

1 Jose F. Vergara 251342
2 Law Office of Jose F. Vergara
3 1990 North California Blvd., 8th Floor
4 Walnut Creek, CA 94596
5 Telephone: (925) 457-2090

6 Attorney for Petitioner
7 Carmen Guachiac Chox

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**

11
12 CARMEN GUACHIAC CHOX

13 *Petitioner,*

14
15 v.

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

26 *Respondents,*

Case No. 25-1168

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Note on Motion Calendar:

ORAL ARGUMENT REQUESTED

INTRODUCTION

Petitioner Carmen Guachiac Chox (“Petitioner”) is a Guatemalan 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 June 25, 2022, and she was subsequently released on parole on August 9, 2022. For the next three years and three months, Petitioner complied with what was asked of her: She adhered to all the conditions of her release, including telephonic and check-ins as part of the Intensive Supervision Appearance Program (ISAP) and in person visits at the ICE’s field office. Nevertheless, on November 16, 2025, she was arrested at the front door of her home in the city of Hayward, 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 Carmen Cuachiac Chox ("Petitioner") is an asylum seeker who fled Guatemala due to
5 extreme physical and psychological abuse against her—as well as threats against her life—by her ex-
6 partner in Guatemala. (Dec. of Diego Ixtos Hernandez, ¶ 1.) After Petitioner arrived in the United
7 States on June 25, 2022, federal agents detained her. She was eventually released on parole on August
8 9, 2022. Upon her release, Petitioner was provided with a Notice of Custody Determination, which
9 stated Petitioner was being released pursuant to section 236 of the Immigration and Nationality Act.
10 (Id.) She was also provided with an Interim Notice Authorizing Parole on that same date, informing that
11 DHS was paroling Petitioner from its custody into the United States under 8 U.S.C. § 1182(d)(5) after a
12 determination that she was a low flight risk and was not a danger to the community. (Id.)

13 As a condition of Petitioner's release, she was instructed to make an initial in-person appearance at
14 the ICE Field Office in San Francisco on September 22, 2022. (Id., ¶2.) Petitioner appeared as
15 instructed, and she was instructed to return for a second in-person visit on June 15, 2023. (Id.)
16 Petitioner appeared again at the ICE San Francisco Field Office on June 15, 2023. During that visit, she
17 was served with an Order of Supervision, instructing her to return again for an in-person visit on June
18 17, 2024. (Id.) Petitioner once again appeared at her in-person visit at the same ICE field office on June
19 17, 2024. She was instructed to once again return for an in-person visit on June 17, 2025. However,
20 this time, an ICE officer informed Petitioner she was being enrolled in the Intensive Supervision
21 Appearance Program (ISAP). (Id.) The same ICE officer also provided Petitioner with a cell phone
22 which contained a monitoring app. She was instructed to take selfie-pictures every Thursday. (Id.)

23 Following her in-person visit to ICE on June 17, 2024, Petitioner started taking pictures every
24 Thursday, as instructed by the ICE officer. (Id., ¶3.) Until the date of her arrest by ICE on November
25

26 ¹ Together with the filing of the habeas petition and motion, counsel certifies that they are providing concurrent notice
27 regarding this filing to the U.S. Attorney's Office for the Central District of California via email at
28 USACAE.ECF2241@usdoj.gov.

1 16, 2025, Petitioner only missed taking a selfie-picture on one occasion sometime in 2024 because she
2 had forgotten to charge her cellphone. (Id.) However, on the next day, Petitioner received a phone call
3 from an ICE officer regarding the missed phone call. After explaining the reason for the missed picture,
4 Petitioner proceeded with taking a selfie-picture after being instructed by the ICE officer. (Id.)

5 Petitioner returned to her in-person appointment at the ICE San Francisco Field Office on June 17,
6 2025. She was instructed to return for an in-person visit on December 21, 2025. (Id., ¶4.) No mention
7 was made by the ICE officer in regards to her missing taking a selfie-picture on one occasion on 2024.
8 (Id.) Shortly after the June 17, 2025 visit, Petitioner was notified to appear at a Credible Fear Interview
9 at the San Francisco Asylum office, in San Francisco, California. The interview was scheduled for
10 October 1, 2025. (Id.) Petitioner appeared at her Credible Fear Interview on October 1, 2025. (Id.) At
11 the end of that interview, the asylum officer made a finding that Petitioner had established a credible
12 fear of returning to Guatemala due to the physical and emotional abuse by her ex-partner. (Id.)

