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

Jahaira Abigail Tenorio Rugama,

Petitioner,

v.

Christopher CHESTNUT, Warden,
California City Correctional Facility;

Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

Kristi NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
Security; and

Pam BONDI, in her Official Capacity,
Attorney General of the United States;

Respondents - Defendants,

No.

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

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION AND EX PARTE 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, Jahaira Abigail Tenorio Rugama (“Ms. Tenorio Rugama”) will and hereby does move for a temporary restraining order pursuant to Federal Rules of Civil Procedure 65(b) and Civil Local Rule 65-1. Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this Court (1) orders Petitioner's immediate release from Respondent's custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) orders Petitioner's immediate release from Respondents' custody and, within 14 days, order a pre-deprivation bond hearing before the Adelanto Immigration Court, where Respondents will have the burden of proof to show, by clear and convincing evidence, that Petitioner is a danger or a flight risk. To preserve this Court's jurisdiction, Petitioner further seeks an order (3) enjoining Respondents from deporting Petitioner during the pendency of this proceeding. Enjoins Respondents (1) from continuing to detain Petitioner based on an unlawful action by ICE, (2) orders her immediate release from Respondents' custody; and (3) from re-arresting Ms. Tenorio Rugama until she is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that her re-incarceration would be justified because there is clear and convincing evidence establishing that she is a danger to the community or a flight risk.

Consistent with Civil L.R. 65-1, Petitioner seeks relief at the earliest possible opportunity. Petitioner filed this motion the same day she filed her Petition for Writ of Habeas Corpus. Her Writ of Habeas Corpus stated that she would be filing this motion forthwith.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: December 18, 2025 Respectfully submitted,

/s/ Robert Beles

Robert J Beles
Attorney for Petitioner-Plaintiff
Jahaira Abigail Tenorio Rugama

1 **I. INTRODUCTION**

2 Respondents unlawfully detained Petitioner-Plaintiff Ms. Tenorio Rugama on November
3 4, 2025. Ms. Tenorio Rugama is a native and citizen of Nicaragua. Ms. Tenorio Rugama entered
4 the United States with inspection on November 27, 2022 seeking asylum. When Ms. Tenorio
5 Rugama arrived in the United States, federal agents briefly detained her, determined that she was
6 not a flight risk or danger to the community, and released her on her own recognizance with a
7 notice to appear for removal proceedings in immigration court. Since then, Petitioner had done
8 everything the government asked her to do; she has diligently attended every Immigration and
9 Customs Enforcement (“ICE”) and United States Citizenship and Immigration Services
10 (“USCIS”) appointment and check-in.

11 In September of 2025, Ms. Tenorio Rugama was informed that she did not submit an
12 ISAP photo on time through the phone app. She received a video call and was informed not to
13 let it happen again. At that time, Ms. Tenorio Rugama was not detained.

14 On November 3, 2025, Ms. Tenorio Rugama answered a video call and was informed to
15 check in with ICE on November 4, 2025. Ms. Tenorio Rugama presented herself to the ICE
16 appointment on November 4, 2025. On that date, ICE detained her and informed her that she
17 would be transferred to an ICE detention facility. ICE informed her that she had violated her
18 ISAP supervision.

19 Ms. Tenorio Rugama is not an applicant for admission to the United States, Ms. Tenorio
20 Rugama has lived in the United States for over three years. She currently resides with her friend
21 in Bakersfield, California. Ms. Tenorio Rugama also has family in the United States who also
22 reside in Bakersfield. Ms. Tenorio Rugama has been in Immigration Court proceedings since
23 arriving to the United States.

24 At the time of detention, Ms. Tenorio Rugama was living in Bakersfield, California. Ms.
25 Tenorio Rugama suffers from anxiety, sleep deprivation and depression related to persecution
26 she suffered in Nicaragua. These mental health issues require medication.

27 Ms. Tenorio Rugama’s summary arrest and indefinite detention flout the Constitution.
28 The only legitimate interests that civil immigration detention serves are mitigating the risk of
flight and preventing danger to the community. When those interests are absent, the Fifth
Amendment’s Due Process Clause squarely prohibits detention. Additionally, by summarily
arresting and detaining Ms. Tenorio Rugama without making any affirmative showing of

1 immigration violations, flight risk or danger to the community, the government violated
2 Petitioner's procedural due process rights. At the very least, she was constitutionally entitled to
3 a hearing before a neutral decisionmaker at which the government should have justified her
4 detention.

