

Mayra Acevedo (SBN 334124)
mayra@theacevedolawfirm.com
1231 8th Street, Suite 850
Modesto, CA 95354
Tel: 209.262.6184

Andrea Fatone (SBN 278103)
fatonelaw@gmail.com
1601 I Street, Suite 340
Modesto, CA 95354
Tel: 209.857.8300

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

Cecilia HERNANDEZ ORTIZ,	)	Case No.: 1:25-cv-01807-DAD-SCR
	)	
Petitioner- Plaintiff,	)	PETITIONER'S NOTICE OF MOTION
vs.	)	AND MOTION FOR PRELIMINARY
	)	INJUNCTION
Polly KAISER, Acting Field Office Director of	)	
the San Francisco Immigration and Customs	)	
Enforcement Office;	)	
Todd LYONS, Acting Director of United States	)	
Immigration and Customs Enforcement;	)	
Kristi NOEM, Secretary of the United States	)	
Department of Homeland Security;	)	
Pamela BOND, Attorney General of the United	)	
States, acting in their official capacities;	)	
Christopher CHESTNUT, California City	)	
Correctional Facility Administrator (<i>de facto</i>	)	
Warden)	)	
	)	
Respondents-Defendant(s).	)	

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that as soon as this matter may be heard, in the Courtroom of the Honorable Dale A. Drozd at Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, California 95814 (Courtroom 4, 15th Floor), Petitioner CECILIA HERNANDEZ ORTIZ, will and hereby does, respectfully move this Court for entry of an order preliminarily enjoining Defendants pursuant to Federal Rule of Civil Procedure 65(a) and Local Rule 231. Petitioner CECILIA HERNANDEZ ORTIZ, hereby moves for entry of a Preliminary Injunction maintaining the injunctive relief previously granted by this Court in its December 18, 2025 Minute Order.

This Motion is made in accordance with the Court's January 12, 2026 Minute Order setting the preliminary injunction briefing schedule, and is based upon this Notice, the incorporated Memorandum of Points and Authorities, all pleadings and papers on file, the Court's prior orders, and such argument as the Court may permit.

DATED: January 16, 2026,

Respectfully submitted,

By: /s/ Andrea Fatone
ANDREA FATONE
Attorney for Petitioner

By: /s/ Mayra Acevedo
MAYRA ACEVEDO
Attorney for Petitioner

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1 Mayra Acevedo (SBN 334124)
 mayra@theacevedolawfirm.com
 2 1231 8th Street, Suite 850
 Modesto, CA 95354
 3 Tel: 209.262.6184
 4 Andrea Fatone (SBN 278103)
 fatonelaw@gmail.com
 5 1601 I Street, Suite 340
 Modesto, CA 95354
 6 Tel: 209.857.8300
 7

8 Attorneys for Petitioner
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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12 FRESNO DIVISION
 13

15 Cecilia HERNANDEZ ORTIZ,) Case No.: 1:25-cv-01807-DAD-SCR
 16)
 17 Petitioner- Plaintiff,) PETITIONER'S MEMORANDUM OF
 18 vs.) POINTS AND AUTHORITIES IN
) SUPPORT OF MOTION FOR
) PRELIMINARY INJUNCTION
 19 Polly KAISER, Acting Field Office Director of)
 the San Francisco Immigration and Customs)
 20 Enforcement Office;)
 21 Todd LYONS, Acting Director of United States)
 Immigration and Customs Enforcement;)
 22 Kristi NOEM, Secretary of the United States)
 Department of Homeland Security;)
 23 Pamela BONDI, Attorney General of the United)
 States, acting in their official capacities;)
 24 Christopher CHESTNUT, California City)
 Correctional Facility Administrator (*de facto*)
 25 Warden))
 26 Respondents-Defendant(s).)
 27
 28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. PROCEDURAL POSTURE AND INCORPORATION

3 On December 11, 2025, petitioner filed the petition for writ of habeas corpus under
 4 28 U.S.C. § 2241, challenging her detention and seeking release, or alternatively a bond
 5 hearing before a neutral adjudicator. (See Dkt. No. 1.) Petitioner simultaneously filed a
 6 motion for temporary restraining order. (See Dkt. No. 3.) On December 18, 2025, Judge Dale
 7 A. Drozd GRANTED Petitioner's Motion for Temporary Restraining Order, ordering:
 8 1. Immediate release of Petitioner under the same conditions governing
 her release prior to November 7, 2025; and
 9 2. That Respondents are ENJOINED AND RESTRAINED from re-
 10 detaining Petitioner for any purpose, absent exigent circumstances,
 11 without providing written notice and a pre-detention hearing before a
 12 neutral adjudicator.
 (See Dkt. No. 12.)
 13 Petitioner was released on December 19, 2025. On January 12, 2026, the district court
 14 set the briefing schedule for the instant motion for a preliminary injunction. The Court
 15 expressly relied on *Diaz v. Wofford*, No. 1:25-cv-01079-JLT-EPG, 2025 WL 2581575 (E.D.
 16 Cal. Sept. 5, 2025), and *Guillermo M. R. v. Kaiser*, 791 F. Supp. Ed 1021 (N.D. Cal. 2025)
 17 and further held that no bond is required under Rule 65(c) of the Federal Rules of Civil
 18 Procedure. Pursuant to Local Rule 231(d) and F.R.C.P. 65(a), Petitioner now seeks
 19 continuation of that relief in the form of a Preliminary Injunction. Petitioner would like to
 20 convert the motion for temporary restraining order to a motion for preliminary injunction
 21 because the standard for issuing a temporary restraining order and preliminary injunction is
 22 the same. See *Stuhlberg Int'l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832, 839 n.7 (9th
 23 Cir. 2001). Respondents have indicated their intention to submit on the responses previously
 24 filed. Petitioner seeks conversion of her motion for a temporary restraining order to a motion
 25 for preliminary injunction.

