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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Carlos Alberto Rincon Nino,

Petitioner,

v.

Warden of the Golden State Annex Detention
Facility; Current or Acting Field Office
Director, San Francisco Immigration
and Customs Enforcement Office; Current or
Acting Director of U.S. Immigration and
Customs Enforcement;
Current or Acting Secretary of the United
States Department of Homeland Security;
Current or Acting Attorney General of the
United States,

Respondents.

Case No. 1:25-cv-01714-JDP (HC)

**PETITIONER'S NOTICE OF
MOTION AND *EX PARTE* MOTION
FOR TEMPORARY RESTRAINING
ORDER**

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Eastern District of California, that Petitioner, Carlos Alberto Rincon Nino, will and hereby does move for a temporary restraining order (TRO) pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local Rule 231. Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this Court grant a TRO that (1) immediately releases him from Respondents' custody and enjoins Respondents from re-detaining him absent further order of this Court; (2) in the alternative, immediately releases him from Respondents' custody and enjoins Respondents from re-detaining him unless they demonstrate at a pre-deprivation bond hearing, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that his physical custody is required; (3) in the alternative, orders Respondents to release him from custody if he is not provided a custody redetermination hearing pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO; and (4) prohibits the government from transferring him out of this District and/or removing him from the country until these habeas proceedings have concluded.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the supporting Declaration of Bonita S. Gutierrez, and the Proposed Order; the papers, evidence, and records on file in this action; and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court. This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1) and any exhibits attached thereto.

Consistent with Civil L.R. 231, Petitioner seeks relief at the earliest possible opportunity. Petitioner files this motion as soon as practicable after having been appointed an attorney through the Criminal Justice Act panel and less than thirty days after filing his *pro se* petition.

1 Pursuant to Civil L.R. 65-1(a)(5), and as detailed further in the supporting Declaration of
2 Bonita S. Gutierrez, Counsel for Petitioner provided Counsel for Respondents with notice of this
3 Motion and advised Respondents of the emergency reasons requiring Petitioner to seek an *ex*
4 *parte* application for a TRO. Counsel for Petitioner emailed a copy of the filed petition to Counsel
5 for Respondents. Counsel for Petitioner advised Counsel for Respondents that a Motion for TRO
6 would be filed today. Counsel for Petitioner will email Counsel for Respondents a copy of the
7 Memorandum of Points and Authorities immediately after filing it. As of this filing, Respondents
8 have not stipulated to a TRO.
9

10
11 Date: December 29, 2025

Respectfully Submitted,

12
13 /s/ Bonita S. Gutierrez

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Case No. 1:25-cv-01714-JDP (HC)

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

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INTRODUCTION

Carlos Alberto Rincon Nino is a 41-year-old father from Colombia who came to the United States on or about Mar. 18, 2022. His notice to appear in immigration court indicates that Mr. Rincon Nino entered the United States without inspection. Declaration of Bonita S. Gutierrez ISO TRO (“Gutierrez Decl.”) ¶¶ 6,8.

He came to the United States fleeing persecution after suffering at least one attack and several death threats. After he came to the United States, he was processed by immigration authorities and released without having to pay a bond. *See id.* ¶ 9. Since then, he resided in San Jose, California for the past three years. In 2023, he filed an I-589 asylum application and then received a work permit. *Id.* at ¶ 10. Upon information and belief, Mr. Rincon Nino has no criminal history in the United States. *Id.* ¶ 18.

On Jun. 27, 2025, ICE arrested Petitioner at ICE offices in San Francisco. He was placed into custody and transferred to the Golden State Annex Detention Center, where he remains today. *Id.* ¶ 14. To the best of Mr. Rincon Nino’s memory and understanding, he substantially complied with his ICE reporting requirements after his release. He was required to report once annually to ICE in San Francisco, and he believes he did not miss an appointment with ICE. *Id.* ¶ 13.

Based on Mr. Rincon Nino’s manner of entry to the United States and prior release by immigration authorities to live in the community, he is likely a member of the Bond Eligible Class in *Maldonado Bautista*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Dkt Entries 81 and 82 (granting class certification and granting partial summary judgment to the petitioners). However, as undersigned counsel recounts in her declaration, it is unlikely that an immigration judge would find jurisdiction to decide any request for release on bond. *Id.* ¶ 23. To date, it appears that the Department of Justice has instructed immigration judges that they continue to be bound by the Board of Immigration Appeals decision called *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which finds that noncitizens who entered without inspection are not eligible for consideration of release on bond.

Petitioner moves the Court for a temporary restraining order granting (i) his immediate release from Respondent’s custody, or (ii) his immediate release from custody if he is not provided a custody redetermination hearing pursuant to 8 U.S.C. § 1226(a) within seven days of the temporary restraining order. Petitioner further alleges that he is a member of the Bond

1 Eligible Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM
2 (C.D. Cal.) and thus has a right to a custody redetermination hearing.