5 Ms. Tenorio Rugama must be accorded her 5th amendment due process rights as affirmed
6 in the US Supreme Court case *Department of Homeland Security v. Thuraissigium*, 140 S.Ct.
7 1959 (2020), Specifically, in *Thuraissigium*, the Supreme Court Stated: "aliens who have
8 established connections in this country have due process rights in deportation proceedings,"

9 As a result of her arrest and detention, Ms. Tenorio Rugama is suffering irreparable and
10 ongoing harm. The unconstitutional deprivation of "physical liberty" unquestionably constitutes
11 irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed,
12 "[f]reedom from imprisonment—from government custody, detention, or other forms of physical
13 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*
14 *Davis*, 533 U.S. 678, 690 (2001). Ms. Tenorio Rugama's arrest and detention have caused and
15 will cause immediate, tremendous, and ongoing harm, which include mental health issues,
16 hygiene, sleep and nutrition deprivation, family separation, emotional and economic harm, loss
17 of employment, and psychological harm.

18 In light of this irreparable harm, and because she is likely to succeed on the merits of her
19 due process claims, Ms. Tenorio Rugama respectfully requests that this Court issue an Ex Parte
20 temporary restraining order ("TRO") immediately releasing her from custody and enjoining the
21 government from re-arresting her absent the opportunity to contest that arrest at a hearing before
22 a neutral decision maker. Confronted with substantially identical facts and legal issues, this and
23 other courts in this circuit have recently granted the exact relief Petitioner seeks.

24 See *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*,
25 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025), *Garro Pinchi v. Noem*, 2025 WL 1853763, *4
(N.D. Cal. July 4, 2025), converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL
26 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July
27 11, 2025) (granting preliminary injunction).

28 To maintain this Court's jurisdiction, the Court should also prohibit the government from
transferring Ms. Tenorio Rugama out of this District and removing her from the country until
these proceedings have concluded.

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II. STATEMENT OF FACTS AND CASE

Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are not in status, many of whom have pending applications for asylum or other relief. This “coordinated operation” is “aimed at dramatically accelerating deportations” by arresting people at the courthouse, USCIS interviews, or at the ICE office and placing them into expedited removal. The Trump administration implemented a policy to drastically increase immigration arrests to a target of at least 3,000 per day. According to White House officials, such as Stephen Miller, this directive prioritized arrest numbers over individuals' criminal history, encouraging agents to conduct mass round-ups in public spaces rather than targeted investigations.

As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-thirds of those deported had no criminal history. This focus on quantity over public safety led to a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE appointments, regardless of the status of their legal cases. This has created a climate of fear, discouraging people from attending their mandatory hearings or ICE appointments.

In addition, individuals are now held for extended periods, sometimes days, in temporary holding cells that are not designed for overnight or prolonged detention, often under inhumane conditions. Government officials have justified these harsh conditions not as a matter of necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for detention.

Ms. Tenorio Rugama has lived in the United States for over three years. She has an aunt and sister who live in Bakersfield, California. At the time of detention, Ms. Tenorio Rugama was living in Bakersfield, California. Ms. Tenorio Rugama has no criminal history anywhere in the world. She has established strong connections to the United States.

Ms. Tenorio Rugama's arrest and detention have caused and will cause immediate, tremendous, and ongoing harm, which includes health problems which could lead to hospitalization and/or death, hygiene, sleep, and nutrition deprivation, family separation, emotional and economic harm, loss of employment, and psychological harm. Ms. Tenorio Rugama is not a flight risk, as evidenced by her deep ties to the community, including her

1 relatives in the US. She is not a danger to the community. She is a law-abiding person. Her
2 detention serves no legitimate purpose.

3 This case has substantial factual and legal support to be granted, resulting in Ms. Tenorio
4 Rugama release from custody, and enjoining DHS from detaining Ms. Tenorio Rugama pending
5 a hearing before a neutral adjudicator, to substantiate a material change in circumstances
6 indicating that Ms. Tenorio Rugama is either a flight risk or a danger to the community.