26 Petitioner expressly incorporates by reference all factual allegations, legal arguments,
 27 constitutional claims, declarations, and exhibits contained in:
 28

- The Petition for Writ of Habeas Corpus and Complaint
- The Motion for Temporary Restraining Order
- The Reply in Support of Habeas and Temporary Restraining Order
- All supporting declarations and exhibits

No arguments are waived.

II. FACTUAL BACKGROUND

Petitioner, Cecilia Hernandez Ortiz, is a native of Mexico. (See Docket Nos. 1 & 3.) Petitioner fled her native country due to the ongoing political persecution her family suffered there as a result of actual and/or imputed political opinions attributed to them as members of

Petitioner first entered the United States in February of 1991, then only 12 years old. Petitioner married into the Saligan family on October 17, 1997. (See Docket Nos. 1 & 3.) Petitioner thereafter voluntarily returned to Mexico in October of 1999 in accordance with a Court Order. *Id.* Petitioner's father-in-law was granted asylum as a result of the same political persecution perpetrated against their family on February 04, 2000. *Id.* his wife and many of his children received asylum as derivatives. Petitioner attempted to re-enter the United States on February 05, 2000, and was issued an Expedited Order of Removal. *Id.* Petitioner thereafter re-entered the United States without inspection in September 2001 and has remained present in the United States since that time. Petitioner has attended Elementary School, Middle School and High School in the United States. Petitioner (46 years old) has lived in the United States for over 32 years. *Id.* Petitioner's spouse (A# [REDACTED]) was granted Withholding of Removal as a result of the same on April 24, 2019. *Id.* Petitioner has no criminal record. *Id.*

In May of 2018, Petitioner was ordered to present herself before the Sacramento ICE Office. Petitioner complied, presenting herself together with Counsel. (See Docket Nos. 1 & 3.) Petitioner was asked to provide evidence of her October 1999 Voluntary Return to Mexico and Petitioner complied. Counsel for Petitioner spoke with the assigned Deportation Officer, D.O. Kirkegaard (L7386) regarding the anticipated filing of an I-246 Stay of Removal, however, after favorable compliance with the issuance of evidence of Petitioner's October 1999 Voluntary Return, ICE granted Petitioner an Order of Supervision dated May 17, 2018, after which Petitioner was required to report in-person until 2020 when the Sacramento ICE office closed to the public as a result of Covid-19. (*Id.* See I-871 Notice of Intent to Reinstate Prior Order; See also ICE FORM I-220B Order of Supervision.)

On June 29, 2018, Petitioner completed biometrics at the Application Support Center, USCIS Sacramento, for Form I-589 Application for Asylum and Withholding of Removal, in Case No. [REDACTED] (See Docket Nos. 1 & 3.) Petitioner complied with the terms of her ICE Order of Supervision from May 17, 2018, until her arrest by San Francisco ICE on November 07, 2025 at the San Francisco ICE Office. On November 07, 2025, Petitioner presented in-person accompanied by Counsel at the San Francisco ICE Office, in compliance with completion of her Reasonable Fear Interview. *Id.* Once checked in, Petitioner was required to complete her Reasonable Fear interview via telephone with an officer located at the Asylum Office in San Francisco (located at a different address), rather than completing the interview at the Asylum Office in person. *Id.*

Petitioner's Witness was not allowed to enter the building nor present himself at the initial Reasonable Fear Determination Interview despite ICE's written instructions stating that Petitioner could bring a witness or provide documents in support of her claim. (See Docket Nos. 1 & 3.) Petitioner was repeatedly cut-off by the Asylum Officer and not allowed to complete her answer to any given question. *Id.* Counsel for Petitioner was not allowed to ask any questions at the conclusion of the Asylum Officer's questioning and Counsel explained the need for follow-up on crucial facts asserted in Petitioner's testimony.

1 *Id.* After Petitioner was told that her interview had concluded, she was thereafter called back
 2 for additional questions and then finally her witness was allowed to enter the building (but
 3 thereafter only allowed to answer one general question regarding his "statement" and was
 4 similarly cut-off before completing his answer and then being excused). *Id.* The entirety of
 5 the Reasonable Fear Interview, the Asylum Officer failed to elicit pertinent information. For
 6 example, when Petitioner initially testified that family members had been murdered in 2012,
 7 2013, 2016 and 2017, she was cut-off before completing her testimony and not asked any
 8 follow-up questions regarding names of the deceased, the responsible, manner of death,
 9 cause of death, etc. (*Id.* See *Motion to Vacate Negative Reasonable Fear Determination*)

10 Counsel for Petitioner made oral and written requests with regard to allowing
 11 Petitioner's witness to testify; these requests were initially denied. (See Docket Nos. 1 & 3.)
 12 Counsel for Petitioner also submitted many documents in support of Petitioner's Withholding
 13 and Convention Against Torture claim, however, the Asylum Officer did not review them or
 14 Counsel's Closing Remarks (timely filed according to the Asylum Officer's instructions and
 15 time constraints) prior to issuance of her determination. *Id.*