3 As the Court is likely aware,¹ in July 2025, DHS and the DOJ decided to change their
4 long-standing policy of offering bond hearings as a matter of course to noncitizens who are
5 charged as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) and instead began to consider
6 them subject to mandatory detention under 8 U.S.C. § 1225. This novel new interpretation of
7 the immigration detention statute was then endorsed by a Board of Immigration Appeals
8 decision called *Matter Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). Gutierrez Decl. ¶
20.

9 As a result of this change in policy, Petitioner, who was charged as inadmissible
10 under 8 U.S.C. § 1182(a)(6)(A)(i) is no longer be able to request release from DHS custody
11 at a bond hearing before an immigration judge. *See id.* ¶¶ 20-23.

12 Upon information and belief, Mr. Rincon Nino has no criminal history in the United
13 States and has been in substantial compliance with ICE reporting requirements. *See id.* ¶¶ 18.
14 19. Lack of evidence did not matter to the government. Rather than determining that Mr.
15 Rincon Nino posed a flight risk or danger to the community, ICE continues to detain him based
16 on a new, sweeping, and unlawful policy targeting people for mandatory detention in an attempt
17 to cut them off from their ability to earn a living, pay for immigration counsel in their removal
18 proceedings, remove them to areas where their attorneys cannot visit them and have difficulty
19 speaking with them and pressure them to accept removal orders rather than pursue their rights.
20 *See id.* ¶¶ 24-26. Conditions in immigration custody rival criminal custody conditions and serve
21 to heighten the pressure on noncitizens to give up their rights to seek lawful status in the United
22 States in favor of leaving subpar conditions quickly. This enforcement campaign is specifically
23 intended to increase ICE arrest numbers to satisfy internal agency quotas.²

24 Petitioner's continued and indefinite detention flout the Constitution. The *only* legitimate
25 interests that civil immigration detention serves are mitigating flight risk and preventing danger
26 to the community. When those interests are absent, the Fifth Amendment's Due Process Clause
27 squarely prohibits detention. Additionally, by continuing to detain Petitioner without making
28 any affirmative showing of changed circumstances, the government violates his procedural due

¹ *More than 200 judges have now rejected the Trump admin's mass detention policy*, POLITICO, Nov. 28, 2025, <https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861>

² New data: ICE arrests surge as agency chases Trump quota, AXIOS, Dec. 4, 2025, <https://www.axios.com/2025/12/04/trump-ice-immigration-arrests-deportations>.

1 process rights. At the very least, he is constitutionally entitled to a hearing before a neutral
2 decision-maker at which the government should justify his detention. *See* ECF No. 1, Pet. ¶¶
3 25-26.

4 As a result of his continued detention, Petitioner is suffering irreparable and ongoing
5 harm. The unconstitutional deprivation of “physical liberty” “unquestionably constitutes
6 irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
7 “[f]reedom from imprisonment—from government custody, detention, or other forms of
8 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
9 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). He also faces numerous additional irreparable
10 harms due to his detention, including psychological trauma in particular due to his prolonged
11 detention, history of past persecution, loss of income, and loss of employment. *See* Gutierrez
12 Decl. ¶ 26.

13 In light of this irreparable harm, and because he is likely to succeed on the merits of his
14 due process claims, Petitioner respectfully requests that this Court issue a temporary restraining
15 order (TRO) immediately releasing him from custody and enjoining the government from re-
16 arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision
17 maker. Confronted with substantially similar facts and legal issues, another court in this circuit
18 has recently granted similar relief. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-
19 SSS-BFM, Order Granting Pet’rs’ Ex Parte Appl. For TRO & Order to Show Cause, Dkt. 5
20 (C.D. Cal. Jul. 28, 2025) (enjoining respondents from continuing to detain petitioners unless
21 they are provided a bond hearing in seven days) and Dkt. 81 (granting partial summary
22 judgment to the petitioners). To maintain this Court’s jurisdiction, the Court should also
23 prohibit the government from transferring Mr. Rincon Nino out of this District and removing
24 him from the country until these proceedings have concluded.

25 BACKGROUND

26 Mr. Rincon Nino is 41-year-old citizen of Colombia who has been in immigration
27 detention since Jun. 27, 2025, for approximately six months. Upon information and belief,
28 he has no criminal history. *See* Gutierrez Decl. ¶ 6,18. Since Mar. 18, 2022, Petitioner has
resided peacefully in the United States. Mr. Rincon Nino filed an I-589 asylum application
seeking protection to stay in the United States. *Id.* ¶ 10. He applied for and received a work
permit based on his I-589 application. *Id.* On Jun. 27, 2025, he was arrested in San
Francisco, California, at a previously scheduled check-in with the U.S. Immigration and

1 Customs Enforcement (ICE), ICE transferred him to the Golden State Annex Detention
2 Center where he remains today. *Id.* ¶ 14.

3 Petitioner believes that he substantively complied with all that ICE requested of him.
4 He recalls that he was asked to report to ICE offices in San Francisco approximately once a
5 year after he was released by immigration authorities shortly after he came to the United
6 States. To his knowledge, he did not miss a reporting requirement. *Id.* ¶ 13.

