

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

6 Attorney for Petitioner
7 Maikellys Luseidy Reyes Solano
8
9
10
11

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **FRESNO DIVISION**
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MAIKELLYS LUSEIDY REYES SOLANO

Petitioner,

v.

Timothy S. ROBBINS, Field Office Director of the
Los Angeles Field Office of U.S. Immigration and
Customs enforcement; Todd M. LYONS, Acting
Director of U.S. Immigration and Customs
Enforcement; U.S. DEPARTMENT OF HOMELAND
SECURITY, Kristi NOEM, Secretary of the U.S.
Department of Homeland Security, Christopher
CHESTNUT, Warden, California City Detention
Facility, and Pamela BONDI, Attorney General of the
United States

Respondents,

Case No. 25-1261

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Note on Motion Calendar:

ORAL ARGUMENT REQUESTED

INTRODUCTION

Petitioner Maikellys Luseidy Reyes Solano (“Petitioner”) is a citizen and national of Venezuela who was detained by Immigration and Customs Enforcement (ICE) at the ICE San Francisco Field Office, in San Francisco, California. She entered the United States in or around October 11, 2024, and she was subsequently released on parole after an immigration judge ruled that she had established credible fear of persecution. For the next eleven months following her release from detention, Petitioner complied with what was asked of her: she hired the services of an attorney to work in her asylum application and supporting documents, and she has adhered to the conditions of her release, including telephonic and in person check-ins as part of the Intensive Supervision Appearance Program (ISAP). Nevertheless, in or around October 2, 2025, Petitioner was arrested at a check-in at the San Francisco ICE field office, without any notice or opportunity to respond to any allegation purportedly justifying her re-detention. Petitioner is currently in detention at the California City Detention Facility, in California City, California, separated from her immediate family and friends.

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

By denying her any notice and hearing, Respondents violated Petitioner’s right to due process. As a number of Federal District courts recently held, her ongoing detention is therefore unlawful, and her immediate release is required. (See e.g., *E.A. T.-B. v. Wamsley*, No. 25-cv-1192-KKE, --- F. Supp. 3d ---, 2025 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025) (ordering immediate release because “a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty”); *Vilela v. Robbins*, No. 1:25-CV-01393-KES-HBK (HC), 2025 U.S. Dist. LEXIS 219172 *, 2025 LX 474205, at *19-20 (E.D. Cal. Nov. 6, 2025)

1 (“Petitioner’s immediate release is required to return her to the status quo ante—“the last uncontested
2 status which preceded the pending controversy.””); also see *Valdez v. Joyce*, 25 Civ. 4627, 2025 U.S.
3 Dist. LEXIS 117131, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025) (ordering immediate release of
4 unlawfully detained noncitizen.) Accordingly, Petitioner respectfully seeks immediate relief from this
5 Court to vindicate her right to liberty under the Fifth Amendment’s Due Process Clause.¹

6 STATEMENT OF FACTS

7 Petitioner Maikellys Luseidy Reyes-Solano (“Petitioner”) is an asylum seeker who fled Venezuela
8 due to threats against her life by individuals connected to criminal organizations working along with the
9 Venezuelan government. (Declaration of Luz Daris Solano, ¶ 1.) Although Petitioner fled Venezuela on
10 her own, her mother, Luz Daris Solano Caceres, and Petitioner two minor siblings were already residing
11 in the United States, after fleeing Venezuela for the same reason as Petitioner. (Id., ¶1.) After Petitioner
12 arrived in the United States on October 11, 2024, federal agents detained her. (Id., ¶ 2.) In or around
13 October 17, 2024, Petitioner underwent a credible fear interview with DHS Asylum Officers. (Id.) On
14 October 21, 2024, the asylum officers made a negative finding regarding the interview. (Id.) On the
15 same day, Petitioner requested a review of the decision by an Immigration Judge at the immigration
16 court in Pearsall, Texas. (Id.) On October 23, 2024, the Immigration Court found that Petitioner had
17 established credible fear, thus reversing the decision by the asylum officer, finding that Petitioner had
18 demonstrated a credible fear of being persecuted by individuals with connections to criminal groups in
19 Venezuela connected to its government. (Id.)