16 The Asylum Officer issued a negative Reasonable Fear determination on November
 17 07, 2025, and thereafter Counsel for Petitioner immediately requested Review by an
 18 Immigration Judge (also November 07, 2025). (See Docket Nos. 1 & 3.) Petitioner was then
 19 approached by three Deportation Officers who blocked the entry of her small interview room
 20 and explained that she was going to be handcuffed and incarcerated. Petitioner was arrested
 21 without incident. *Id.* Counsel for Petitioner and Petitioner herself requested an alternative to
 22 detention such as ankle monitor or self-reporting check-ins as she was previously allowed
 23 from 2018-2025. These requests were denied by the arresting officers (1 female, 2 male
 24 officers). *Id.* The arresting officer (female officer, Colombian heritage) assured Counsel that
 25 if an Immigration Judge reversed the negative Reasonable Fear finding, that ICE would then
 26 release Petitioner. *Id.* Thereafter, Petitioner was transferred to California City Correctional
 27 Facility and later issued a hearing on November 20, 2025, where the Immigration Court
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1 found that Petitioner did, in fact, have a Reasonable Fear, thereby vacating the determination
 2 made by the Asylum Officer on November 07, 2025. *Id.* See *Immigration Court Order*
 3 *vacating the decision of the DHS immigration Officer*. Pursuant to 8 C.F.R. Section
 4 1208.31(g)(2), Petitioner was placed in "withholding-only" proceedings on 11/20/2025.

5 Counsel for Petitioner made written requests to both the San Francisco ICE (main
 6 office) and Bakersfield ICE sub-office regarding the same, after the Immigration Judge
 7 vacated the negative Reasonable Fear Finding, however, ICE did not release Petitioner as
 8 they claimed that they would (on November 07, 2025 at the time of Petitioner's arrest), until
 9 after the district court ordered them to do so. ICE did not issue a formal response to the line
 10 of inquiry surrounding their previous statements to release once the Immigration Court
 11 vacated negative Reasonable Fear findings.

12 On November 7, 2025, without notice or opportunity to be heard, Petitioner fell prey
 13 to ICE's new practice of arresting under the auspices of purported mandatory detention. (See
 14 Docket Nos. 1 & 3.) Petitioner had previously been ordered to complete in person check-ins.
 15 Petitioner presents a long history of compliance in responding to in person check-ins,
 16 biometrics appointments, and USCIS interview (since May of 2018). *Id.*

17 Petitioner requested a Bond Hearing, but was informed by an Immigration Judge on
 18 December 08, 2025, that the Immigration Court lacked jurisdiction to issue a bond under
 19 INA Section 241(a) Proceedings. (See Docket Nos. 1 & 3.) As a result, Petitioner was
 20 allowed to withdraw her bond request. Prior to the District Court's order to release Petitioner,
 21 she was being detained at the California City Correctional facility located at 22844 Virginia
 22 Boulevard, Bakersfield, CA 93505, approximately 452 miles from her home (over 7 hours
 23 each direction). *Id.* The Adelanto Immigration Court itself is over 500 miles away (over 8
 24 hours away from home each direction).

25 On November 07, 2025, the arresting officer failed to state a reason for Petitioner's
 26 arrest and detention; however, it was subsequent to an Asylum Officer's negative finding of
 27 Reasonable Fear. (See Docket Nos. 1 & 3.) This determination was reversed by the
 28

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1 Immigration Court on November 20, 2025, and Petitioner has been placed into withholding
 2 only proceedings. *Id.* Subsequent to the district court ordering Petitioner's release on
 3 December 18, 2025, Petitioner was released from ICE custody on December 19, 2025. (See
 4 Docket No. 12.) Petitioner was released from ICE custody pursuant to the Eastern District
 5 Court of California's granted Temporary Restraining Order.

6 After Petitioner's release from custody on December 19 of 2025, she filed an EOIR-
 7 33 Change of Address with the detained docket Adelanto Immigration Court to notify the
 8 Immigration Court that she was no longer detained. (See Exhibit A.) Petitioner was thereafter
 9 issued an in-person ICE check-in at the Sacramento Field Office scheduled for December 30,
 10 2025 at 8:00AM. *Id.* Petitioner appeared in-person and timely complied with the December
 11 30, 2025 ICE check-in as directed. *Id.* At the December 30, 2025 check-in, ICE assigned
 12 Petitioner a future in-person check-in date of June 17, 2026, at 8:00 a.m. *Id.* Petitioner
 13 received notice that her January 7, 2026, detained docket Adelanto Immigration Court
 14 hearing was rescheduled by the Court to January 13, 2026, at 8:00AM. *Id.* After Petitioner's
 15 release from ICE custody, Petitioner asked the ICE deportation officer's handling her check-
 16 in at Sacramento Field Office whether they would notify the Immigration Court that she was
 17 no longer detained and was informed by ICE that notifying the Immigration Court of her
 18 release was her attorney's responsibility and not handled by ICE. *Id.* ICE did not file Form I-
 19 861 with the detained docket Immigration Court. On January 13, 2026, Petitioner appeared
 20 and attended her detained docket Adelanto Immigration Court hearing via WebEx, despite
 21 having been released from custody, in order to ensure compliance with all court and agency
 22 requirements. *Id.* On January 13, 2026, Counsel for Petitioner requested a Motion for Change
 23 of Venue from the detained docket at the Adelanto Immigration Court to the non-detained
 24 docket before the Sacramento Immigration Court; this motion was granted by Immigration
 25 Judge Susan Phan on January 13, 2026. *Id.* Petitioner has complied with every ICE and
 26 Immigration Court requirement since her release and intends to continue doing so. *Id.*

1 III. LEGAL STANDARD

2 A preliminary injunction is appropriate where the moving party demonstrates:

- 3 1. Likelihood of success on the merits;
- 4 2. Likelihood of irreparable harm absent relief;
- 5 3. Balance of equities tips in her favor; and
- 6 4. An injunction is in the public interest.

7 (See *Winter v. Natural Resources Defense Council Inc.*, 555 U.S. 7, 20 (2008).

8 A deficiency in any element precludes relief. *Id.* at 23. [I]f a plaintiff can only show
 9 that there are serious question going to the merits- a lesser showing than likelihood of
 10 success on the merits- then a preliminary injunction may still issue if the balance of hardships
 11 tips sharply in the plaintiff's favor, and the other two Winter factors are satisfied. *Friends of*
 12 *the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and
 13 citations omitted).