7 Petitioner's prolonged detention has nothing to do with his individual case. Instead, it is
8 part of a new, nationwide DHS strategy of sweeping up thousands of noncitizens who were found
9 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), many of whom were released initially by ICE
10 officials after processing them near the border, detaining them indefinitely under a new
11 interpretation of the immigration statutes, and seeking to pressure them into accepting removal
12 orders to cut short poor conditions in immigration custody.³ Since Mar. 2025, DHS has
13 implemented a coordinated practice of immigration detention to strip noncitizens of their
14 substantive and procedural rights and pressure them into deportation. DHS is aggressively
15 pursuing this arrest and detention campaign at ICE check-in appointments⁴ and courthouses
16 throughout the country, including Northern California.⁵ *Id.* To complement this arrest campaign,
17 DHS and DOJ decided to revisit their interpretation of the detention statutes at 8 U.S.C. §
18 1225(b)(2)(A) to shoehorn any noncitizen like Petitioner who was found neither admitted or
19 paroled into mandatory detention.⁶

20 This "coordinated operation" is "aimed at dramatically accelerating deportations" by

21 ³ "60 violations in 50 days: Inside ICE's giant tent facility at Ft. Bliss," MacMillan, Douglas, et
22 al, Washington Post, Sept. 16, 2025, available at
23 [https://www.washingtonpost.com/business/2025/09/16/ice-detention-center-immigration-](https://www.washingtonpost.com/business/2025/09/16/ice-detention-center-immigration-violations/)
24 [violations/](https://www.washingtonpost.com/business/2025/09/16/ice-detention-center-immigration-violations/)

25 ⁴ ABC News, Lawsuit challenges arrests of people showing up to ICE check-ins in San Diego,
26 Nov. 25, 2025, available at [https://abcnews.go.com/US/wireStory/lawsuit-challenges-arrests-](https://abcnews.go.com/US/wireStory/lawsuit-challenges-arrests-people-showing-ice-check-ins-127880549)
27 [people-showing-ice-check-ins-127880549.](https://abcnews.go.com/US/wireStory/lawsuit-challenges-arrests-people-showing-ice-check-ins-127880549)

28 ⁵ Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron.,
June 12, 2025, [https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-](https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php)
29 [20374755.php](https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php); see also Margaret Kadifia, *Immigrants Fearful as ICE Nabs at Least 15 in S.F.,*
30 *Including Toddler*, Mission Local, June 5, 2025, [https://missionlocal.org/2025/06/ice-arrest-san-](https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/)
31 [francisco-toddler/](https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/); also Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF*
32 *Immigration Court*, S.F. Standard, May 27, 2025, [https://sfstandard.com/2025/05/27/undercover-](https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/)
33 [ice-agents-make-arrests-san-francisco-court/](https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/).

⁶ See Am. Immigration Lawyers Ass'n Doc. No. 25071607: ICE Memo: Interim Guidance
Regarding Detention Authority for Applications for Admission, Jul. 8, 2025,
[https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
for-admission

1 arresting people at the courthouse and placing them into expedited removal,⁷ or where people
 2 cannot be shoehorned into expedited removal, they are now placed into mandatory detention
 3 under a legally flawed new policy to pressure noncitizens into accepting removal, the better,
 4 they're told, to cut short their time in ICE detention where conditions are comparable to criminal
 5 custody.⁸

6 Mr. Rincon Nino has suffered and will suffer serious and ongoing harm every day he
 7 remains in detention. Confinement carries a significant psychological burden which
 8 compounds with each passing day. Moreover, the physical conditions of ICE detention have
 9 often been substandard.⁹ He has been deprived of six months of income, and his loss of
 10 future potential income increases daily. Each day that he is detained, he will be denied access
 11 to his community in the United States, where he has resided peacefully since 2022.

12 Detention will severely prejudice Petitioner's ability to defend himself against removal.
 13 The privation of his liberty greatly complicates his ability to communicate with his attorney,
 14 particularly because at Golden State Annex Detention Center, access to attorney calls and Zoom
 15 appointments can be difficult to schedule and are often not available same day. Gutierrez Decl. ¶
 16 25. Access to counsel is further impeded when ICE regularly transfers noncitizens without
 17 warning, sometimes across state lines, and noncitizens may not get in touch with their attorneys
 18 for days at a time. Petitioner's detention greatly restricts his access to legal help because his loss
 19 of income will take away his ability to pay for immigration counsel in his future immigration
 20 proceedings in which he is eligible to seek relief from removal in the form of asylum, withholding
 21 of removal, and protection under the Convention Against Torture. *Id.* ¶ 10. Additionally,

22 ⁷ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in*
 23 *Trump's Deportation Push*, Wash. Post, May 23, 2025,
 24 <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>;
 25 *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up*
 26 *Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
 27 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html> (updated June 1,
 28 2025).