13 On October 2, 2025, Petitioner was served with a Notice to Appear, indicating that Petitioner had a
14 Master Calendar Hearing scheduled with the San Francisco Immigration Court on January 6, 2026. (Id.,
15 ¶5.) The Notice to Appear also indicated that the Notice to Appear was being issued after an asylum
16 officer had determined that Petitioner had demonstrated a credible fear of persecution or torture. (Id.)
17 The same notice also indicated that the Section 235(b)(1) order was vacated pursuant to 8 C.F.R.
18 §208.30.² On that same day, DHS initiated removal proceedings against Petitioner in the San Francisco
19 Immigration court. (Id.) Following commencement of her removal proceedings, Petitioner retained the
20 services of an immigration attorney and they started working on preparing an asylum application in
21 anticipation of the January 6, 2026 Master Calendar hearing. (Id.)

22 To the best of her knowledge, Petitioner complied with all ISAP requirements during the time
23 following her June 17, 2024 visit to ICE, which included phone and video check-ins every time
24 Petitioner was instructed via text to do so through the ISAP mobile phone app. (Id., ¶6.) She submitted
25 a photo via the app every time she was instructed to. She only missed sending one selfie picture some
26

27 ² There is no indication that Petitioner was ever served with a notice and order of expedited removal pursuant to Section
28 235(b)(1).

1 time between July and December 2024, due to the fact that her telephone battery had died. (Id.)
2 However, she took the picture the next day after explaining the situation to her ICE officer and being
3 instructed to take the picture. (Id.) She also notified ISAP whenever she changed addresses. Since her
4 entry in the United States, Petitioner had lived in the city of Hayward, in Alameda County, near San
5 Francisco. She also appeared at the ICE field office in San Francisco on every day as indicated in her
6 Form I-220A. (Id.)

7 In addition, since her entry into the United States on June 15, 2022, Petitioner met her current
8 partner, Diego Ixtos Hernandez. (Id., ¶7.) They started dating in January 2023 and they moved in
9 together on November 2023. They have a daughter, Sofia Ashley Ixtos Guachiac, who was born in
10 Berkeley, California, on May 26, 2024. (Id.) Petitioner and Diego Ixtos Hernandez had plans to get
11 married sometime on February or March 2026. She also had a steady job as a cook at a McDonalds fast
12 food restaurant in Hayward, where she had been working since September 2022. (Id.)

13 On November 16, 2025, Petitioner was at her home with her fiancé and their minor United States
14 citizen child having breakfast when she received a phone call from an ICE agent, who proceeded
15 received a text from ICE in her phone, instructing her to step outside her home because he was having
16 connection problems with his phone. (Id., ¶8.) Believing the ICE officer, Petitioner stepped outside her
17 home, just to be detained by ICE officers. She was not provided an explanation for her detention. On
18 the same day, Petitioner was transferred to the California City Detention Center, in California City,
19 California. (Id.)

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

22 ARGUMENT

23 Requirements for a temporary restraining order

24 On a motion for a TRO, the movant “must establish that he is likely to succeed on the merits, that he
25 is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
26 his favor, and that an injunction is in the public interest.” (*Winter v. Nat. Res. Def. Council, Inc.*, 555
27 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir.

2001) (noting that preliminary injunction and TRO standards are “substantially identical”).) A TRO may issue where “serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff’s] favor.” (*All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified).) To succeed under the “serious question” test, Petitioner must also show that he is likely to suffer irreparable injury and that an injunction is in the public’s interest. (*Id.* at 1132.)

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

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

In regards to cases involving an immigrant being re-detained, the U.S. District Court for the Western District of Washington recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976) is the controlling framework for determining what process 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

1 additional or substitute procedural requirement would entail.” (424 U.S. at 335; *see also Jorge M.F. v.*
 2 *Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (applying *Mathews* factors to assess right to pre-
 3 deprivation hearing); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee’s liberty
 4 interests and the state’s interests to assess what process is due a parolee). Here, those factors strongly
 5 favor Petitioner.

6 **A. Petitioner Has a Weighty Private Interest.**

7 Petitioner has an exceptionally strong interest in freedom from physical confinement and in a
 8 hearing prior to any revocation of her liberty. Indeed, her “interest in not being detained is ‘the most
 9 elemental of liberty interests[.]’” (*E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting
 10 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). “Freedom from imprisonment . . . lies at the heart of the
 11 liberty that [the Due Process] Clause protects.” (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).) Thus,
 12 “[d]etention, including that of a non-citizen, violates due process if there are not ‘adequate procedural
 13 protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally protected interest
 14 in avoiding physical restraint.’” (*Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second
 15 alteration in original) (quoting *Zadvydas*, 533 U.S. at 690).) Similarly, the Ninth Circuit has held that
 16 “[i]n the context of immigration detention, it is well-settled that ‘due process requires adequate
 17 procedural protections to ensure that the government’s asserted justification for physical confinement
 18 outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’”
 19 (*Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196,
 20 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g., Foucha v.*
 21 *Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that commitment for any purpose constitutes a significant
 22 deprivation of liberty that requires due process protection.” (citation omitted)).)

