements for a temporary restraining order

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1 On a motion for a TRO, the movant “must establish that he is likely to succeed on the merits, that he
2 is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
3 his favor, and that an injunction is in the public interest.” (*Winter v. Nat. Res. Def. Council, Inc.*, 555
4 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
5 2001) (noting that preliminary injunction and TRO standards are “substantially identical”).) A TRO
6 may issue where “serious questions going to the merits [are] raised and the balance of hardships tips
7 sharply in [plaintiff’s] favor.” (*All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)
8 (citation modified).) To succeed under the “serious question” test, Petitioner must also show that he is
9 likely to suffer irreparable injury and that an injunction is in the public’s interest. (*Id.* at 1132.)

10 **Petitioner is likely to succeed on the merits of her argument that her detention is unlawful because**
11 **she was not afforded a pre-deprivation hearing**

12 Due process requires Respondents to afford Petitioner a hearing before a neutral decisionmaker
13 where ICE is required to justify re-detention *before* it occurs. In recent months, as DHS has detained
14 many similarly-situated noncitizens, several courts—including District Courts in California—have held
15 the same and ordered the immediate release of noncitizens who had been re-detained by DHS without a
16 pre-deprivation hearing. (*See, e.g., E.A. T.-B.*, 2025 WL 2402130; *Valdez v. Joyce*, No. 25 CIV. 4627
17 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-
18 deprivation hearing); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921
19 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL
20 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025
21 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).) In light of this, Petitioner is likely to succeed on her
22 claim and the Court should order her immediate release. If Respondents continue to assert that her
23 detention is justified after her release, they may thereafter schedule a hearing where they bear the burden
24 of presenting clear and convincing evidence that her re-detention is warranted.

25 In regards to cases involving an immigrant being re-detained, the U.S. District Court for the
26 Western District of Washington recently explained in *E.A. T.-B.*, the three-factor test established in
27 *Mathews v. Eldridge*, 424 U.S. 319 (1976) is the controlling framework for determining what process
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Petitioner is due. *Mathews* requires the Court to evaluate (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (424 U.S. at 335; *see also Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (applying *Mathews* factors to assess right to pre-deprivation hearing); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee’s liberty interests and the state’s interests to assess what process is due a parolee). Here, those factors strongly favor Petitioner.

A. Petitioner Has a Weighty Private Interest.

Petitioner has an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of her liberty. Indeed, her “interest in not being detained is ‘the most elemental of liberty interests[.]’” (*E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). “Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects.” (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).) Thus, “[d]etention, including that of a non-citizen, violates due process if there are not ‘adequate procedural protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally protected interest in avoiding physical restraint.’” (*Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second alteration in original) (quoting *Zadvydas*, 533 U.S. at 690).) Similarly, the Ninth Circuit has held that “[i]n the context of immigration detention, it is well-settled that ‘due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’” (*Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g., Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” (citation omitted)).)

1 This principle applies with significant force given Petitioner's initial release from detention on
2 parole. "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in
3 fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that
4 entitles him to constitutional due process before he is re-incarcerated." (*Hurd v. District of Columbia*,
5 864 F.3d 671, 683 (D.C. Cir. 2017).) As the *Hurd* court explains, this includes cases of "pre-parole
6 conditional supervision," *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); "probation," (*Id.*)
7 (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and "parole," (*Id.*) (citing *Morrissey*, 408 U.S. at
8 482).)

9 These principles apply with even more force here, where civil immigration detention is concerned,
10 than in cases involving renewed incarceration in the criminal context. As one court has explained,
11 "[g]iven the civil context, [a noncitizen's] liberty interest is arguably greater than the interest of parolees
12 in *Morrissey*." (*Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).) Parolees and
13 probationers have a diminished liberty interest because of their underlying convictions. (*See, e.g., United*
14 *States v. Knights*, 534 U.S. 112, 119 (2001) ("Probation is one point on a continuum of possible
15 punishments" (citation modified)); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987) ("To a greater or
16 lesser degree, it is always true of probationers (as we have said it to be true of parolees) that they do not
17 enjoy the absolute liberty to which every citizen is entitled" (citation modified).) Nonetheless, even
18 in the criminal parole and supervised release context, courts have held that parolees cannot be re-
19 arrested without a due process hearing affording them the opportunity to contest the legality of their re-
20 incarceration. (*See, e.g., Hurd*, 864 F.3d at 684.)

