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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DIANA CAROLINA RIVERA MENDOZA,

Petitioner,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, Attorney General of the United States; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; FERETI SEMAIA; Warden, Adelanto ICE Processing Center; ERNESTO SANTACRUZ, Acting Field Office Director of the Los Angeles Immigration and Customs Enforcement Office in their official capacities,

Respondents.

Case No. 5:25-CV-0322

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

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INTRODUCTION

In violation of due process, Diana Carolina Rivera Mendoza ("Petitioner") is being detained by Respondents at the Adelanto ICE Processing Center ("Adelanto"). She respectfully asks this Court to issue a Temporary Restraining Order ("TRO") requiring her immediate release and barring her removal from the jurisdiction of this Court and re-detention unless and until Respondents prove by clear and convincing evidence at a bond hearing that she is either a danger or flight risk.[1]

Petitioner is the mother of two children who is lawfully seeking asylum in the United States because [redacted] beliefs if forced to return to Nicaragua. Ex. B; LeRoy decl. at ¶¶ 6,7. Petitioner arrived in the United States on Dec. 14, 2022, after crossing the Texas border. On the same day, United States Border Patrol took Petitioner into custody "for unlawfully entering the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States," presumably under 8 U.S.C. § 1226(a)(2)(B). Ex. A; LeRoy decl. at ¶ 4. On December 15, 2022, Petitioner was released from custody.

Petitioner has been residing in California for nearly three years. She received class C08 work authorization and a corresponding social security card issued by the Department of Homeland Security ("DHS"), applied for asylum in the United States and was employed and living and working in Lancaster, California when she attended an ICE check in on August 25, 2025 in Los Angeles, California (Exs. A,

[1] Facts asserted in this Memorandum of Points and Authorities are drawn from the attached declaration of Carrie LeRoy, counsel for Petitioner, and from exhibits to that declaration. Further citation will be made directly to the individual exhibits attached to the declaration, or to the declaration itself, hereinafter "LeRoy decl."

B, C). Petitioner was then arrested, taken into ICE custody, transported to Adelanto and placed into removal proceedings pursuant to which Respondents seek to deport her to Honduras, in which Petitioner has no family members, community ties or connections whatsoever. Exs. A, E; LeRoy decl. at ¶ 7.

The basis for Petitioner's re-detention appears to be arbitrary, as the August 25, 2025 Notice to Appear in her case refers to her as an "arriving alien," (Ex. J), notwithstanding the fact that she has been residing in the interior of the United States and working pursuant to a DHS-issued work authorization (Ex. C) after being released by Respondents in December 2022.

Petitioner's compliance with U.S. law and efforts to build a peaceful and productive life for herself in the United States for over two years did not matter to Respondents. Rather than seeking to determine whether Petitioner posed a flight risk or danger to the community, federal immigration agents arrested her pursuant to Respondents' sweeping, and unlawful policy targeting people for arrest at immigration courthouses and ICE check-in appointments for the purpose of fast-tracking deportations. Respondents' current quota-driven policy amounts to: arrest and detain now, ask questions later and deport as soon as possible to deny legitimate asylum seekers their right to due process.

Petitioner's summary arrest and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without a bond hearing and without making any affirmative showing of changed circumstances, Respondents violated Petitioner's procedural due process rights. At the very least, prior to her re-detention, she was constitutionally entitled to a hearing before a neutral decisionmaker at which the government should have justified her re-detention—or been ordered to release her.

As a result of her arrest and detention, Petitioner is suffering irreparable and ongoing harm. Petitioner is suffering severe mental anguish and physical pain at Adelanto. Ex. I; LeRoy decl. at ¶ 10. Petitioner's inability to provide emotional and financial support to her children is devastating to her and she suffers from severe back pain that has not been effectively treated at Adelanto. Ex. I; LeRoy decl. at ¶ 10.

Moreover, the unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

In light of this irreparable harm, and because she is likely to succeed on the merits of her due process claims, Petitioner respectfully requests that this Court issue a TRO immediately releasing from her from custody and enjoining the government from re-arresting her absent the opportunity to contest that arrest at a hearing before a neutral decision maker. Confronted with substantially similar facts and legal issues, courts in this circuit have repeatedly granted the exact relief Petitioner seeks on substantially similar facts relating to arbitrary re-detention. *See, e.g.*, *Padilla v. Bowen*, No. 2:25-CV-10780 CAS (SK), 2025 WL 3251368, at *6 (C.D. Cal. Nov. 21, 2025); *Mosqueda v. Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *Salazar v. Kaiser*, 2025 WL 2456232, at *2 (E.D. Cal. Aug. 26, 2025) (converting request for TRO to request for preliminary injunction and granting relief); *Jimenez Garcia v. Kaiser*, 2025 WL 2453970, at *3 (N.D. Cal. Aug. 17, 2025) (granting TRO); *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, at *10 (E.D. Cal. July 11, 2025) (granting preliminary