14 Where a temporary restraining order has already issued after full briefing and judicial
 15 findings (i.e. functionally adversarial proceedings), continuation of relief in the form of a
 16 Preliminary Injunction should be strongly favored absent changed circumstances. Here,
 17 Petitioner has complied with all the terms of her release, attended her assigned Immigration
 18 Court hearing and ICE check-in, and filed an EOIR-33 Change of Address with the
 19 Immigration Court following her release from ICE custody on December 19, 2025.

20 III. ARGUMENT

21 A. Likelihood of Success on the Merits

22 The Court has already found Petitioner's claims analogous and persuasive under
 23 controlling authority and determined that Respondents' conduct violated constitutional limits
 24 on civil immigration detention. Petitioner lived under ICE supervision for more than seven
 25 years without violation, creating a protected liberty interest under *Morrissey v. Brewer*, 408
 26 U.S. 471 (1972); *Young v. Harper*, 520 U.S. 143 (1997); *Zadydas v. Davis*, 533 U.S. 678
 27 (2001).

Respondents re-detained Petitioner without notice, without individualized findings, and based on a non-final reasonable fear determination that was later vacated by an Immigration Judge, rendering the detention arbitrary and unconstitutional as applied. Statutory authority under 8 U.S.C. § 1231 does not extinguish Fifth Amendment protections, and Respondents have identified no lawful basis for summary revocation of Petitioner's liberty. The Supreme Court made clear that the government's detention authority under § 1231 must be read in light of the Fifth Amendment's Due Process Clause, which protects all "persons" from arbitrary restraint. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

1. Applicability of 8 USC § 1231(a)(6)

U.S.C. § 1231(a)(6), statutory authorization alone does not eliminate due process protections once a liberty interest has attached. See *Young v. Harper*, 520 U.S. 143, 147-49 (1997). The government detained Petitioner without any hearing and without making any individualized determination that she posed a danger to the community or a risk of flight. This is particularly significant given that Petitioner lived in the United States for more than thirty years and, despite her prior immigration history, was not detained until 2018. Petitioner was granted an order of order of supervision and remained compliant for 7 years, checking-in with ICE, attending her I-589, application for asylum and withholding of removal biometrics, and her reasonable fear interview. Those facts undermine any claim that her confinement was necessary to serve a legitimate civil purpose.

Respondents repeatedly contend that Petitioner's detention is "mandatory" under § 1231(a) and therefore beyond due-process review. That contention is wrong. The Supreme Court has made clear that statutory authority to detain does not override constitutional constraints. In *Zadvydas v. Davis*, the Court held that immigration detention must bear a reasonable relation to its civil purpose and may not be arbitrary or punitive. *Jennings v. Rodriguez* likewise preserved as-applied constitutional challenges to immigration detention.

Petitioner brings precisely such an as-applied challenge here. After fully evaluating Petitioner's history, ICE previously determined that detention was unnecessary and released

her under an Order of Supervision. That determination gave rise to a protected liberty interest. Respondents point to no language in §1231 authorizing ICE to revoke that liberty without cause or procedural safeguards. While the statute permits detention, it does not sanction arbitrary re-detention untethered to flight risk, dangerousness, or noncompliance.

2. Due Process

The Due Process Clause protects persons in the United States from being deprived of life, liberty, or property without due process of law. U.S. Const. amend. V. "It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

The Court analyzes petitioner's due process claim "in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution." *Garcia v. Andrews*, 2025 WL 1927596, at *2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)). "The Due Process clause applies to noncitizens in this country in connection with removal proceedings, even if their presence is unlawful or temporary." *Tinoco v. Noem*, 2025 WL 3567862, at *5 (E.D. Cal. Dec. 14, 2025) (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has found that a protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147-49 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. See *id.* (finding due process requires pre-deprivation hearing before revocation of preparole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context). To determine whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the

1 issue by comparing the specific conditional release in the case before them with the liberty
2 interest in parole as characterized by Morrissey." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864,
3 887 (1st Cir. 2010) (internal quotation marks and citation omitted).

4 In *Morrissey*, the Supreme Court explained that parole "enables [the parolee] to do a
5 wide range of things open to persons" who have never been in custody or convicted of any
6 crime, including to live at home, work, and "be with family and friends and to form the other
7 enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. "Though the [government]
8 properly subjects [the parolee] to many restrictions not applicable to other citizens," such as
9 monitoring, his "condition is very different from that of confinement in a prison." *Id.* "The
10 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to
11 live up to the parole conditions." *Id.* The revocation of parole undoubtedly "inflicts a
12 grievous loss on the parolee." *Id.* (quotations omitted). Therefore, a parolee possesses a
13 protected interest in his "continued
14 liberty." *Id.* at 481-84.

15 Here, Petitioner possessed a protected liberty interest in her continued freedom prior
16 to her arrest. For over seven years, the government allowed her to live in the community
17 under supervision, during which time she was not physically confined but she complied with
18 all government requirements. That is materially comparable to the conditional liberty
19 recognized in *Morrissey v. Brewer* where the Supreme Court held that a parolee's ability to
20 live at home, work, and maintain family and community ties constitutes a protected liberty
21 interest under the Due Process Clause. Like a parolee, Petitioner's liberty was different from
22 actual physical confinement and its abrupt revocation inflicts a grievous loss. *Id.* at 481-84.
23 Although the government now asserts that Petitioner is subject to "mandatory detention"
24 under 8 U.S.C. § 1231(a)(6), statutory authorization alone does not eliminate due process
25 protections once a liberty interest has attached. See *Young v. Harper*, 520 U.S. 143, 147-49
26 (1997). The government detained Petitioner without any hearing and without making any
27 individualized determination that she posed a danger to the community or a risk of flight.
28

1 This is particularly significant given that Petitioner lived in the United States for more than
2 thirty years and, despite her prior immigration history, was not detained until 2018 and was
3 thereafter released on an order of supervision. Those facts undermine any claim that her
4 confinement was necessary to serve a legitimate civil purpose.