20 On November 11, 2024, Respondent DHS paroled Petitioner from its custody into the United States
21 under 8 U.S.C. § 1182(d)(5). (Id., ¶ 3.) As a condition of Petitioner’s release, she was required to enroll
22 in the Intensive Supervision Appearance Program (ISAP), a program operated by a private contractor
23 that ICE uses to monitor released noncitizens. (Id.) DHS officials provided Petitioner with a Notice to
24

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

1 Appear in Immigration Court (DHS Form I-862), which stated that the Section 235(b)(1) order was
2 being vacated pursuant to 8 C.F.R. §208.30. (Id.) ICE officials also placed an ankle monitor on
3 Petitioner upon her exit from the detention facility in Texas. (Id.) Following her release, Petitioner
4 relocated to Daly City, California, where she moved in with her mother and minor siblings in early
5 November 2024. (Id.) Petitioner knew that her mother had been battling breast cancer for a number of
6 years, so Petitioner promised her mother that she would help her and Petitioner's siblings as much as she
7 could while residing with them. (Id.)

8 On December 6, 2024, Respondents commenced removal proceedings under 8 U.S.C. § 1229a.
9 (Id., ¶ 4.) Following commencement of removal proceedings, Petitioner actively worked on her case,
10 starting to organize evidence and draft an initial declaration in support of her asylum application.
11 Petitioner also proceeded with saving money in order to hire an immigration attorney to help her file an
12 asylum application and represent her with the Immigration Court. (Id.) Sometime in July or August
13 2025, Petitioner retained an immigration attorney and started working with her towards transferring her
14 removal case to the San Francisco Immigration Court and prepare an asylum application. (Id.)

15 Petitioner complied with all of her monitoring requirements during the eleven months following her
16 November 11, 2024 release. (Id., ¶ 5.) These requirements included phone and video check-ins through
17 the ISAP mobile phone application (ISAP app). (Id.) Petitioner submitted a photo via the app every
18 time she was instructed via text to do so, and she had received written notice in her phone that she
19 needed to appear in person at either the ICE field office or the ISAP office on different dates following
20 her entry on the United States. (Id.)

21 Petitioner appeared for her initial in person visits at the ISAP field office in San Jose, California,
22 on November 22, 2024. (Id., ¶6.) At that meeting, Petitioner was directed by ICE Officials to present
23 herself at the ISAP field office in San Francisco on December 4, 2024. (Id.) On December 4, 2024,
24 Petitioner appeared as instructed at the ISAP office in San Francisco. (Id.) At that visit, ICE officers
25 removed her ankle monitor and once again instructed her to return to the ISAP San Francisco office on
26 February 10, 2025. (Id.) She once again returned to the ISAP San Francisco office on February 10,
27
28

1 2025 for another routine visit. (Id.) This time, Petitioner was instructed to wait for instructions through
2 the app as to when to appear at the ICE Field office in San Francisco. (Id.)

3 In or around July 21, 2025, Petitioner was two hours late with taking a picture due to the fact that at
4 the scheduled time to take the picture, Petitioner had accompanied her mother to the Kaiser Permanente
5 hospital for her mother's scheduled breast cancer treatment and as a result, Petitioner forgot about her
6 scheduled selfie picture due to the fact she had been discussing her mother's treatment with her mother's
7 oncologist. (Id., ¶ 7.) The following morning, on July 22, 2025, Petitioner received a notification
8 through the app instructing her to appear at the ICE Field office in San Francisco on July 31, 2025. (Id.)
9 On July 31, 2025, Petitioner appeared at the ICE Field office in San Francisco. When questioned about
10 why she had been late by two hours with sending a selfie picture, Petitioner explained to the ICE office
11 that at the scheduled time to take the selfie picture, she was with her mother at the Kaiser Hospital for
12 her mother's cancer treatment session. (Id.) The ICE Office told her she was sympathetic to her
13 situation and that Petitioner had nothing to worry about. (Id.) Nevertheless, the ICE officer once again
14 placed the ankle monitor on Petitioner. (Id.) Petitioner was then instructed to appear at the ICE Field
15 Office on October 2, 2025. (Id.)