21 Critically, in recent months and years, courts have repeatedly applied these principles to hold that
22 noncitizens have a strong liberty interest in cases involving re-detention. A person re-detained after a
23 prior release from ICE custody is "undoubtedly deprive[d] . . . of an established interest in his liberty."
24 (*E.A. T.-B.*, 2025 WL 2402130, at *3.) Other courts have reached the same conclusion. (*See, e.g.,*
25 *Garcia*, 2025 WL 2420068, at *10) ("[P]arole allowed [the petitioner] to build a life outside detention,
26 albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody
27 which would allow him to continue in these life activities, including supporting his family."); (*Pinchi*,

2025 WL 2084921, at *4) (“[Petitioner] has a substantial private interest in remaining out of custody. She has an interest in remaining in her home, continuing her employment, providing for her family, obtaining necessary medical care, maintaining her relationships in the community, and continuing to attend her church.”); (*Maklad*, 2025 WL 2299376, at *8 (similar).)

As in these cases, Petitioner has a strong interest in her liberty. Prior to her re-detention, Petitioner resided in Daly City, California for about one year, living with her spouse, living a productive life as a house cleaner, and complying with her ISAP check-in requirements. (Nathaley Wesley Fernandes Barros Decl. ¶¶ 1–4.). In addition, when she was released, she was informed that her release was pursuant to Section 236, and her NTA stated that her Expedited Removal Order had been vacated. She has substantial connections to this country, and her spouse and friends are suffering in her absence. These facts show not only that Petitioner’s freedom is at stake, but that her absence is negatively affecting the life of her spouse.

B. The Risk of Erroneous Deprivation Is High.

Second, “the risk of erroneous deprivation of Petitioner’s liberty interest in the absence of a pre-detention hearing is high.” (*E.A. T.-B.*, 2025 WL 2402130, at *4.) “That the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.” (*Id.*) Her re-detention must still “bear[] [a] reasonable relation” to a valid government purpose—here, preventing flight or protecting the community against dangerous individuals. (*Zadvydas*, 533 U.S. at 690) (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must prove that re-detention is justified and that Petitioner poses a flight risk or danger—can ensure that this “reasonable relation” to a valid government purpose exists. But to date, only the “government enforcement agent” has made any decision about the propriety of detention, (*Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971)), a far cry from the hearing before a neutral decisionmaker that due process requires, (see, e.g., *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) (“Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement.”); see also *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar).) In fact,

1 Petitioner did not (and has not) even received a formal notice of the basis for her re-detention, much less
2 any opportunity to respond to any allegations purporting to justify her re-detention or a hearing before a
3 neutral decisionmaker.

4 The importance of a hearing before a neutral decisionmaker principle remains even though
5 Petitioner might have initially been subject to mandatory detention under 8 U.S.C. § 1225(b)(1) or (b)(2)
6 when he was processed for expedited removal. (See *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).)
7 This is because, as this Court explained in *E.A. T.-B.*, “Petitioner does not claim to be entitled to a
8 hearing consistent with a particular statute; he argues that the Due Process Clause requires it.” (2025
9 WL 2402130, at *4.) And due process requires such a hearing because “Petitioner’s circumstances have
10 changed materially” since her release in November 2024. (*Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762,
11 777 (N.D. Cal. 2019).) As noted above, she has formed deep connections to this country, residing in
12 California, and working to support herself and her sister. “These facts show that a[] [pre-deprivation]
13 hearing provide[s] additional safeguards under these circumstances.” (Id.; see also, e.g., *Jorge M.F.*, 534
14 F. Supp. 3d at 1055) (“In any pre-detention hearing, the IJ would be required to consider any additional
15 evidence from the eight-plus months since Petitioner was released.”); (*Garcia*, 2025 WL 2420068, at
16 *10 (“[P]arole allowed [Petitioner] to build a life outside detention.”)).