5 Therefore, Petitioner's prior release on an order of supervision created a reasonable
6 expectation that he would be entitled to retain his liberty as long as he was not a flight risk
7 and did not pose a danger to the community. See *Perry v. Sindermann*, 408 U.S. 593, 601-03
8 (1972) (finding reliance on governmental representations may establish a legitimate claim of
9 entitlement to a constitutionally protected interest); F.M.V., 2025 WL 3083934 at *4.

10 Next, the Court turns to what procedures are necessary to ensure that the deprivation
11 of that protected liberty interest meets the demands of the Constitution. The Ninth Circuit has
12 "regularly applied *Mathews* [v. Eldridge, 424 U.S. 319 (1976)], to due process challenges to
13 removal proceedings." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022); see
14 also *Hernandez*, 872 F.3d at 993 (applying *Mathews* factors in immigration detention
15 context). Under *Mathews*, the Court considers three factors: (1) the private interest affected;
16 (2) the risk of an erroneous deprivation; and (3) the government's interest. *Mathews*, 424
17 U.S. at 335.

18 First, petitioner has a private interest in remaining free from detention. "Freedom
19 from imprisonment -- from government custody, detention, or other forms of physical
20 restraint -- lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*,
21 533 U.S. at 690 (citing *Foucha*, 504 U.S. at 80 ("Freedom from bodily restraint has always
22 been at the core of the liberty protected by the Due Process Clause."); *Hernandez*, 872 F.3d at
23 981 ("[T]he government's discretion to incarcerate non-citizens is always constrained by the
24 requirements of due process.")). For over seven years, petitioner was free from custody before
25 her re-detention and was gainfully self-employed, working at her family's landscaping
26 business Primo Lawns, to help support her family. Petitioner does not have a criminal record,
27 which Respondents do not dispute. Respondents do not point to any violation of her order of
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1 supervision. The seven year conditional release demonstrate her considerable interest in her
 2 continued liberty. See *Pinchi v. Noem*, 2025 WL 2084921, at *3 (N.D. Cal. July 25, 2025) (in
 3 the past five years, petitioner developed “extensive relations of support and interdependence”
 4 that “underscore the high stakes of [his] liberty.”); *Ortega v. Bonnar*, 415 F. Supp. 3d 963,
 5 963 (N.D. Cal. 2019) (holding that petitioner had a substantial liberty interest where he had
 6 been released from custody for 18 months and was living with his wife, spending time with
 7 his mother and other family members, working as a bicycle mechanic, and developing
 8 friendships in his community).

9 Next, the Court turns to the second *Mathews* factor, the risk of erroneous deprivation
 10 to petitioner, and finds this factor weighs in petitioner’s favor. “The risk of an erroneous
 11 deprivation [of liberty] is high” when “[the petitioner] has not received any bond or custody
 12 redetermination hearing.” See *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16,
 13 2025). Civil immigration detention, which is “nonpunitive in purpose and effect [.]” is
 14 typically justified under the Due Process Clause only when a noncitizen presents a risk of
 15 flight or danger to the community. See *Zadydas*, 533 U.S. at 690; *Padilla v. ICE*, 704 F.
 16 Supp. 3d 1163, 1172 (W.D. Wash. 2023).

17 Here, Petitioner does not impose a flight risk. Following the Court’s issuance of a
 18 temporary restraining order, Petitioner was released from custody on December 17, 2025.
 19 Thereafter, she timely reported to her assigned in person ICE check-in at the Sacramento
 20 Field Office on December 30, 2025. She also attended her Master Hearing on January 13,
 21 2026. Petitioner’s compliance with release conditions and continued engagement with
 22 immigration authorities demonstrates that re-detaining Petitioner without a bond or custody
 23 redetermination hearing would likely result in the wrongful deprivation of her liberty.

24 Finally, with regard to the third *Mathews* factor, this Court recognizes that the
 25 government has an interest in enforcing immigration laws, but respondents’ interest in
 26 detaining petitioner without a hearing is “low.” *Ortega v. Bonnar*, 415 F. Supp. 3d at 970;
 27 *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. March 3, 2025. Detention hearings in
 28

1 immigration courts are routine, and impose a “minimal cost.” *Doe*, 787 F. Supp. 3d at 1094.
 2 Here, the government’s interest is low because Petitioner was previously released on an
 3 order of supervision by immigration officials, she lived in the community for over seven
 4 years after her release, does not have criminal history, and has appeared at all of her
 5 scheduled check-ins and appointments.

6 All of the *Mathews* factors weigh in favor of Petitioner, establishing that re-detaining
 7 Petitioner without a bond or custody redetermination hearing would violate due process, and
 8 that continued release is constitutionally required absent such hearing.