16 From July 22, 2025 until October 2, 2025, Petitioner continued sending to ICE all her selfie pictures
17 in a timely manner, as well as keeping ICE informed about her address. (Id., ¶ 8.) Petitioner also
18 continued to help her mother with her day-to-day chores, as well as helping to care for Petitioner's two
19 minor siblings. (Id.) The truth is that due to her cancer, Petitioner's mother had difficulties in
20 performing normal tasks at home due to the side-effects of her medications.² (Id.) As a result,
21 Petitioner was responsible for caring for her siblings and her mother. (Id.) Petitioner would do the
22 cooking and cleaning at home, as well as taking her siblings to and from school. (Id.) Petitioner was
23 also responsible for driving her mother whenever needed, including her hospital visits. (Id.) Still,
24 Respondent did her best to help everyone, while at the same time working part time at a marketing
25 company [REDACTED] (Id.) Petitioner also made sure to take her mother every Sunday
26 [REDACTED]

27 ² Petitioner's mother treatment consisted in taking [REDACTED] Both medications cause side effects
28 such as fatigue and weakness.

1 for services at Cosecha Ministry Church, in San Francisco. (Id.) In there, she was able to make a
2 number of friends, including her current fiancé, Angel David Perucho Hernandez. (Id.) Petitioner and
3 Mr. Hernandez made plans to get married on June 2026. (Id.)

4 On October 2, 2025, Petitioner once again appeared at the ICE San Francisco field office for her
5 scheduled check-in presentation, but she was promptly detained by ICE officers. (Id., ¶ 9.) Petitioner
6 asked for the specific facts and proof supporting the allegation, but the only information the ICE officer
7 provided was that she had missed taking a selfie-picture on one occasion. (Id.) Remembering the
8 incident of July 21, 2025, Petitioner tried to explain that she had missed taking a picture for two hours
9 due to her being with her mother at the hospital with her oncologist. (Id.) Still, the ICE officers
10 proceeded with arresting her. (Id.) On the same day, Petitioner was transferred to the California City
11 Detention Center, in California City, California. (Id.)

12 Since the day of Petitioner's detention, her mother is having great difficulties taking care of the
13 minor children while at the same time having to treat her breast cancer. (Id., ¶10.) Due to the side
14 effects of the medical drugs Petitioner's mother has been taking, she is suffering from extreme fatigue,
15 which makes it very hard for her to take care of the home and raise her minor children. (Id.) In
16 addition, now that Petitioner is in detention, she is no longer able to work, which has resulted in
17 financial difficulties for her mother. (Id.) Petitioner is suffering from depression and anxiety, knowing
18 that her mother is having great difficulties now that Petitioner is no longer there to help her. (Id.) In
19 addition, Petitioner is no longer able to be together with her fiancé. (Id.) Even worse, although
20 Petitioner's attorney prepared an asylum application, her attorney is unable to sign the application
21 because she is currently detained and although her counsel sent a copy of the application to California
22 City Detention Center via email and postal mail, and the same was delivered to the facility, for unknown
23 reasons, the same was never delivered to Petitioner's hands. (Id.) Petitioner filed a habeas petition in
24 this court along with the present motion. (Id.) By means of the present motion, she now seeks
25 immediate relief from her continued, unlawful detention.

ARGUMENT

Requirements for a preliminary injunction order

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

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

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

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

13 A. Petitioner Has a Weighty Private Interest.

14 Petitioner has an exceptionally strong interest in freedom from physical confinement and in a
 15 hearing prior to any revocation of her liberty. Indeed, her “interest in not being detained is ‘the most
 16 elemental of liberty interests[.]’” (*E.A. T.-B.*, 2025 WL 2402130, at *3 (alteration in original) (quoting
 17 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). “Freedom from imprisonment . . . lies at the heart of the
 18 liberty that [the Due Process] Clause protects.” (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).) Thus,
 19 “[d]etention, including that of a non-citizen, violates due process if there are not ‘adequate procedural
 20 protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally protected interest
 21 in avoiding physical restraint.’” (*Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (second
 22 alteration in original) (quoting *Zadvydas*, 533 U.S. at 690).) Similarly, the Ninth Circuit has held that
 23 “[i]n the context of immigration detention, it is well-settled that ‘due process requires adequate
 24 procedural protections to ensure that the government’s asserted justification for physical confinement
 25 outweighs the individual’s constitutionally protected interest in avoiding physical restraint.’”
 26 (*Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196,
 27 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. *See, e.g., Foucha v.*

1 *Louisiana*, 504 U.S. 71, 80 (1992) (“It is clear that commitment for any purpose constitutes a significant
2 deprivation of liberty that requires due process protection.” (citation omitted)).)