⁸ *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), <https://www.oig.dhs.gov/sites/default/files/assets/2024-04/OIG-24-23-Apr24.pdf> (finding
 that ICE failed to meet certain minimum detention standards at Golden State Annex).

⁹ *See n.8 supra.*

detention will also make it much harder to go through all the steps needed to prepare a fear-based claim – steps such as having extensive communication with counsel, being evaluated by a psychologist for corroborating trauma, collecting evidence, and preparing testimony. *Id.* ¶ 26.

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 TRO 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 he 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

1 not to be a danger to the community and whose appearance at future immigration proceedings can
2 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
3 absent, immigration detention serves no legitimate government purpose and becomes
4 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*
5 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
6 government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-
7 CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after
8 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”).

9 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
10 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
11 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
12 pursuing and completing deportation proceedings, it could become necessary then to inquire
13 whether the detention is not to facilitate deportation, or to protect against risk of flight or
14 dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019)
15 (“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.”).

16 Mr. Rincon Nino, who upon information and belief, has no criminal record and who is
17 diligently pursuing his immigration case, is neither a danger nor a flight risk. Therefore, his
18 detention is both punitive and not justified by a legitimate purpose, violating his substantive due
19 process rights. Indeed, Respondents chose to release him from custody near the southern border
20 in 2022, indicating that they had determined that he was neither dangerous nor a flight risk. *See*
21 *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for*
22 *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the
government that the noncitizen is not a danger to the community or a flight risk.”). Nothing has
transpired since to disturb that finding.

23 In sum, Mr. Rincon Nino’s actions since Respondents first released him confirm that he is
24 neither a danger nor a flight risk. His established pattern of compliance with ICE reporting
25 requirements and the *pro se* asylum and work permit applications he pursued compel the
26 conclusion that he is even *less* of a danger or flight risk than when he was originally released.
27 Accordingly, his ongoing detention is unconstitutional, and substantive due process principles
28 require his immediate release.

B. The government violates procedural due process by depriving Petitioner of the opportunity to contest his arrest and detention before a neutral decision-maker.

Noncitizens living in the United States like Mr. Rincon Nino 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.” *Zinerman 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 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). Mr. Rincon Nino thus has a protected liberty interest in his freedom from physical custody.

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 Mr. Rincon Nino and prohibiting his re-detention without a custody hearing at which the government bears the burden of proof.

First, 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. Mr. Rincon Nino, who has lived a law-abiding and honorable life,

1 faces prolonged detention, denying him the “free[dom] to be with family and friends and to
 2 form the . . . enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Cutting someone
 3 off from the “core values of unqualified liberty”—including his ability to work, study, and
 4 support his family —creates a “grievous loss.” *Id.* Moreover, because Mr. Rincon Nino faces
 5 *civil detention*, “his liberty interest is arguably greater than the interest of the parolees in
 6 *Morrissey*.” *See Ortega*, 415 F. Supp. 3d at 970. As someone in civil detention, therefore, “it
 7 stands to reason that [Petitioner] is entitled to protections at least as great as those afforded to
 8 a[n] . . . individual . . . accused but not convicted of a crime.” *See Jones v. Blanas*, 393 F.3d
 9 918, 932 (9th Cir. 2004).

10 *Second*, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[the
 11 petitioner] has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No.
 12 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*,
 13 No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v.*
 14 *Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025).

15 **C. The DHS- DOJ interpretation of the detention statute is wrong.**

16 Individuals charged with inadmissibility and deportability in removal proceedings, like
 17 Petitioner, have long been detained by DHS under 8 U.S.C. § 1226 and granted an initial bond
 18 hearing by an immigration judge, unless subject to mandatory detention due to criminal grounds
 19 provided for in the statute. *See* 8 U.S.C. §§ 1229a, 1226(c); 8 C.F.R. §§ 1003.19(a), 1236.1(d).

20 However, on July 8, 2025, DHS issued a new policy instructing all ICE employees to
 21 consider each person alleged inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who
 22 are alleged to be present without admission—to be deemed an “applicant for admission,” and
 23 therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).¹⁰ The new
 24 policy was implemented “in coordination with” the Department of Justice. *See* n.10. On
 25 September 5, 2025, the Board of Immigration Appeals (BIA) issued an opinion adopting this
 26 interpretation of the detention statutes. *Matter Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
 27 2025).

28 The joint DHS-DOJ interpretation of Section 1225(b)(2) defies the INA’s text, the INA’s

¹⁰ *See* Am. Immigration Lawyers Ass’n Doc. No. 25071607: ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, Jul. 8, 2025, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>

1 logic, and the well-established case law and practice interpreting this provision. Indeed, there
2 are five separate grounds on which the DHS-DOJ interpretation of this law fails basic methods
3 of statutory construction and legal analysis, because it: (i) ignores the statutory title; (ii) ignores
4 the statutory text and context; (iii) creates and then ignores “extra” words in the statute; (iv)
5 renders a neighboring statute superfluous; (v) ignores the word “warrant” in the text of the
6 statute.