17 **C. The Government’s Interest Is Minimal.**

18 Finally, “the government’s interest in detaining [Petitioner] or re-detaining [her] without a hearing
19 is slight.” (*Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970) (“If the government
20 wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in
21 doing so without a hearing is low.”). “[A]lthough [a pre-deprivation hearing] would have required the
22 expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP]
23 violations before arresting and re-detaining her, those costs are far outweighed by the risk of erroneous
24 deprivation of the liberty interest at issue.” (*E.A. T.-B.*, 2025 WL 2402130, at *5.) Notably, since her
25 release, Respondent “has continued to demonstrate that [she] poses neither a flight risk nor a danger to
26 the community,” holding an honest job and helping both herself and her spouse, and developing
27 friendships, among other factors. (*Pinchi*, 2025 WL 2084921, at *5.)

1 The government may claim that its interest in enforcing immigration laws weighs heavily in its
2 favor. But the government's interest in immigration enforcement "is not at stake here; instead, it is the
3 much lower interest in detaining [Petitioner] pending removal without a bond hearing." (*Perera*, 598 F.
4 Supp. 3d at 746.) Many other courts have observed the same. (See, e.g., *Zagal-Alcaraz v. ICE Field*
5 *Office*, No. 3:19-CV-01358-SB, 2020 WL 1862254, at *7 (D. Or. Mar. 25, 2020) ("The government
6 interest at stake here is not the continued detention of Petitioner, but the government's ability to detain
7 him without a bond hearing."), *report and recommendation adopted*, 2020 WL 1855189 (D. Or. Apr. 13,
8 2020). What is more, Petitioner has complied with the immigration laws: she was released on parole and
9 has been preparing to appear at her first Master Calendar Hearing, as the Immigration and Nationality
10 Act (INA) expressly permits. 8 U.S.C. § 1158. She also made all required check-ins with both ISAP and
11 ICE. Any claimed "enforcement" amounts to punishing and deterring people like Petitioner from
12 asserting the statutory rights that the INA expressly provides, rather than enforcing those laws.

13 In addition, the government's interest is not limited to enforcement of the law; instead, it also
14 encompasses the interest of the "public," including the administrative or financial burdens additional
15 process requires. (*Mathews*, 424 U.S. at 348.) Here, any cost in holding a hearing, should the
16 government choose to do so, is minimal. Moreover, any financial burden is outweighed by the costs of
17 detaining Petitioner prior to such a hearing. The public's "interest lies on the side of affording fair
18 procedures to all persons, even though the expenditure of governmental funds is required." (*Lopez v.*
19 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).) This consideration also "cuts strongly in favor" of Mr.
20 Ramirez because when "[w]hen the Government incarcerates individuals it cannot show to be a poor
21 bail risk for prolonged periods of time, as in this case, it separates families and removes from the
22 community breadwinners, caregivers, parents, siblings and employees." (*Velasco Lopez v. Decker*, 978
23 F.3d 842, 855 (2d Cir. 2020).)

24 In sum, Petitioner has demonstrated—or is likely to be able to demonstrate—that she "has a
25 protected liberty interest in his continuing release from custody, and that due process requires that Petitioner
26 receive a hearing before an immigration judge before he can be re-detained." (*E.A. T.-B.*, 2025 WL 2402130,
27 at *5.)

Petitioner will suffer irreparable harm absent an injunction.