7 Intervention from this Court is therefore required to ensure that Ms. Tenorio Rugama is
8 released from her current custody based on her unlawful arrest, returned to her home in
9 Bakersfield, California, where ICE can then provide her with a hearing before determining to re-
arrest her pursuant to the Due Process Clause of the Fifth Amendment.

10 **III. LEGAL STANDARD**

11 Ms. Tenorio Rugama is entitled to a temporary restraining order if she establishes that
12 she is “likely to succeed on the merits...likely to suffer irreparable harm in the absence of
13 preliminary relief, that the balance of equities tips in [her] favor, and that an injunction is in the
14 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l*
15 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary
16 injunction and temporary restraining order standards are “substantially identical”). Even if Ms.
17 Tenorio Rugama does not show a likelihood of success on the merits, the Court may still grant a
18 temporary restraining order if she raises “serious questions” as to the merits of her claims, the
19 balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied.
20 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more
detail below, Ms. Tenorio Rugama overwhelmingly satisfies both standards.

21 Furthermore, the requirements for issuing a temporary restraining order without notice
22 are met here. See Fed. R. Civ. P. 65(b). Ms. Tenorio Rugama has attempted to secure her release
23 from ICE but has received no response. Ms. Tenorio Rugama also set out specific facts
24 demonstrating that immediate and irreparable injury, loss, or damage may result before
25 respondents can be heard in opposition. See *Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 L
26 1853763, at *4 (N.D. Cal. July 4, 2025); *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal
27 Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025)(granting
ex parte temporary restraining order in similar circumstances).

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IV. ARGUMENT

A. Ms. Tenorio Rugama WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. See *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Ms. Tenorio Rugama is likely to remain in unlawful custody in violation of her due process rights without intervention by this Court. Ms. Tenorio Rugama will continue to suffer irreparable injury if she continues to be detained without due process.

1. Ms. Tenorio Rugama is likely to succeed on the merits because her detention violates substantive due process.

The Due Process Clause applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government’s deprivation of an individual’s liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; see *Hernandez*, 872 F.3d at 994 (“[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person’s substantive due process rights. See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the government’s interests in preventing flight and danger); see also *Mahdawi v. Trump*, No. 2:25-

1 CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after
2 finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates either that the
3 government acted with a punitive purpose or that it lacks any legitimate reason to detain him”).

4 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
5 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
6 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing
7 and completing deportation proceedings, it could become necessary then to inquire whether the
8 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but
9 to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision
10 today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,
11 constitutional challenges to applications of the statute as we have now read it.”).

12 Ms. Tenorio Rugama is neither a danger nor a flight risk. Therefore, her detention is both
13 punitive and not justified by a legitimate purpose, violating her substantive due process rights.
14 Ms. Tenorio Rugama’s ongoing detention is unconstitutional, and substantive due process
15 principles require her immediate release.

16 **2. Ms. Tenorio Rugama is Likely to Succeed on the Merits of Her Claim That
17 in This Case the Constitution Requires a Hearing Before a Neutral
18 Adjudicator Prior to Any Re-Incarceration by ICE.**

19 Ms. Tenorio Rugama is likely to succeed on her claim that, in her particular
20 circumstances, her current detention is unlawful because the Due Process Clause of the
21 Constitution prevents Respondents from detaining her without first providing a pre-deprivation
22 hearing before a neutral adjudicator where the government demonstrates by clear and convincing
23 evidence that she is a danger to the public or a flight risk.

24 Courts analyze procedural due process claims, such as this one, in two steps: the first asks
25 whether a protected liberty interest exists under the Due Process Clause, and the second examines
26 the procedures necessary to ensure that any deprivation of that protected liberty interest accords
27 with the Constitution. See *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

28 **a. Ms. Tenorio Rugama Has a Protected Liberty Interest**

The Due Process Clause protects Ms. Tenorio Rugama’s liberty from immigration
custody: “Freedom from imprisonment—from government custody, detention, or other forms of

1 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
2 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 Ms. Tenorio Rugama has an established life in California. Ms. Tenorio Rugama has lived
4 in the United States for over three years. She resides in Bakersfield, California. Ms. Tenorio
5 Rugama has not missed any court hearings or ICE appointments. Ms. Tenorio Rugama has no
6 criminal history anywhere in the world. Ms. Tenorio Rugama suffers from anxiety and sleep
7 issues which require medications.