3 This principle applies with significant force given Petitioner’s initial release from detention on
4 parole. “The Supreme Court has repeatedly held that in at least some circumstances, a person who is in
5 fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that
6 entitles him to constitutional due process before he is re-incarcerated.” (*Hurd v. District of Columbia*,
7 864 F.3d 671, 683 (D.C. Cir. 2017).) As the *Hurd* court explains, this includes cases of “pre-parole
8 conditional supervision,” *id.* (citing *Young v. Harper*, 520 U.S. 143, 152 (1997)); “probation,” (*Id.*)
9 (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and “parole,” (*Id.*) (citing *Morrissey*, 408 U.S. at
10 482).)

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

23 Critically, in recent months and years, courts have repeatedly applied these principles to hold that
24 noncitizens have a strong liberty interest in cases involving re-detention. A person re-detained after a
25 prior release from ICE custody is “undoubtedly deprive[d] . . . of an established interest in his liberty.”
26 (*E.A. T.-B.*, 2025 WL 2402130, at *3.) Other courts have reached the same conclusion. (*See, e.g.,*
27 *Garcia*, 2025 WL 2420068, at *10) (“[P]arole allowed [the petitioner] to build a life outside detention,
28

1 albeit under the terms of that parole. [Petitioner] has a substantial private interest in being out of custody
 2 which would allow him to continue in these life activities, including supporting his family.”); (*Pinchi*,
 3 2025 WL 2084921, at *4) (“[Petitioner] has a substantial private interest in remaining out of custody.
 4 She has an interest in remaining in her home, continuing her employment, providing for her family,
 5 obtaining necessary medical care, maintaining her relationships in the community, and continuing to
 6 attend her church.”); (*Maklad*, 2025 WL 2299376, at *8 (similar).)

7 As in these cases, Petitioner has a strong interest in her liberty. Prior to her re-detention, Petitioner
 8 resided in Daly City, California for more than three year, living with her mother and her minor siblings,
 9 living a productive life working at a marketing company, and complying with her ISAP check-in
 10 requirements. (Decl. of Luz Daris Solano ¶¶ 1–10.). She has substantial connections to this country,
 11 and her mother, minor siblings and fiancé are suffering in her absence. In addition, the fact Petitioner’s
 12 mother has cancer and is having difficulties caring for the minor children is negatively affecting
 13 Petitioner’s mental health. These facts show not only that Petitioner’s freedom at stake, but that her
 14 absence is negatively affecting the life of her family and fiancé.

15 B. The Risk of Erroneous Deprivation Is High.

16 Second, “the risk of erroneous deprivation of Petitioner’s liberty interest in the absence of a pre-
 17 detention hearing is high.” (*E.A. T.-B.*, 2025 WL 2402130, at *4.) “That the Government may believe it
 18 has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a
 19 manner that comports with due process.” (*Id.*) Her re-detention must still “bear[] [a] reasonable
 20 relation” to a valid government purpose—here, preventing flight or protecting the community against
 21 dangerous individuals. (*Zadvydas*, 533 U.S. at 690) (second alteration in the original) (quoting *Jackson*
 22 *v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must
 23 prove that re-detention is justified and that Petitioner poses a flight risk or danger—can ensure that this
 24 “reasonable relation” to a valid government purpose exists. But to date, only the “government
 25 enforcement agent” has made any decision about the propriety of detention, (*Coolidge v. New*
 26 *Hampshire*, 403 U.S. 443, 450 (1971)), a far cry from the hearing before a neutral decisionmaker that
 27 due process requires, (see, e.g., *Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) (“Whatever else
 28

1 neutrality and detachment might entail, it is clear that they require severance and disengagement from
2 activities of law enforcement.”); see also *Gerstein v. Pugh*, 420 U.S. 103, 112 (1975) (similar).) In fact,
3 Petitioner did not (and has not) even received a formal notice of the basis for her re-detention, much less
4 any opportunity to respond to any allegations purporting to justify her re-detention or a hearing before a
5 neutral decisionmaker.

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

20 C. The Government’s Interest Is Minimal.

21 Finally, “the government’s interest in detaining [Petitioner] or re-detaining [her] without a hearing
22 is slight.” (*Maklad*, 2025 WL 2299376, at *8; *Ortega*, 415 F. Supp. 3d at 970) (“If the government
23 wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in
24 doing so without a hearing is low.”). “[A]lthough [a pre-deprivation hearing] would have required the
25 expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP]
26 violations before arresting and re-detaining her, those costs are far outweighed by the risk of erroneous
27 deprivation of the liberty interest at issue.” (*E.A. T.-B.*, 2025 WL 2402130, at *5.) Notably, since her
28

1 release, Petitioner “has continued to demonstrate that [she] poses neither a flight risk nor a danger to the
2 community,” holding an honest job and helping both herself and her sister, and developing friendships,
3 among other factors. (*Pinchi*, 2025 WL 2084921, at *5.)