Petitioner must also show she is “likely to suffer irreparable harm in the absence of preliminary relief.” (*Winter*, 555 U.S. at 20.) Irreparable harm is the type of harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Here, Petitioner’s unlawful detention constitutes “a loss of liberty that is . . . irreparable.” (*Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where “preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained” because they are neither a danger nor a flight risk).) This is particularly true here, where Petitioner’s detention also violates the Constitution. “Civil immigration detention violates due process outside of certain special and narrow nonpunitive circumstances.” (*Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation modified).) As detailed above, Petitioner’s detention is outside of those “special and narrow nonpunitive circumstances,” as the Due Process Clause forbids his detention without a pre-deprivation hearing. These constitutional concerns also counsel in favor of finding that Petitioner has demonstrated irreparable harm, for he has shown that his detention violates due process. (See *Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm”).)

Detention also inflicts substantial harm on Petitioner by separating her from her sister and friends. Absent a TRO, Petitioner has no hope of being reunited with her sister and her friends and community. Such “separation from family members” is an important irreparable harm factor. (*Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g., Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding “separated families” to be a “substantial injur[y] and even irreparable harm[.]”); *cf. Hernandez*, 872 F.3d at 996 (recognizing that “government-compelled [family] separation” causes family members “trauma” and “other burdens”).)

1 In sum, Petitioner is suffering numerous and irreparable harms: detention itself, separation from
2 family and friends. All of these factors warrant a TRO.

3 **The balance of hardships and public interest weigh heavily in Petitioner's favor.**

4 The final two factors for a preliminary injunction—the balance of hardships and public interest—
5 “merge when the Government is the opposing party.” (*Nken v. Holder*, 556 U.S. 418, 435 (2009).) Here,
6 as previously discussed, Petitioner faces weighty hardships: loss of liberty and separation from family
7 and friends. The government, by contrast, faces no hardship, as all it must do is release a person it
8 previously released and who has since lawfully resided in San Mateo County, California. Avoiding such
9 “preventable human suffering” strongly tips the balance in favor of Petitioner. (*Hernandez*, 872 F.3d at
10 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).)

11 What is more, “the public interest benefits from an injunction that ensures that individuals are not
12 deprived of their liberty and held in immigration detention because of . . . a likely [illegal] process.”
13 (*Hernandez*, 872 F.3d at 996.) Indeed, “in cases involving a constitutional claim, a likelihood of success
14 on the merits . . . strongly tips the balance of equities and public interest in favor of granting a
15 preliminary injunction.” (*Baird*, 81 F.4th at 1048.)

16 Accordingly, the balance of hardships and the public interest favor a temporary restraining order to
17 ensure that Respondents release Petitioner and to require a hearing before a neutral decisionmaker where the
18 government must demonstrate she poses a flight risk or danger before any re-detention.

19 **Immediate release is warranted.**

20 As in *E.A. T.-B.*, this Court should order Petitioner's immediate release. “[A] post-deprivation
21 hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent
22 an erroneous deprivation of liberty.” (*E.A. T.-B.*, 2025 WL 2402130, at *6.) In other words, Petitioner's
23 unlawful detention without a pre-deprivation hearing is *already* occurring, and only immediate release
24 remedies that issue. Moreover, the evidence here demonstrates that Petitioner has made every effort to
25 follow the law: receiving parole, preparing for her removal proceedings by means of filing an asylum
26 application and changing venue, and complying with all ISAP ad ICE requirements. As a result, the
27 Court should order her immediate release and provide that Petitioner may only be re-detained if ICE
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1 justifies re- detention by clear and convincing evidence at a hearing where ICE is required to
2 demonstrate Petitioner is a flight risk or danger to the community. (See, e.g., *Pinchi*, 2025 WL 2084921,
3 at *7; *Maklad* 2025 WL 2299376, at *10; *Garcia*, 2025 WL 2420068, at *13.)

4 **CONCLUSION**

5 For the foregoing reasons, Petitioner respectfully requests the Court grant her motion for a
6 temporary restraining order and order her immediate release.

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8 Respectfully submitted,

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10 DATE: 11/19/2025

/S/ Jose F. Vergara

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13 COUNSEL FOR PETITIONER
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WORD COUNT CERTIFICATION

I certify that this memorandum contains 4,494 words, in compliance with the Local Civil Rules.

/S/ Jose F. Vergara

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