8 **b. Ms. Tenorio Rugama’s Liberty Interest Mandates Her Release from
Unlawful Custody And A Hearing Before any Re-Arrest.**

9 Ms. Tenorio Rugama asserts that, here, (1) where her detention would be civil; (2) where
10 she has viable immigration relief; (3) where no circumstances exist that would justify her lawful
11 detention; and (4) where ICE’s move to arrest as many people as possible under the new
12 administration’s initiative, due process mandates that she be released from her unlawful custody
13 and receive notice and a hearing before a neutral adjudicator before any re-arrest or revocation
14 of her custody release.

15 “Adequate, or due, process depends upon the nature of the interest affected. The more
16 important the interest and the greater the effect of its impairment, the greater the procedural
17 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
18 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey v. Brewer*, 408 U.S. 471, at 481-82
19 (1972)). This Court must “balance [Ms. Tenorio Rugama’s] liberty interest against the
20 [government’s] interest in the efficient administration of” its immigration laws to determine what
21 process she is owed to ensure that ICE does not unconstitutionally deprive her of her liberty. *Id.*
22 at 1357. Under the test outlined in *Mathews v. Eldridge*, this Court must consider three factors in
23 conducting its balancing test: “first, the private interest that will be affected by the official action;
24 second, the risk of an erroneous deprivation of such interest through the procedures used, and the
25 probative value, if any, of additional or substitute procedural safeguards; and finally the
26 government’s interest, including the function involved and the fiscal and administrative burdens
27 that the additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at
28 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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.

1 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
2 are “the only remedies the State could be expected to provide” can the post-deprivation process
3 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one
4 of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible
5 in preventing the kind of deprivation at issue” such that “the State cannot be required
6 constitutionally to do the impossible by providing pre-deprivation process,” can the government
7 avoid providing pre-deprivation process. *Id.*

8 Because, in this case, the provision of a pre-deprivation hearing is both possible and
9 valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Ms. Tenorio
10 Rugama with notice and a hearing prior to any incarceration. See *Morrissey*, 408 U.S. at 481-82;
11 *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; see also
12 *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982). Under *Mathews*, “the balance weighs heavily
13 in favor of [Ms. Tenorio Rugama’s] liberty” and requires a pre-deprivation hearing before a
14 neutral adjudicator.

15 **i. Ms. Tenorio Rugama Private Interest in Her Liberty is Profound.**

16 What is at stake in this case for Ms. Tenorio Rugama is one of the most profound
17 individual interests recognized by our legal system: whether ICE may unilaterally detain a non-
18 citizen and be able to take away her physical freedom, i.e., her “constitutionally protected interest
19 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)(internal
20 quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty
21 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See also
22 *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention,
23 or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
24 protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

25 Thus, there is a profound private interest at stake in this case, which must be weighed
26 heavily when determining what process she is owed under the Constitution. See *Mathews*, 424
27 U.S. at 334-35.

28 **ii. The Government’s Interest in Incarcerating Ms. Tenorio Rugama Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Her Unless and Until She is Provided a Hearing is Minimal**

1 The government's interest in maintaining an unlawful detention without a due process
2 hearing is low, and when weighed against Ms. Tenorio Rugama's significant private interest in
3 her liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping her in
4 unlawful custody; (2) re-arresting Ms. Tenorio Rugama unless and until the government
5 demonstrates to a neutral adjudicator by clear and convincing evidence that she is a flight risk or
6 danger to the community; and (3) removing her from the United States in violation of an agency
7 order and district court injunction. It becomes abundantly clear that the *Mathews* test favors Ms.
8 Tenorio Rugama when the Court considers that the process she seeks—notice and a bond hearing
9 before a neutral decision maker—is a standard course of action for the government. Providing
10 Ms. Tenorio Rugama with a hearing before this Court (or a neutral decision maker) to determine
11 whether there is clear and convincing evidence that Ms. Tenorio Rugama is a flight risk or danger
12 to the community would impose only a de-minimis burden on the government, because the
13 government routinely provides this sort of hearing to individuals like Ms. Tenorio Rugama.