9 B. Irreparable Harm

10 The second factor requires petitioner to demonstrate that she “is likely to suffer
 11 irreparable harm in the absence of preliminary relief.” *Winter v. Nat. Res. Def. Council, Inc.*,
 12 555 U.S. 7, 20 (2008). “It is well established that the deprivation of constitutional rights
 13 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002
 14 (9th Cir. 2012); *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) Where a plaintiff alleges
 15 a constitutional violation and “shows he is likely to prevail on the merits, that showing
 16 usually demonstrates he is suffering irreparable harm no matter how brief the violation.”).
 17 Here, in addition to the deprivation of her physical freedom, petitioner’s re-detention imposes
 18 an economic burden because petitioner was unable to continue working within the family run
 19 landscaping business Primo Lawns, was separated from her spouse and children, forced to
 20 pay thousands of dollars in unexpected legal fees to defend her wrongful detention and
 21 seizure filing a Habeas Petition and request for Temporary Restraining Order, Reasonable
 22 Fear Redetermination Hearing, Detained Proceedings and was subjected to significant stress
 23 and anxiety. “[T]he subpar medical and psychiatric care in ICE detention facilities [and] the
 24 economic burdens imposed on detainees and their families as a result of detention” are
 25 “concrete” examples of “irreparable harm” sustained during civil detention. See *Hernandez*
 26 *v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); see also *Norsworthy v. Beard*, 87 F. Supp. 3d
 27 1164, 1192 (N.D. Cal.), appeal dismissed and remanded, 802 F.3d 1090 (9th Cir. 2015)
 28

1 ("Emotional distress, anxiety, depression, and other psychological problems can constitute
2 irreparable injury.") (citations omitted). "As other courts that have faced this issue have
3 explained, the violation of petitioner's statutory rights causes 'immediate and irreparable
4 injury.'" *Guerro Lepe v. Andrews*, WL 2716910, at *9 (E.D. Cal. Sept. 23, 2025) (collecting
5 cases).

6 Ninth Circuit remedial jurisprudence also recognizes that constitutional violations
7 involving liberty interests often satisfy irreparable harm. See *Hernandez v. Sessions*, 872
8 F.3d 976, 990 (9th Cir. 2017); *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2013); *Mannes*
9 *v. Gillespie*, 967 F.2d 1310, 1312 (9th Cir. 1992). In *Hernandez v. Sessions*, the Ninth
10 Circuit affirmed a preliminary injunction for noncitizens detained under 8 U.S.C. § 1226(a)
11 because plaintiffs were likely to suffer irreparable harm due to deprivation of constitutional
12 rights absent relief (freedom from detention without adequate procedural protections).
13 *Hernandez* supports the proposition that detention that implicates constitutional liberty
14 interests is treated as irreparable harm in preliminary relief analyses. In *Rodriguez v.*
15 *Robbins*, the Ninth Circuit recognized that in a prolonged immigration detention case, "the
16 major hardship posed by needless prolonged detention" contributed to irreparable harm
17 supporting injunctive relief. The Supreme Court held more generally that loss of liberty,
18 whether through detention or other restraint on movement, implicates a fundamental liberty
19 interest protected by the Constitution. *Zadvydas*, 533 U.S. 678, 690–93 (2001). Continued
20 physical detention absent adequate procedural protections implicates fundamental due
21 process interests and has repeatedly been treated as irreparable harm in the Ninth Circuit's
22 preliminary injunction analyses. For example, the Ninth Circuit affirmed a preliminary
23 injunction for detained noncitizens in *Hernandez v. Sessions*, finding plaintiffs likely to
24 suffer irreparable harm due to deprivation of constitutional rights (including continued
25 detention) absent relief.

26 The continuing threat of re-detention chills Petitioner's liberty, disrupts family unity,
27 impairs access to counsel, and risks mooted this Court's habeas jurisdiction. Absent a
28

1 preliminary injunction, Respondents may re-detain Petitioner at any time without judicial
2 oversight — the precise injury the Court has already enjoined.

3 **C. Balance of Equities & Public Interest**

4 Finally, the Court turns to the last two *Winter* factors, which merge when the
5 government is the nonmoving party. See *Winter v. Natural Resources Defense Council Inc.*,
6 555 U.S. 7, 20 (2008); *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Baird v. Bonta*, 81 F.4th
7 1036, 1040 (9th Cir. 2023). (internal citations omitted). Petitioner argues that the balance of
8 hardships weighs in favor of injunctive relief because the policy preventing petitioner from
9 obtaining bond is inconsistent with federal law (quoting *Moreno Galvez v. Cuccinelli*, 387 F.
10 Supp. 3d 1208, 1218 (W.D. Wash. 2019) ("Because plaintiffs are likely to succeed on the
11 merits of their claims that the government's new policy is inconsistent with federal law,
12 arbitrary and capricious, and procedurally defective, the balance of hardships and public
13 interest factors weigh in favor of a preliminary injunction.")). Though the government has an
14 interest in enforcing immigration laws, the issue here is whether the government can re-
15 detain the petitioner without a bond hearing more than seven years after the government
16 released the petitioner on her own recognizance. Petitioner faces a loss of liberty, an
17 inability to work, separation from her spouse, and the stress and anxiety incurred during
18 detention. In addition, avoiding such "preventable human suffering" strongly tips the balance
19 in favor of petitioner. *Hernandez v. Sessions*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713
20 F.2d 1432, 1437 (9th Cir. 1983)). On the other hand, respondents face no hardship, because
21 respondents must release a person the government previously released and who has since
22 lawfully resided in the United States. Respondents "cannot reasonably assert that [they are]
23 harmed in any legally cognizable sense by being enjoined from constitutional violations."
24 *Zepeda v. U.S. I.N.S.*, 753 25 F.2d 719, 727 (9th Cir. 1983); see also *Rodriguez v. Robbins*,
25 715 F. 3d 1127, 1145 (9th Cir. 2013) ("[The government] cannot suffer harm from an
26 injunction that merely ends an unlawful practice[.]").
27
28

1 Further, the public has a strong interest in requiring respondents to follow the law and
2 comply with due process. In addition, as recognized by the Ninth Circuit, "costs to the public
3 of immigration detention are staggering[.]" *Hernandez v. Sessions*, 872 F.3d at 995; see also
4 *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) ("It is
5 always in the public interest to prevent the violation of a party's constitutional rights.").
6 Thus, the Court should find that the balance of hardships and the public interest weigh in
7 favor of granting petitioner injunctive relief.