6 **1. It ignores the statutory title.**

7 First, the DHS-DOJ reading of the statute is wrong because it is incompatible with the
8 title of Section 1225, “Inspection by Immigration Officers; Expedited Removal of Inadmissible
9 Arriving Aliens; Referral for Hearing.” 8 U.S.C. § 1225 (emphasis added). As the Supreme
10 Court has explained, “the title of a statute and the heading of a section are tools available for the
11 resolution of a doubt” about the meaning of a statute. *Almendarez-Torres v. United States*, 523
12 U.S. 224, 234 (1998). Section 1225’s title refers to “arriving” noncitizens who are put in
13 “expedited removal proceedings.” *Id.* These are the people to whom Section 1225(a)(1)’s
14 definition of “applicant for admission” and Section 1225(b)(2)(A)’s mandatory detention
15 provisions apply. The government gravely errs by applying the definition of “applicant for
16 admission” to people who are not “arriving” and not in “expedited removal proceedings.” In this
17 case, Petitioner was not “arriving” or “seeking admission” when he was detained 500 miles
18 north of the border, years after he crossed it. Nor was he put in expedited removal proceedings.
19 Section 1225(b)(2)(A) cannot apply to him.

18 **2. It ignores the statutory text and context.**

19 Second, and relatedly, the DHS-DOJ reading violates the INA because it ignores the
20 subject-matter of Section 1225. Section 1225 describes the procedures for the inspection and
21 expedited removal of people detained at the border who are “seeking admission” to the United
22 States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court noted that the mandatory detention
23 scheme in Section 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry, where the
24 Government must determine whether a[] [noncitizen] seeking to enter the country is
25 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). The text of this section makes
26 clear that it concerns apprehensions and “expedited” procedures carried out at the border—not
27 actions taken far from the border, as in Petitioner’s case. That the DHS-DOJ reading of the
28 statute ignores this context is another sign that it is wrong. “It is a fundamental canon of
statutory construction,” the Supreme Court explained, “that the words of a statute must be read

1 in their context and with a view to their place in the overall statutory scheme.” *Davis v.*
 2 *Michigan Dep’t of Treasury*, 489 U.S. 803, 809 (1989). The context of Section 1225
 3 demonstrates that subsections 1225(a)(1) and 1225(b)(2)(A) apply to those apprehended at or
 4 near the border upon arrival or shortly thereafter. They do not apply to those who are arrested
 5 deep in the interior of the United States months or years or decades later. Quite simply, the
 6 DHS-DOJ reading of the statute is an act of cherry-picking a definitional phrase from one
 7 context and applying it to another context where it does not belong.

3. It creates and then ignores “extra” words in the statute.

8 Third, the DHS-DOJ reading of Section 1225(b)(2)(A) is wrong because it requires
 9 courts to ignore numerous words in the text of that very subsection. As Justice Antonin Scalia
 10 and his co-author, Bryan A. Garner, explain: “If possible, every word and every provision is to
 11 be given effect.” Scalia and Garner, *Reading the Law: The Interpretation of Legal Texts* at 174
 12 (2012). A good interpretation of a statute will not result in “extra” words. Yet that is exactly
 13 what occurs if one tries to apply Section 1225(b)(2)(A) to Petitioner’s case. Here is the full text
 14 of Section 1225(b)(2)(A), the mandatory-detention provision:

15 [I]n the case of an alien who is an applicant for admission, if the [1] examining
 16 immigration officer determines that an alien [2] seeking admission is [3] not
 clearly and beyond a doubt entitled to be admitted, the alien shall be detained for
 a proceeding under section 240.

17 8 U.S.C. § 1225(b)(2)(A) (emphasis and bracketed numbers added).

18 In Petitioner’s case, his immigration court notice to appear charged him as inadmissible
 19 because he was not admitted or paroled into the United States. *See* Gutierrez Decl. ¶ 8. That is,
 20 he was not found to be seeking admission but rather he was found present in the United States
 21 after entering, he was processed by ICE and released, likely because he claimed to have a fear of
 22 returning to his native country. There was never a “determin[ation] that . . .” he was “not
 clearly and beyond a doubt entitled to be admitted.”

23 The reason the DHS-DOJ application of the statute has all of these “extra” words is that
 24 the statute applies only to those who are “arriving” at the border and are candidates for
 25 “expedited removal.” In that context, those “extra” words make sense, as there will be an
 26 “examining immigration officer” and there will be a determination of potential eligibility for
 27 immigration relief. These procedures are uniquely tethered to the border, and they are described
 28 in detail in the subsections of Section 1225. But Section 1225’s procedures have no purchase in
 the entirely different context of someone, in Petitioner’s position, who is detained far from the

1 border and years after he has entered. Only by ignoring all of these “extra” words can DHS-DOJ
2 claim to make its reading of the statute fit Petitioner. That is another strong indication that their
3 reading is wrong.