14 As immigration detention is civil in nature, it cannot serve a punitive purpose. The
15 government's only interest in holding an individual in immigration detention can be to prevent
16 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. See
17 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
18 basis for detaining Ms. Tenorio Rugama since she has lived at liberty with her community,
19 without any criminal or civil traffic infractions and has attended all court hearings and ICE check-
20 ins. The government's interest in detaining Ms. Tenorio Rugama currently is extremely low. That
21 ICE has a new policy to make a minimum number of arrests each day under the new
22 administration does not constitute a valid reason to detain her.

23 Moreover, the "fiscal and administrative burdens" that her immediate release and a lawful
24 pre-detention hearing would impose is nonexistent in this case. See *Mathews*, 424 U.S. at 334-
25 35. Ms. Tenorio Rugama does not seek a unique or expensive form of process, but rather a routine
26 hearing. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public
27 of immigration detention are 'staggering': \$158 each day per detainee, amounting to a total daily
28 cost of \$6.5 million." *Hernandez*, 872 F.3d at 996. It is only fair to say these costs have increased
in the past 8 years.

Alternatively, providing Ms. Tenorio Rugama with a hearing before this Court (or a
neutral decision-maker) regarding release from custody is a routine procedure that the

1 government provides to those in immigration detention facilities daily. At that hearing, the Court
2 would have the opportunity to determine whether circumstances justify her arrest and detention.
3 But there is no justifiable reason to incarcerate Ms. Tenorio Rugama before such a hearing takes
4 place.

5 Releasing Ms. Tenorio Rugama from unlawful custody and enjoining Ms. Tenorio
6 Rugama's arrest until ICE (1) moves for a custody re-determination before an IJ and (2)
7 demonstrates by clear and convincing evidence that Ms. Tenorio Rugama is a flight risk or danger
8 to the community is far less costly and burdensome for the government than keeping her detained
9 to a total daily cost of over \$6.5 million. *Hernandez*, 872 F.3d at 996.

10 **iii. Without a Due Process Hearing Prior to Any Arrest, the Risk of an**
11 **Erroneous Deprivation of Liberty is High, and Process in the Form of**
12 **a Constitutionally Compliant Hearing Where ICE Carries the Burden**
13 **Would Decrease That Risk.**

14 Releasing Ms. Tenorio Rugama from unlawful custody and providing Ms. Tenorio
15 Rugama a pre-deprivation hearing would decrease the risk of her being erroneously deprived of
16 her liberty. Before Ms. Tenorio Rugama can be lawfully detained, she should have been provided
17 with a hearing before a neutral adjudicator at which the government is held to show that there are
18 sufficient circumstances to detain her. Clear and convincing evidence exists to establish that Ms.
19 Tenorio Rugama is not a danger to the community or a flight risk.

20 The procedure Ms. Tenorio Rugama seeks—a hearing in front of a neutral adjudicator at
21 which the government must prove by clear and convincing evidence to justify her detention. “A
22 neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d
23 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548
24 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty
25 under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes
26 custody determinations. *Diouf v. Napolitano* (“*Diouf IP*”), 634 F.3d 1081, 1091-92 (9th Cir.
27 2011).

28 Due process also requires consideration of alternatives to detention at any custody
redetermination hearing that may occur. The primary purpose of immigration detention is to
ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.

Detention is not reasonably related to this purpose if there are alternatives to incarceration
that could mitigate the risk of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly,

1 alternatives to detention must be considered in determining whether Ms. Tenorio Rugama's
2 reincarceration is warranted.

3 As the above-cited authorities show, Ms. Tenorio Rugama is likely to succeed in her
4 claim that the current arrest and detention that ICE effected November 4, 2025, are unlawful.
5 The Due Process Clause requires notice and a hearing before a neutral decision-maker before any
6 reincarceration by ICE. And, at the very minimum, she clearly raises serious questions regarding
7 this issue, thus also meriting a TRO. See *Alliance for the Wild Rockies*, 632 F.3d at 1135.