8 The public has a compelling interest in:

- 9
 - Compliance with constitutional due process
 - 10 - Adherence to judicial orders
 - 11 - Preventing arbitrary civil detention

12 Continuation of injunctive relief advances these interests and preserves the integrity
13 of habeas review. In addition, Petitioner has no criminal record and is not a safety concern to
14 the public. Rather, Petitioner is a contributing resident of California, assisting in the
15 administrative tasks of running the family owned business. Petitioner is also a mother to both
16 a U.S. citizen and Lawful Permanent Resident of the United States. Petitioner is actively
17 involved in her congregation and beloved within her community. Petitioner presently is
18 facing Withholding Only removal proceedings before the Sacramento Immigration Court and
19 wishes to complete the remainder of her non-detained proceedings without fear of re-
20 detention or arbitrary restraint. Petitioner seeks only preservation of the status quo ante —
21 supervised release conditions previously deemed appropriate by ICE itself. Requiring notice
22 and a pre-detention hearing imposes minimal administrative burden on Respondents while
23 preventing grave constitutional injury.

24 IV. REQUESTED RELIEF

25 Petitioner respectfully requests that the Court issue a Preliminary Injunction ordering:

- 26 1. Respondents are ENJOINED AND RESTRAINED from re-detaining
27 Petitioner for any purpose, absent exigent circumstances, without first
28

1 providing written notice and a pre-detention hearing before a neutral
2 adjudicator;

- 3 2. Petitioner shall remain released under the same conditions governing her
4 release immediately prior to November 7, 2025;
- 5 3. No bond shall be required pursuant to F.R.C.P. Rule 65(c); and
- 6 4. Such other relief as the Court deems just and proper.

7 V. CONCLUSION

8 Because the Court has already found injunctive relief warranted and because the
9 constitutional violations and risk of irreparable harm persist, Petitioner respectfully requests
10 that the Court convert its December 18, 2025 Temporary Restraining Order into a
11 Preliminary Injunction pending final resolution of this action.

12 DATED: January 16, 2026,

13 Respectfully submitted,

14 By: /s/ Andrea Fatone
15 ANDREA FATONE
16 Attorney for Petitioner

17 By: /s/ Mayra Acevedo
18 MAYRA ACEVEDO
19 Attorney for Petitioner

1 Mayra Acevedo (SBN 334124)
 2 mayra@theacevedolawfirm.com
 3 1231 8th Street, Suite 850
 Modesto, CA 95354
 Tel: 209.262.6184

4 Andrea Fatone (SBN 278103)
 5 fatonelaw@gmail.com
 6 1601 I Street, Suite 340
 Modesto, CA 95354
 Tel: 209.857.8300

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 8 Attorneys for Petitioner

9
 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12
 13
 14 Cecilia HERNANDEZ ORTIZ,

Case No.: 1:25-cv-01807-DAD-SCR

15
 16 Petitioner- Plaintiff,

EXHIBIT A

17 vs.

(DECLARATION OF CECILIA
 HERNANDEZ ORTIZ)

18
 19 Polly KAISER, Acting Field Office Director of
 the San Francisco Immigration and Customs

20 Enforcement Office;

Todd LYONS, Acting Director of United States

21 Immigration and Customs Enforcement;

Kristi NOEM, Secretary of the United States

22 Department of Homeland Security;

Pamela BONDI, Attorney General of the United

23 States, acting in their official capacities;

Christopher CHESTNUT, California City

24 Correctional Facility Administrator (*de facto*

Warden)

25
 26 Respondents-Defendant(s).

27
 28 EXHIBIT A

-21-

1 I. CECILIA HERNANDEZ ORTIZ, declare as follows:

2 1. I am the Petitioner in this action. I have personal knowledge of the facts stated herein
 3 and could competently testify to them if called as a witness.

4 2. On December 19, 2025, I was released from ICE custody pursuant to the Eastern
 5 District Court of California's Temporary Restraining Order.

6 3. After my release from custody on December 19 of 2025, I filed an EOIR-33 Change
 7 of Address with the detained docket Adelanto Immigration Court to notify the Court
 8 that I was no longer detained.

9 4. After my release, I was assigned an in-person ICE check-in at the Sacramento Field
 10 Office scheduled for December 30, 2025 at 8:00AM.

11 5. I appeared in-person and timely complied with the December 30, 2025 ICE check-in
 12 as directed.

13 6. At the December 30, 2025 check-in, ICE assigned me a future in-person check-in
 14 date of June 17, 2026, at 8:00 a.m.; I fully intend to appear and comply with this
 15 future appointment.

16 7. I received notice that my January 7, 2026, detained docket Adelanto Immigration
 17 Court hearing was rescheduled by the Court to January 13, 2026, at 8:00AM.

18 8. After my release from ICE custody, I asked ICE whether they would notify the
 19 Immigration Court that I was no longer detained. I was informed by ICE that
 20 notifying the Immigration Court of my release was my attorney's responsibility and
 21 not handled by ICE. Based on that information, I relied on my counsel to file the
 22 appropriate notice with the Immigration Court.

23 9. On January 13, 2026, I appeared and attended my detained docket Adelanto
 24
 25
 26
 27
 28

EXHIBIT A

-22-

Immigration Court hearing via WebEx, despite having been released from custody, in order to ensure compliance with all court and agency requirements.

10. On January 13, 2026, my attorney requested a Motion for Change of Venue from the detained docket at the Adelanto Immigration Court to the non-detained docket before the Sacramento Immigration Court; this motion was granted by Immigration Judge Susan Phan on January 13, 2026.