4 **4. It renders a neighboring statute superfluous.**

5 Fourth, the DHS-DOJ reading of Section 1225(b)(2)(A) violates the INA because it
6 renders a neighboring subsection superfluous. At Section 1226(c), the INA describes
7 noncitizens who would otherwise be eligible for bond under Section 1226(a), but are rendered
8 ineligible for bond because of their criminal histories. *See* 8 U.S.C. § 1226(c). Of particular
9 interest, subsections 1226(c)(1)(E)(i)-(ii) address people who are alleged to be inadmissible
10 under 8 § U.S.C. 1182(a)(6)(A) as aliens present without inspection. According to these
11 subsections, such people are ineligible for bond only if they are also “charged with, . . . arrested
12 for, . . . convicted of . . .” certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). In short, Section
13 1226(c) requires mandatory detention for noncitizens who have entered without inspection and
14 have criminal histories. But if the DHS-DOJ reading were correct, then all people who entered
15 without inspection would be mandatorily detained, regardless of whether they had criminal
16 histories or not. Subsections 1226(c)(1)(E)(i) and (ii) would be superfluous, if the DHS-DOJ
17 position were correct, because Section 1225(b)(2)(A) would govern all cases where someone
18 was alleged to have entered without inspection. But that is highly dubious because these
19 subsections of 1226(c)(1) were recently added by Congress to the INA just this year in the
20 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. ____ (2025) (adding (E)(i) and (E)(ii) to Section
21 1226(c)(1)). Congress would not have added the subsections only to see these additions
22 rendered completely superfluous. That is another sign that the government’s reading of Section
23 1225(b)(2)(A) is wrong.

24 **5. It ignores the word “warrant” in the text of the Section 1226(a).**

25 Fifth, the DHS-DOJ reading violates the INA because it ignores the textual references to
26 “warrant” in Section 1226(a). The text of the INA makes clear that a person arrested by warrant
27 is detained under 1226(a), not 1225(b)(2)(A). For example, the opening sentence of 1226(a)
28 states: “Arrest, detention, and release.—On a warrant issued by the Attorney General, an alien
may be arrested and detained pending a decision on whether the alien is to be removed from the
United States.” 8 U.S.C. § 1226(a) (emphasis). By contrast, the word “warrant” does not appear
anywhere in Section 1225.

As the Supreme Court has explained, “It is our duty to give effect, if possible, to every

1 clause and word of a statute.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see Rodriguez v.*
 2 *Bostock*, 779 F. Supp. 3d 1239, 1259 (W.D. Wash. 2025); *see also* Scalia and Garner, *Reading*
 3 *the Law: The Interpretation of Legal Texts* at 174 (“If possible, every word and every provision
 4 is to be given effect. . . . None should needlessly be given an interpretation that cause it to . . .
 5 have no consequence.”). This is a sure sign that Congress intended those arrested by warrant to
 6 be evaluated under Section 1226(a) and, thus, eligible for bond. Likewise, the Supreme Court
 7 noted that Section 1226(a)—INA 236(a)—“authorizes detention only ‘[o]n a warrant issued’ by
 8 the Attorney General leading to the alien’s arrest.” *Jennings*, 583 U.S. at 302. Other federal
 9 courts to consider this issue have agreed that an immigration arrest by warrant subjects a person
 10 to detention under 1226(a), thus making them bond eligible. *See, e.g., Lopez Benitez v. Francis*,
 11 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) (pointing to warrant of arrest for noncitizen
 12 as evidence that “unequivocally establish[es]” he is “detained pursuant to . . . § 1226(a)
 13 [236(a)]”). But the DHS-DOJ reading of the statute ignores the warrant altogether, choosing to
 14 apply Section 1225(b)(2)(A) even though Section 1225 never mentions arrests by warrant but
 15 rather contemplates only border arrests, where no warrant would be required. This is another
 16 indication that the government badly misreads Sections 1225 and 1226.

17 For the five distinct reasons outlined above, the mandatory detention provision of
 18 Section 1225(b)(2) cannot apply to noncitizens like Petitioner, who was placed in removal
 19 proceedings after being found by an immigration officer to have entered without inspection.
 20 Petitioner should be deemed detained under 1226(a), which allows for bond. Furthermore,
 21 finding Petitioner detained under Section 1226(a), rather than section 1225(b)(2)(A), makes
 22 sense because it accords with years of agency practice and precedent finding noncitizens
 23 charged as present without admission subject to 8 U.S.C. § 1226(a). The meaning of a statute
 24 cannot change from year to year, and yet that is what DHS and DOJ are attempting to do
 25 through a contorted reading of Section 1225(a)(1) and 1225(b)(2)(A).

26 Federal courts have resoundingly rejected this attempt by DHS and DOJ to pivot to this
 27 misreading of the detention statutes. The U.S. District Court in the Western District of
 28 Washington found that such a reading of the INA is likely unlawful and that Section 1226(a),
 not Section 1225(b), applies to noncitizens who are neither apprehended upon arrival to the
 United States nor within the first two years of presence. *Rodriguez*, 779 F. Supp. 3d at
 1245.