injunction); *Vazquez v. Feeley,* No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11 (D. Nev. Sept. 17, 2025);*Garcia v. Santacruz,* No. 2:25-cv-10581-MWC-PD, 2025 LX 535592 (C.D. Cal. Nov. 10, 2025); *Tut v. Noem,* No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266 (C D. Cal. Oct. 16, 2025); *Pop v. Noem,* No. 5:25-cv-02589-SSS-SSC, 2025 LX 425456 (C.D. Cal. Oct. 3, 2025); *Valencia Zapata v. Kaiser, No.* 25-CV-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Espinoza v. Kaiser,* No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 *(E.D. Cal. Sept. 18, 2025); Polo v. Chestnut,* No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025).

To maintain this Court's jurisdiction, the Court should also prohibit Respondents from transferring Petitioner out of this District and removing her from the country and specifically, Honduras, until these proceedings have concluded.

BACKGROUND

Petitioner arrived in the United States on Dec. 14, 2022, after crossing the Texas border. On the same day, United States Border Patrol took Petitioner into custody "for unlawfully entering the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States" presumably under 8 U.S.C. § 1226(a)(2)(B). Ex. A; LeRoy decl. at ¶ 4. On December 15, 2022, Petitioner was released. The notices provided by Respondents do not indicate that she was released on December 15, 2022 in accordance with the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) "for urgent humanitarian reasons or significant public benefit." Ex. A; LeRoy decl. at ¶ 5. Rather, Respondents specified that Petitioner's release in 2022 was due to detention center "capacity" limitations. Ex. A; LeRoy decl. at ¶ 5.

Petitioner was arrested and re-detained on August 25, 2025 when she attended a routine check in with ICE in Los Angeles, California. Ex. A; LeRoy decl. at ¶ 3. On August 29, 2025, Petitioner was served with a Notice to Appear dated August 25, 2025 charging Petitioner under Section 1182(a)(7)(A)(i)(I) as an immigrant who is

"not in possession of a valid unexpired immigrant visa ... or other valid entry document" and she was identified as "an arriving alien," as if she had not been living and working in the interior of the United States for more than two years. Exs. A, J; LeRoy decl. at ¶ 4. Respondents did not provide any notice to Petitioner specifying any changed circumstances or other reason for Respondents' decision to re-detain her on August 25, 2025. Ex. A; LeRoy decl. at ¶ 4.

Petitioner presents no flight risk and has no criminal history to justify her arrest or re-detention. Ex. A; LeRoy decl. at ¶ 8. Indeed, Respondents specifically indicated on DHS Form I-213 that Petitioner "does not have any criminal history." Ex. A; LeRoy decl. at ¶ 8. Petitioner obtained class C08 work authorization and a corresponding social security card issued by DHS on September 10, 2024, applied for asylum in the United States and was employed, residing and working in Lancaster, California when she attended an ICE check in on August 25, 2025 in Los Angeles, California. Exs. A, B, C. Respondents now arbitrarily seek to deport Petitioner to a third country, Honduras, in which Petitioner has no family members, community ties or connections whatsoever. Ex. E; LeRoy decl. at ¶ 7. The merits of her asylum claim have not been heard. LeRoy decl. at ¶ 7.

Meanwhile, conditions have deteriorated in Nicaragua for opponents of the authoritarian regime.[2] Petitioner has a credible fear that she will be imprisoned, tortured or executed because of her political beliefs if forced to return to Nicaragua. Ex. B; LeRoy decl. at ¶¶ 6,7.

Petitioner's arrest had nothing to do with her individual case, as she is not a flight risk, has no criminal record and is not a threat to others. Ex. A; LeRoy decl. at ¶ 8. Instead, her arrest and re-detention are part of a new, nationwide DHS strategy of sweeping up migrants who attend their immigration court hearings and ICE check-