8 **3. Ms. Tenorio Rugama Will Suffer Irreparable Harm Absent Injunctive Relief**

9 Ms. Tenorio Rugama will suffer irreparable harm if she remains detained after being
10 deprived of her liberty and subjected to unlawful incarceration by immigration authorities
11 without being provided with the constitutionally adequate process that this motion for a
12 temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions."
13 *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained,
14 "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means
15 loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514,
16 532-33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th
17 Cir. 1984).

18 Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms
19 imposed on anyone subject to immigration detention," including "subpar medical and psychiatric
20 care in ICE detention facilities, the economic burdens imposed on detainees and their families as
21 a result of detention, and the collateral harms to children of detainees whose parents are
22 detained." *Hernandez*, 872 F.3d at 995.

23 The government itself has documented alarmingly poor conditions in ICE detention
24 centers. See, e.g., DHS, Office of Inspector General (OIG), Summary of Unannounced
25 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations
26 of environmental health and safety standards; staffing shortages affecting the level of care
27 detainees received for suicide watch, and detainees being held in administrative segregation in
28 unauthorized restraints, without being allowed time outside their cell, and with no documentation
that they were provided health care or three meals a day).

1 Conditions at the California City Detention Facility – where plaintiff is being held - are
2 so inhumane that the ACLU recently filed a Class Action lawsuit in this Federal District detailing
3 the grotesque, inhumane, and substandard conditions of the facility. *Gomez Ruiz v. U.S.*
4 *Immigration and Customs Enforcement*, (N.D. Cal. Case 3:25-cv-09757, filed 11/12/25).

5 As detailed supra, Petitioner contends that her arrest, absent a hearing before a neutral
6 adjudicator, violates her due process rights under the Constitution. It is clear that “the deprivation
7 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695
8 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a
9 temporary restraining order is necessary to prevent Ms. Tenorio Rugama from suffering
10 irreparable harm by being subject to unlawful and unjust detention.

11 **4. The Balance of Equities and the Public Interest Favor Granting the**
12 **Temporary Restraining Order.**

13 The balance of equities and the public interest undoubtedly favor granting this temporary
14 restraining order. First, the balance of hardships strongly favors Ms. Tenorio Rugama. The
15 government cannot suffer harm from an injunction that prevents it from engaging in an unlawful
16 practice. See *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably
17 assert that it is harmed in any legally cognizable sense by being enjoined from constitutional
18 violations.”). Therefore, the government cannot allege harm arising from a temporary restraining
19 order or preliminary injunction ordering it to comply with the Constitution.

20 Further, any burden imposed by requiring the ICE to release Ms. Tenorio Rugama from
21 unlawful custody and refrain from re-arrest unless and until she is provided with a hearing before
22 a neutral arbitrator is both de minimis and clearly outweighed by the substantial harm she will
23 suffer as if she is detained. See *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s
24 interest lies on the side of affording fair procedures to all persons, even though the expenditure
25 of governmental funds is required.”).

26 A temporary restraining order is in the public interest. First and most importantly, “it
27 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
28 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
v. Brewer, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
effectively be granted permission to detain Ms. Tenorio Rugama in violation of the requirements

of Due Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); see also *Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process.”); cf. *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”).

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

V. CONCLUSION

For all the above reasons, this Court should find:

(1) that Ms. Tenorio Rugama warrants a temporary restraining order and a preliminary injunction ordering that Respondents Declare that Petitioner’s detention violates the Due Process Clause of the Fifth Amendment;

(2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately and schedule a bond hearing before an immigration judge;

(3) Declare immediately that Defendants are prohibited from moving Petitioner outside of the jurisdiction of the Eastern District of California and enjoin Defendants from sending her to any place outside of the United States;

(4) Enjoin defendant from re-detaining Petitioner without a pre-deprivation hearing before an immigration judge where the Government bears the burden of proving that circumstances have materially changed, rendering Petitioner a danger to the community or a flight risk;

(5) Order Defendants to file a written declaration attesting to full compliance with these obligations.

(6) Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and

(7) Grant any further relief this Court deems just and proper.

Dated: December 18, 2025

Respectfully submitted,

/s/ Robert Beles

Robert J. Beles

Attorney for Petitioner

Jahaira Abigail Tenorio Rugama

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on December 18, 2025, in Oakland, CA.

/s/ Emilio Parker
Emilio Parker
Attorney for Petitioner
Jahaira Abigail Tenorio
Rugama