11. I have complied with every ICE and Immigration Court requirement since my release and intend to continue doing so.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my own personal knowledge.

Executed on January 13, 2026,

Cecilia Hernandez Ortiz

EXHIBIT A

-23-

Mayra Acevedo (SBN 334124)
mayra@theacevedolawfirm.com
1231 8th Street, Suite 850
Modesto, CA 95354
Tel: 209.262.6184

Andrea Fatone (SBN 278103)
fatonejlaw@gmail.com
1601 I Street, Suite 340
Modesto, CA 95354
Tel: 209.857.8300

Attorneys for Petitioner

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

Cecilia HERNANDEZ ORTIZ,

Petitioner- Plaintiff,

vs.

Polly KAISER, Acting Field Office Director of
the San Francisco Immigration and Customs
Enforcement Office;
Todd LYONS, Acting Director of United States
Immigration and Customs Enforcement;
Kristi NOEM, Secretary of the United States
Department of Homeland Security;
Pamela BONDI, Attorney General of the United
States, acting in their official capacities;
Christopher CHESTNUT, California City
Correctional Facility Administrator (*de facto*
Warden)

Respondents-Defendant(s).

Case No.: 1:25-cv-01807-DAD-SCR

PROPOSED ORDER GRANTING
PRELIMINARY INJUNCTION

- 24 -

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

Having considered Petitioner's Motion for Preliminary Injunction, Respondents' opposition, Petitioner's reply, the record in this case, and the circumstances of Petitioner's detention and release, the Court finds analogous and persuasive the decisions of the district courts in *Diaz v. Wofford*, No. 1:25-cv-01079-JLT-EPG, 2025 WL 2581575 (E.D. Cal. Sept. 5, 2025), and *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021 (N.D. Cal. 2025). The Court further finds that continuation of injunctive relief is warranted to maintain the status quo pending resolution of Petitioner's habeas petition, and to protect this Court's jurisdiction.

Overall, this Court finds that petitioner is likely to succeed on the merits of her claims. As stated in *Guerro Lepe v. Andrews*, WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025), "[t]he purpose of a preliminary injunction is to return the parties to the status quo ante, which is 'not simply [] any situation before the filing of a lawsuit, but instead [] 'the last uncontested status which preceded the pending controversy.'" (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). Respondents do not argue that petitioner presents a flight risk or a danger to the community.

This Court finds the requirements for issuing a preliminary injunction are met. Petitioner's continued release is required to return her to the status quo before the pending controversy. If the government seeks to re-detain petitioner in the future, the government must prove that petitioner is a flight risk or danger to the community at a bond hearing before a neutral arbiter.

The Court exercises its discretion under Federal Rule of Civil Procedure 65(c) to dispense with the filing of bond. "[T]here is no realistic likelihood of harm to the [respondents] from enjoining [their] conduct." *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003); see *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011). Therefore, no security is needed to ensure that respondents will be reimbursed for "costs and damages sustained by . . . hav[ing] been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Courts regularly waive security in cases like this one. See, e.g., *Zakzouk v. Becerra*, 2025 WL 2899220, at *8

(N.D. Cal. Oct. 10, 2025).

CONCLUSION AND ORDERS

Accordingly, IT IS HEREBY ORDERED that:

1. Petitioner's Motion for Preliminary Injunction is GRANTED.
2. Petitioner's Motion for Temporary Restraining Order is converted to a Motion for Preliminary Injunction which is GRANTED.
3. Respondents are ORDERED to immediately maintain Petitioner's release from Respondents' custody on the same conditions that governed her release immediately prior to her detention on November 7, 2025.
4. Respondents are ENJOINED AND RESTRAINED from re-detaining Petitioner for any purpose, without providing Petitioner written notice and a pre-detention hearing before a neutral adjudicator.
5. Respondents are ENJOINED AND RESTRAINED from re-detaining petitioner unless they demonstrate, by clear and convincing evidence at a pre-deprivation bond hearing before a neutral decision maker, that petitioner is a flight risk or danger to the community such that her physical custody is legally justified.
6. The bond requirement of Federal Rule of Civil Procedure 65(c) is waived.
7. Petitioner shall not be required to post a bond pursuant to Rule 65(c) of the Federal Rules of Civil Procedure.
8. Respondents shall not take any action to remove Petitioner from the United States or to move Petitioner out of the Eastern District of California pending a final resolution of Petitioner's Immigration Court proceedings, including the exhaustion of all timely filed administrative and judicial appeals.

IT IS SO ORDERED.

DATED: _____

DALE A. DROZD
United States District Judge

Mayra Acevedo (SBN 334124)
mayra@theacevedolawfirm.com
1231 8th Street, Suite 850
Modesto, CA 95354
Tel: 209.262.6184

Andrea Fatone (SBN 278103)
fatoneclaw@gmail.com
1601 I Street, Suite 340
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Tel: 209.857.8300

Attorneys for Petitioner

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Christopher CHESTNUT, California City
Correctional Facility Administrator (*de facto*
Warden)

NOTICE OF REQUEST TO WAIVE
EVIDENTIARY HEARING

Respondents-Defendant(s).

NOTICE OF REQUEST TO WAIVE EVIDENTIARY HEARING

PLEASE TAKE NOTICE that pursuant to E.D.C.A. local rules, Petitioner hereby
notifies the Court that she does not request an evidentiary hearing on her Motion for
Preliminary Injunction. Petitioner submits that the Motion may be resolved on the papers and
the existing record, including the Court's prior Temporary Restraining Order and Minute
Orders.

DATED: January 16, 2026

Respectfully submitted,

By: /s/ Andrea Fatone
ANDREA FATONE
Attorney for Petitioner

By: /s/ Mayra Acevedo
MAYRA ACEVEDO
Attorney for Petitioner