[2] *See*: *Dep't of State 2024 Country Report on Human Rights Practices: Nicaragua*: https://www.state.gov/reports/2024-country-reports-on-human-rights-practices/nicaragua

ins, detaining them, and seeking to re-route them to fast-track deportations.[3] Since mid-May of 2025, DHS has implemented a coordinated practice of immigration detention to strip people like Petitioner of their due process rights and pressure them into deportation, which could amount to a death sentence in Nicaragua for Petitioner. This "coordinated operation" is "aimed at dramatically accelerating deportations" to meet deportation quotas.[4] Although DHS regulations do not permit re-detention absent a showing that the "[c]ircumstances of the case have changed," 8 C.F.R. § 239.2(a)(7)(c), DHS is arbitrarily re-detaining asylum seekers in violation of their due process rights. Courts nationwide have almost uniformly ruled against Respondents on the question of whether the due process rights of detainees have been violated by their re-arrest and detention after release absent changed circumstances.[5]

The only "justification" for her re-detention on August 25, 2025 appears to be the preposterous fiction created by Respondents by checking the box "arriving alien" in the applicable August 25, 2025 charging document (Ex. J) that an asylum seeker residing in the interior of the United States for nearly three years after being released because DHS determined nearly three years ago that she was neither a flight risk or threat to others can suddenly and without changed circumstances be made subject to mandatory detention as an "ariving alien."

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[3] 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.

[4] 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); *see also* Josh Gerstein and Kyle Cheney, *Judges press Trump administration on deportation quotas,* Politico.com, July 28, 2025, https://www.politico.com/news/2025/07/28/judges-trump-administration-deportation-quotas-00480899 (*quoting* Deputy Chief of Staff Stephen Miller: "[u]nder President Trump's leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day").

[5] Kyle Cheney, *More Than 220 Judges Have Now Rejected the Trump Admin's Mass Detention Policy,* Politico, *November 28, 2025,* https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861

Prior to obtaining counsel for federal court matters, on November 20, 2025, Petitioner requested a bond hearing in her immigration case that has not resulted in her release. LeRoy decl. at ¶ 9. Petitioner's counsel in the instant case attempted to discuss and resolve this matter out of court, but Respondents did not respond to her requests to seek such a resolution. Ex. H; LeRoy decl. ¶¶ 11, 12.

ARGUMENT

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

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. Petitioner's detention violates substantive due process because she is neither a flight risk nor a danger 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 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) ("Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.").

Petitioner, who has no criminal record and is diligently pursuing her asylum case in accordance with U.S. law, is neither a danger nor a flight risk. Therefore, her detention is both punitive and not justified by a legitimate purpose, violating her substantive due process rights. Indeed, when Respondents chose to release Petitioner from custody in 2022, that decision represented their finding that she was neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). By regulation, a noncitizen may only be released "provided the [noncitizen] present[s] neither a security risk nor risk of absconding." *Fernández López v. Wofford*, 2025 WL 2959319, *2 (E.D. Cal. 2025).

The Due Process Clause of the Constitution makes it unlawful for Respondents to arrest Petitioner, years after they released her, without first providing a pre-deprivation hearing in which an immigration judge determines whether circumstances have so materially changed since her release in 2022 that a re-detention may be necessary. By statute and regulation, ICE may revoke a noncitizen's immigration bond and re-arrest the noncitizen. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). However, DHS "requires a showing of changed circumstances" where "the previous release decision was made by a DHS officer." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("[w]here the release decision was made by a DHS officer, not an immigration judge, the Government's practice has been to require a showing of changed circumstances before re-arrest."). Moreover, the Ninth Circuit has held that ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021).

This rule applies with even more force in a case like Petitioner's, where the government released Petitioner in 2022 without the need for any bond at all and in September of 2024, authorized her to work in this country. Ex. C. In making this

release decision and releasing Petitioner from ICE custody, the necessary inference is that ICE in Texas determined that Petitioner was neither a flight risk nor a danger to the community. As a result, re-detention is not permitted without demonstrating to a neutral arbiter prior to such re-detention that there has been a material change in circumstances.

Nothing has transpired in Petitioner's case to disturb the initial finding in 2022 that she does not pose a flight risk or danger to others. Respondents did not provide any notice to Petitioner specifying any changed circumstances or other reason for Respondents' decision to re-detain her on August 25, 2025. Exs. A, D; LeRoy decl. at ¶ 4. What has changed is the well-documented Trump administration push to strip refugees and other immigrants of their due process rights, including arbitrary deportation to third countries.

First, Petitioner has no criminal history and has had no intervening criminal history or arrests since her release, there is no credible argument that Petitioner is a danger to the community. She is a law-abiding restaurant worker and mother of two children who has significant ties to and support from her community in Lancaster, California including her church community. Exs. A, F, G; LeRoy decl. at ¶ 8.