23 This principle applies with significant force given Petitioner’s initial release from detention on
 24 parole. “The Supreme Court has repeatedly held that in at least some circumstances, a person who is in
 25 fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that
 26 entitles him to constitutional due process before he is re-incarcerated.” (*Hurd v. District of Columbia*,
 27 864 F.3d 671, 683 (D.C. Cir. 2017).) As the *Hurd* court explains, this includes cases of “pre-parole
 28

1 conditional supervision,” *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); “probation,” (*Id.*)
2 (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and “parole,” (*Id.*) (citing *Morrissey*, 408 U.S. at
3 482).)

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

16 Critically, in recent months and years, courts have repeatedly applied these principles to hold that
17 noncitizens have a strong liberty interest in cases involving re-detention. A person re-detained after a
18 prior release from ICE custody is “undoubtedly deprive[d] . . . of an established interest in his liberty.”
19 (*E.A. T.-B.*, 2025 WL 2402130, at *3.) Other courts have reached the same conclusion. (*See, e.g.,*
20 *Garcia*, 2025 WL 2420068, at *10) (“[P]arole allowed [the petitioner] to build a life outside detention,
21 albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody
22 which would allow him to continue in these life activities, including supporting his family.”); (*Pinchi*,
23 2025 WL 2084921, at *4) (“[Petitioner] has a substantial private interest in remaining out of custody.
24 She has an interest in remaining in her home, continuing her employment, providing for her family,
25 obtaining necessary medical care, maintaining her relationships in the community, and continuing to
26 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 the city of Hayward, in Alameda County, California for over three years, living with her partner/fiancé and their United States born child. She also had a steady job as a cook at a [REDACTED] fast food restaurant in Hayward, where she had been working since September 2022. She also had been complying with all her ISAP check-in requirements. (Diego Ixtos Hernandez Decl. ¶¶ 1–8.). 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 after she had undergone a credible fear interview. She has substantial connections to this country, and her fiancé and infant child 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 fiancé and child.

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, Petitioner did not (and has not) even received a formal notice of the basis for her re-detention, much less

1 any opportunity to respond to any allegations purporting to justify her re-detention or a hearing before a
2 neutral decisionmaker.

3 The importance of a hearing before a neutral decisionmaker principle remains even though
4 Petitioner might have initially been subject to mandatory detention under 8 U.S.C. § 1225(b)(1) or (b)(2)
5 when he was processed for expedited removal. (See *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019).)
6 This is because, as this Court explained in *E.A. T.-B.*, “Petitioner does not claim to be entitled to a
7 hearing consistent with a particular statute: he argues that the Due Process Clause requires it.” (2025
8 WL 2402130, at *4.) And due process requires such a hearing because “Petitioner’s circumstances have
9 changed materially” since her release on August 9, 2022. (*Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762,
10 777 (N.D. Cal. 2019).) As noted above, she has formed deep connections to this country, residing in
11 California, and working to support herself and her family. “These facts show that a[] [pre-deprivation]
12 hearing provide[s] additional safeguards under these circumstances.” (*Id.*; see also, e.g., *Jorge M.F.*, 534
13 F. Supp. 3d at 1055) (“In any pre-detention hearing, the IJ would be required to consider any additional
14 evidence from the eight-plus months since Petitioner was released.”); (*Garcia*, 2025 WL 2420068, at
15 *10 (“[P]arole allowed [Petitioner] to build a life outside detention.”)).

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

17 Finally, “the government’s interest in detaining [Petitioner] or re-detaining [her] without a hearing
18 is slight.” (*Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970) (“If the government
19 wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in
20 doing so without a hearing is low.”). “[A]lthough [a pre-deprivation hearing] would have required the
21 expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP]
22 violations before arresting and re-detaining her, those costs are far outweighed by the risk of erroneous
23 deprivation of the liberty interest at issue.” (*E.A. T.-B.*, 2025 WL 2402130, at *5.) Notably, since her
24 release, Petitioner “has continued to demonstrate that [she] poses neither a flight risk nor a danger to the
25 community,” holding an honest job and helping both herself and her family, and developing friendships,
26 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 ICE. Any
11 claimed "enforcement" amounts to punishing and deterring people like Petitioner from asserting the
12 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 family. Absent a TRO, Petitioner has no hope of being reunited with her family 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 Alameda 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
3 2084921, 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: 11/25/2025

/S/ Jose F. Vergara

11 Jose F. Vergara
12 CA Bar No. 251342
13 vergarajf@hotmail.com

14 COUNSEL FOR PETITIONER
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WORD COUNT CERTIFICATION

I certify that this memorandum contains 4,868 words, in compliance with the Local Civil Rules.

/S/ Jose F. Vergara

Jose F. Vergara

CA Bar No. 251342

vergarajf@hotmail.com

COUNSEL FOR PETITIONER