In the Central District of California, detainees sought a nationwide class action
 challenging this policy. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-

1 SSS-BFM, Class Action Compl. & Am. Pet. for Habeas Corpus, Dkt. 15 (C.D. Cal. July 28,
2 2025). The district court granted a temporary restraining order for the named class members.
3 *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Order Granting Pet'rs' Ex
4 Parte Appl. for TRO & Order to Show Cause, Dkt. 5 (C.D. Cal. July 28, 2025). The court has
5 since granted class certification and partial summary judgment in favor of the petitioners.
6 Indeed, DHS can point to no published decision by a district or circuit court that supports their
7 position. DHS has impermissibly revisited its legal position on detention and release authorities
8 to withhold protections that Petitioner would have otherwise been afforded under Section
9 1226(a), and the immigration judge will be bound by the BIA's recent decision upholding this
10 position. Petitioner is likely to succeed on the merits of his statutory claim.

11 In such circumstances, when Respondents have provided *no* procedural safeguards, "the
12 probable value of additional procedural safeguards, *i.e.*, a bond hearing, is high." *A.E.*, 2025 WL
13 1424382, at *5. This is especially true here, where there is no change in Petitioner's
14 circumstances suggesting that he now poses a flight risk or danger to the community. His re-
15 detention instead appears to be motivated instead by Respondents' new arrest quotas and
16 practice of leveraging detention to secure a swift departure by immigrants in lieu of them
17 pursuing their immigration cases and rights of appeal. Neither constitutes a lawful justification
18 to re-detain a person who does not pose a flight risk or danger to the community.

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

27 *Third*, the government's interest in detaining Mr. Rincon Nino without first providing
28 notice and submitting to a custody hearing is minimal. As described above, until recently the
immigration courts routinely conducted custody hearings for noncitizens in Petitioner's position,
which impose a "minimal" cost to the government. *See Doe*, 2025 WL 691664, at *6; *A.E.*, 2025
WL 1424382, at *5. Any burden imposed by requiring DHS to release Petitioner from custody
until he is provided a bond hearing before a neutral decisionmaker is minimal and clearly
outweighed by the substantial harm he and his family will suffer as long as he is detained. *See*

1 *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983); *see also Soto Garcia*, 2025 WL 1676855
 2 at *3. If a temporary restraining order is not entered, the government would effectively be granted
 3 permission to ignore the statutory text of the INA and the requirements of Due Process. In this
 4 context, the public interest overwhelmingly favors entering a temporary restraining order and
 5 preliminary injunction. *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3-*4 (N.D.
 6 Cal. June 14, 2025) (granting TRO prohibiting re-detention of noncitizen without a pre-
 7 deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at
 8 *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp. 3d at 970 (granting habeas petition
 ordering the same).

9 In similar cases, courts in this Circuit regularly hold that re-detaining noncitizens
 10 without a pre-deprivation hearing in which the government bears the burden of proof violates
 11 due process, and grant the emergency relief Petitioner seeks here. *See Garro Pinchi v. Noem*, __
 12 F. Supp. 3d __, 2025 WL 2084921, at *7 (converting TRO requiring release of asylum seeker
 13 arrested at her immigration court hearing into preliminary injunction prohibiting the government
 14 from re-detaining her without a hearing); *Singh v. Andrews*, 2025 WL 1918679, *8-10 (E.D.
 15 Cal. July 11, 2025) (granting PI under similar circumstances); *Doe*, 2025 WL 691664, at *8
 16 (granting TRO over one month after petitioner's initial detention); *see also, e.g., Diaz*, 2025 WL
 17 1676854, at *3-*4; *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal.
 18 June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at *4; *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).

19 In short, Respondents violate Mr. Rincon Nino's due process rights by continuing to
 20 detain him without an individualized consideration of whether he legally merits detention and
 21 by purporting to detain him indefinitely under a legally flawed interpretation of the detention
 22 statutes. Here, only an order releasing Petitioner and enjoining re-detention—unless
 23 Respondents provide him with a custody hearing where the government bears the burden of
 24 proof—would return the parties to the “last uncontested status which preceded the pending
 25 controversy.” *Doe v. Noem*, __ F. Supp. 3d __, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17,
 26 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see*
 27 *also Valdez*, 2025 WL 1707737, at *4-*5 (ordering petitioner's immediate release as remedy for
 28 procedural due process violation).

D. Petitioner is a Class Member in the *Maldonado Bautista* Litigation and thus Entitled to a Bond Hearing.

On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santaacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners) (Dkt. Entry 81); *Maldonado Bautista*, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (Dkt. Entry 82) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

The declaratory judgment held that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Id.* at *11.