Second, as to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. There is no basis to argue that Petitioner, who was arrested by Respondents when she appeared for a routine check-in with ICE at the Los Angeles Field Office on August 25, 2025, is a flight risk. Petitioner has a viable path toward immigration relief and a pathway to lawful permanent residence, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is no legitimate concern of flight risk where plaintiffs have bona fide asylum

claims and desire to remain in the United States). At the time of her arrest, Petitioner had filed her application for asylum and her work permit and corresponding social security number were issued in 2024 and she was employed at the time of her detention. Petitioner has a very strong bona fide claim for political asylum. Ex. B.

In sum, Petitioner's actions since Respondents first released her in 2022 confirm that she is neither a danger nor flight risk. Indeed, her ongoing immigration law compliance and community ties compel the conclusion that she is even *less* of a danger or flight risk than when she was originally released in 2022. Accordingly, Petitioner's ongoing detention is unconstitutional, and substantive due process principles require her immediate release.

B. Respondents violated procedural due process by depriving Petitioner of the opportunity to contest her arrest and detention before a neutral decisionmaker.

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

Accordingly, the Supreme Court has repeatedly held that individuals released from custody on bond, parole, or other forms of conditional release have a protected interest in their ongoing liberty, because "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole

conditions." *Morrissey*, 408 U.S. at 482. "By whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due Process Clause]." *Id.* This liberty interest also applies to noncitizens, including those who have been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Regardless of which statute initially authorized her parole in 2022, Petitioner has a protected liberty interest in remaining out of custody absent a showing that she currently poses a risk of flight or danger. *See, e.g., Fernández López v. Wofford,* 2025 WL 2959319 at *4-5 (E.D. Cal. 2025) (finding that petitioner released from immigration detention on parole had protected liberty interest in remaining out of custody regardless of whether she was paroled under § 1182(d)(5)(A) or § 1226(a)).

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

The private interest affected in this case is profound. When considering this factor, courts look to "the degree of potential deprivation." *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of deprivation here is high. Petitioner, who is the mother of two children, has no criminal record and has work and community ties in the United States, has been completely deprived of her physical liberty and locked in a detention center operated by a private, for-profit prison company, Geo Group, that has repeatedly been cited by government watchdogs for failing to meet safety

requirements and other standards.[6]

Petitioner's arbitrary detention stripped from her the "free[dom] to be with family and friends and to form the . . . enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Cutting someone off from the "core values of unqualified liberty"—for Petitioner, unable to work to support herself, being separated from family members and other loved ones, unable to interact with her community, including her church, effectuates a "grievous loss." *Id.* Moreover, because Petitioner faces *civil detention*, her "liberty interest is arguably greater than the interest of the parolees in *Morrissey*." *See Ortega*, 415 F. Supp. 3d at 970. As someone in civil detention, therefore, "it stands to reason that [Petitioner] is entitled to protections at least as great as those afforded to a[n] . . . individual . . . accused but not convicted of a crime." *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

Petitioner believed she was attending a brief check-in with ICE in August 2025. Instead, she was arbitrarily arrested, with no opportunity to contest her re-detention before a neutral decisionmaker.[7] Based on the notices that she received from DHS (Ex. D) and class C08 work authorization (Ex. C), Petitioner reasonably assumed that her compliance with law and DHS requirements would preclude her re-detention. In such circumstances, when Respondents have provided *no* procedural safeguards, the probable value of additional procedural safeguards, such

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[6] *See, e.g.*, In re Geo Group, Inc., Cal. Occupational Safety and Health Appeals Bd., Inspection No. 1609228, *Decision After Reconsideration*, Jan. 10, 2025, https://www.dir.ca.gov/oshab/Decisions/DAR/1609228-Geo-Group.pdf (upholding levy of fines on GEO Group for imposing unsafe working conditions on detained laborers at Golden State Annex); U.S. Dep't of Homeland Sec. Off. of Inspector Gen., OIG 24-23, *Final Report: Results of an Unannounced Inspection of ICE's Golden State Annex in McFarland, California* (Apr. 18, 2024).

[7] In addition to the lack of procedural safeguards, the ability of lawyers to assist Adelanto detainees is limited, given its policy of restricting communications between detainees and others. *See https://www.ice.gov/detain/detention-facilities/adelanto-ice-processing-center.*

as a bond hearing, is high. *See Fernández López*, 2025 WL 2959319 at *6 ("Given the absence of any procedural safeguards to determine if her re-detention was justified, the probable value of additional procedural safeguards, i.e., a bond hearing, is high."). This is especially true here, where there is no change in Petitioner's circumstances suggesting that Petitioner now poses a flight risk or danger to the community.