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

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

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

5 **Petitioner will suffer irreparable harm absent a temporary restraining order.**

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

10 Here, Petitioner’s unlawful detention constitutes “a loss of liberty that is . . . irreparable.” (*Moreno*
 11 *Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
 12 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022);
 13 *cf. Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where
 14 “preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained” because
 15 they are neither a danger nor a flight risk).) This is particularly true here, where Petitioner’s detention
 16 also violates the Constitution. “Civil immigration detention violates due process outside of certain
 17 special and narrow nonpunitive circumstances.” (*Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018)
 18 (citation modified).) As detailed above, Petitioner’s detention is outside of those “special and narrow
 19 nonpunitive circumstances,” as the Due Process Clause forbids his detention without a pre-deprivation
 20 hearing. These constitutional concerns also counsel in favor of finding that Petitioner has demonstrated
 21 irreparable harm, for he has shown that his detention violates due process. (See *Baird v. Bonta*, 81 F.4th
 22 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a constitutional claim, a likelihood of
 23 success on the merits usually establishes irreparable harm”).)

24 Detention also inflicts substantial harm on Petitioner by separating her from her family and friends.
 25 Absent a preliminary injunction, Petitioner has no hope of being reunited with her partner, her mother
 26 and her minor siblings. Such “separation from family members” is an important irreparable harm factor.
 27 (*Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also*,
 28

1 *e.g.*, *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding “separated
 2 families” to be a “substantial injur[y] and even irreparable harm[.]”); *cf. Hernandez*, 872 F.3d at 996
 3 (recognizing that “government-compelled [family] separation” causes family members “trauma” and
 4 “other burdens”).)

5 In sum, Petitioner is suffering numerous and irreparable harms: detention itself, as well as
 6 separation from family and friends. All of these factors warrant a temporary restraining order and a
 7 preliminary injunction.

8 **The balance of hardships and public interest weigh heavily in Petitioner’s favor.**

9 The final two factors for a preliminary injunction—the balance of hardships and public interest—
 10 “merge when the Government is the opposing party.” (*Nken v. Holder*, 556 U.S. 418, 435 (2009).) Here,
 11 as previously discussed, Petitioner faces weighty hardships: loss of liberty and separation from family
 12 and friends. The government, by contrast, faces no hardship, as all it must do is release a person it
 13 previously released and who has since lawfully resided in San Mateo County, California. Avoiding such
 14 “preventable human suffering” strongly tips the balance in favor of Petitioner. (*Hernandez*, 872 F.3d at
 15 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983).)

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

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

24 **Immediate release is warranted.**

25 As in *E.A. T.-B.*, this Court should order Petitioner’s immediate release. “[A] post-deprivation
 26 hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent
 27 an erroneous deprivation of liberty.” (*E.A. T.-B.*, 2025 WL 2402130, at *6.) In other words, Petitioner’s
 28

1 unlawful detention without a pre-deprivation hearing is *already* occurring, and only immediate release
2 remedies that issue. Moreover, the evidence here demonstrates that Petitioner has made every effort to
3 follow the law: receiving parole, preparing to for asylum, and complying with ISAP requirements. As a
4 result, the Court should order her immediate release and provide that Petitioner may only be re-detained
5 if ICE justifies re- detention by clear and convincing evidence at a hearing where ICE is required to
6 demonstrate Petitioner is a flight risk or danger to the community. (See e.g., *Pinchi*, 2025 WL 2084921,
7 at *7; *Maklad* 2025 WL 2299376, at *10; *Garcia*, 2025 WL 2420068, at *13.)

8 **CONCLUSION**

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

11
12 Respectfully submitted,

13
14 DATE: 12/11/2025

15 /S/ Jose F. Vergara

16 Jose F. Vergara
17 CA Bar No. 251342
18 vergarajf@hotmail.com

19
20 COUNSEL FOR PETITIONER
21
22
23
24
25
26
27
28

WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,349 words, in compliance with the Local Civil Rules.

/S/ Jose F. Vergara

Jose F. Vergara

CA Bar No. 251342

vergarajf@hotmail.com

COUNSEL FOR PETITIONER