Mr. Rincon Nino is a member of the Bond Eligible Class because: he (1) lacks lawful status in the United States and was found to have entered without inspection; (2) he was not apprehended *upon* arrival but rather after he arrived; and (3) he is not subject to mandatory detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 (or INA §§ 236(c), 235(b)(1), or 241) at the time his custody was initially re-determined by DHS in 2022, resulting in his release. His notice to appear plainly designates him as "an alien present in the United States who has not been admitted or paroled" and does not designate him as the alternative "an arriving alien." *See* Gutierrez Decl. ¶ 8. This shows that DHS previously found him to have entered without inspection. The notice to appear states at allegation #3 that he entered "at or near an unknown place, on or about unknown date," indicating that that he was not apprehended upon arrival but rather at some time and place after his entry. Further, the charge of removability at INA § 212(a)(6)(A)(i) (8 U.S.C. § 1182(a)(6)(A)(i)) further supports DHS's earlier allegations that Petitioner was not inspected or admitted at his entry.

Finally, on Apr. 28, 2022, DHS previously released Mr. Rincon Nino pursuant to a notice of custody determination that found: "Pursuant to the authority contained in section 236 of the [INA] and Part 235 of Title 8, Code of Federal Regulations, I have determined that pending a final administrative determination in your case, you will be: Released" *See* Gutierrez Decl ¶ 9. Since § 236 contemplates only two forms of detention for noncitizens, discretionary detention at § 236(a), and mandatory detention under § 236(c), Petitioner could only have been released

1 under the discretionary section at 236(a). Thus, he was initially released under § 236(a) and he
2 meets the class definition requirements.

3 Accordingly, as a member of the Bond Eligible Class, Mr. Rincon Nino is entitled to the
4 application of the law as stated in the *Maldonado Bautista* orders granting summary judgment
5 and class certification. *See* 2025 WL 3288403, at *9 (“When considering this determination with
6 the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond
7 Eligible Class as a whole.”). Petitioner is therefore likely to succeed on the merits because his
8 detention without bond violates the district court’s orders.

9 * * * * *

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

15 **II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE** 16 **INJURY ABSENT A TRO.**

17 Without a temporary restraining order, Mr. Rincon Nino will suffer irreparable injury.
18 Indeed, he will face such injury every day that he remains in detention, in violation of his Fifth
19 Amendment rights. “It is well established that the deprivation of constitutional rights
20 ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95 (citing
21 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation of a
22 constitutional right is involved, most courts hold that no further showing of irreparable injury is
23 necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (internal quotation
24 marks omitted). Moreover, the unlawful deprivation of physical liberty is the quintessential
25 irreparable harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably
26 harmed “by virtue of the fact that they [we]re likely to be unconstitutionally detained for an
27 indeterminate period of time”); *see also, e.g., Rosales-Mireles v. United States*, 585 U.S. 129,
28 139 (2018) (recognizing that “[a]ny amount of actual jail time is significant, and has
exceptionally severe consequences for the incarcerated individual” (cleaned up)).

In addition to his constitutional injury, Mr. Rincon Nino will suffer other irreparable

1 harms from continued detention, including loss of income and livelihood; inability to support
 2 his wife and child; inability to participate meaningfully with his counsel to prepare his asylum
 3 claim, and separation from his community in the United States where he has made his home
 4 over the last three years. Gutierrez Decl. ¶¶ 11, 25-26.

5 **III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH** 6 **STRONGLY IN PETITIONER'S FAVOR.**

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

14 The public interest likewise weighs strongly in Petitioner's favor. As another California
 15 district court recently concluded, "[t]he public has a strong interest in upholding procedural
 16 protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the
 17 public of immigration detention are staggering." *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge*
 18 *M. F.*, 2021 WL 783561, at *3). More fundamentally, "[i]t is always in the public interest to
 19 prevent the violation of a party's constitutional rights." *Index Newspapers LLC v. U.S. Marshals*
 20 *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)).

21 **SECURITY**

22 No security is necessary here. Courts "may dispense with the filing of a bond when," as
 23 here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."
 24 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
 25 requirement in cases raising constitutional claims, because "to require a bond would have a
 26 negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other
 27 members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
 28 Cal. 1996). Finally, Mr. Rincon Nino'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*

1 *Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th
2 Cir. 1985).

3 **CONCLUSION**
4

5 For the foregoing reasons, Mr. Rincon Nino respectfully requests the Court grant a TRO
6 to restore the *status quo ante* that (1) immediately releases him from Respondents' custody and
7 enjoins Respondents from re-detaining him absent further order of this Court; (2) in the
8 alternative, immediately releases him from Respondents' custody and enjoins Respondents from
9 re-detaining him unless they demonstrate at a pre-deprivation bond hearing, by clear and
10 convincing evidence, that Mr. Rincon Nino is a flight risk or danger to the community such that
11 his physical custody is required; (3) in the alternative, orders Respondents to release him from
12 custody if he is not provided a custody redetermination hearing pursuant to 8 U.S.C. § 1226(a)
13 within seven days of the TRO; and (4) prohibits the government from transferring him out of this
14 District and/or removing him from the country until these habeas proceedings have concluded.

15 Date: December 29, 2025

Respectfully Submitted,

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