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

The government's interest in detaining Petitioner without first providing notice and submitting to a pre-deprivation custody hearing is minimal. Immigration courts routinely conduct custody hearings, which impose a "minimal" cost to the government. *See Doe*, 2025 WL 691664, at *6; *A.E. v. Andrews*, No. 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Courts regularly hold that the government's interest in re-detention prior to a custody hearing is low when an individual, as in the case of Petitioner, "has long complied with his reporting requirements." *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-4 (N.D. Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3-4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition ordering the same); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-5 (S.D.N.Y. June 18,

2025) (granting habeas petition and immediately releasing petitioner who had been detained without process, who had "voluntarily attended his scheduled immigration court proceedings.").

In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens without a pre-deprivation hearing in which the government bears the burden of proof violates due process and grant the emergency relief Petitioner seeks here. *See Garro Pinchi v. Noem*, __ F. Supp. 3d __, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker arrested at her immigration court hearing into preliminary injunction prohibiting the government from re-detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D. Cal. July 11, 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8 (granting TRO over one month after petitioner's initial detention); *see also, e.g.*, *Diaz*, 2025 WL 1676854, at *3-*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1443250, at *4 (N.D. Cal. May 6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020); *Padilla v. Bowen*, No. 2:25-CV-10780 CAS (SK), 2025 WL 3251368, at *6 (C.D. Cal. Nov. 21, 2025); *Mosqueda v. Noem,* No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *Garcia v. Santacruz,* No. 2:25-cv-10581-MWC-PD, 2025 LX 535592 (C.D. Cal. Nov. 10, 2025); *Tut v. Noem,* No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266 (C D. Cal. Oct. 16, 2025); *Pop v. Noem,* No. 5:25-cv-02589-SSS-SSC, 2025 LX 425456 (C.D. Cal. Oct. 3, 2025); *Valencia Zapata v. Kaiser, No.* 25-CV-07492-RFL, 2025 WL 2741654 (N.D. Cal. Sept. 26, 2025); *Espinoza v. Kaiser,* No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785 (E.D. Cal. Sept. 18, 2025); *Polo v. Chestnut,* No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025).

In short, Respondents violated Petitioner's due process rights when they detained her without notice and a pre-deprivation custody hearing before a neutral

arbiter. Here, only an order releasing Petitioner from detention and enjoining re-detention absent a pre-deprivation custody hearing would return the parties to the "last uncontested status which preceded the pending controversy." *Doe v. Noem*, __ F. Supp. 3d __, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez*, 2025 WL 1707737, at *4-*5 (ordering petitioner's immediate release as remedy for procedural due process violation).

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

II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE INJURY ABSENT A TRO.

Without a temporary restraining order, Petitioner will suffer immense irreparable injury. Indeed, she faces such injury every day she remains in detention in violation of her 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.").

Although Petitioner previously requested a bond hearing through her immigration court counsel, she has not been released. LeRoy decl. ¶ 9. In any event, such request is futile, as immigration court judges are consistently taking the erroneous position that *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025) deprive them of jurisdiction to conduct bond hearings for detainees such as Petitioner. As such, only an order of this Court could effectively grant Petitioner relief. *See Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025). There is no requirement to exhaust remedies in immigration court because no other forum exists in which Petitioner can raise the constitutional claims herein.

As a result of her arrest and detention, Petitioner is also suffering additional ongoing irreparable harm. She has lost the ability to provide emotional and financial support to her children and is suffering from severe back pain that has not been effectively treated in detention. Without a restraining order to prevent Respondents' ongoing violation of Petitioner's due process rights, she reasonably fears that Respondents will simply keep her detained indefinitely and then deport her to Nicaragua or Honduras in further violation of her due process rights and U.S. asylum law.

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER'S FAVOR.

When the government is the party opposing the request for emergency relief, the balance of the equities and the public interest merge. *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance of equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing constitutional violations and continued additional suffering if the TRO is not granted. *See*

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 Petitioner's favor. As another California district court recently concluded, "[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz*, 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, 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

SECURITY

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

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court (1) grant a TRO to restore the *status quo ante* that immediately releases her from

Respondents' custody and enjoins Respondents from re-detaining her absent further order of this Court; in the alternative, immediately releases her from Respondents' custody and enjoins Respondents from re-detaining her unless they demonstrate at a bond hearing within seven (7) days of this Court's order, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that her physical custody is required and prohibits the government from transferring Petitioner out of this District and/or removing her from the country until these proceedings have concluded; and (2) issue an order to show cause as to why a preliminary injunction should not issue.

Date: December 1, 2025

Respectfully submitted,

/s/ Carrie LeRoy
Carrie LeRoy
Pro Bono Attorney for Petitioner