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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11 ODILIO MISAEL ORELLANA REYES,

12 Petitioner,

13 v.

14 SERGIO ALBARRAN, Field Office Director of the
15 San Francisco Immigration and Customs
16 Enforcement Office; TODD LYONS, Acting
17 Director of United States Immigration and Customs
18 Enforcement; KRISTI NOEM, Secretary of the
19 United States Department of Homeland Security,
20 PAMELA BONDI, Attorney General of the United
21 States, acting in their official capacities,

22 Respondents.

Case No. 3:26-cv-01756

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

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INTRODUCTION

ICE pulled over Petitioner Odilio Misael Orellana Reyes's vehicle today and arbitrarily detained him. Mr. Orellana Reyes has no criminal history and has a pathway to legal status through his U visa application.

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

As a result of his arrest and detention, Petitioner is suffering irreparable and ongoing harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). He is also the main breadwinner for his wife and four children, and they are at risk of homelessness if he remains detained.

In light of this irreparable harm, and because he is likely to succeed on the merits of his due process claims, Petitioner respectfully requests that this Court issue a temporary restraining order ("TRO") immediately releasing from him custody and enjoining the government from re-arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision maker. **Confronted with similar facts and legal issues, courts in this circuit have granted the relief Petitioner seeks. See, e.g., *Ayala v. Bondi*, 794 F. Supp. 3d 901 (W.W. D.C., July**

1 24, 2025); *B.D.A.A. v. Bostock*, 2025 U.S. Dist. LEXIS 250425, No. 6:25-cv-02062-AA (D.
2 Ore. Dec. 4, 2025). To maintain this Court's jurisdiction, the Court should also prohibit the
3 government from transferring Petitioner out of this District and removing him from the country
4 until these proceedings have concluded.

5 BACKGROUND

6 A noncitizen is eligible for a U visa if (1) the applicant "suffered substantial physical or
7 mental abuse as a result of having been a victim of" certain explicitly identified types of crimes;
8 (2) the applicant "possesses information concerning [the] criminal activity"; (3) the applicant
9 "has been helpful, is being helpful or is likely to be helpful" to government officials regarding
10 the criminal activity; and (4) the criminal activity "occurred in the United States" or violated
11 United States law. 8 U.S.C. § 1101(a)(15)(U)(i)(I-IV). Children and spouses and, for petitioners
12 under the age of 21, siblings and parents, may also receive U visas as derivative beneficiaries. 8
13 C.F.R. § 214.14(a)(10).
14

15 Under USCIS's BFD policy, petitioners granted a BFD EAD are placed directly in a
16 queue to wait for a U visa to come available. In the BFD process, USCIS conducts a streamlined
17 initial review to determine whether an application is "bona fide." PM, Vol. 3, Part C, Ch. 4. The
18 determination is "based on the petitioner's compliance with initial evidence requirements and
19 successful completion of background checks," after which USCIS "considers any national
20 security and public safety risks, as well as any other relevant considerations," in deciding
21 whether to issue an employment authorization document ("EAD") and deferred action. PM, vol.
22 3, pt. C, chap. 5. "If USCIS determines a principal petitioner and any other qualifying family
23 members have a bona fide petition and warrant a favorable exercise of discretion, USCIS issues
24 them BFD EADs and grants deferred action." PM, Vol. 3, Part C, Ch. 5.B, C.
25

26 A BFD EAD and deferred action are valid for four years and renewable. PM vol. 3, pt.
27 C, chap. 5. USCIS identifies four circumstances when early revocation of deferred action is
28

appropriate: (1) “if USCIS determines a national security or public safety concern is present,”
 (2) “if USCIS determines the BFD EAD and deferred action is no longer warranted,” (3) if “the
 Form I-918 Supplement B law enforcement certification is withdrawn” by the certifying agency,
 or (4) USCIS determines the prior BFD EAD was issued in error.” *Id.*

FACTS

Mr. Orellana Reyes entered the United States in 2017. Petitioner’s Habeas Petition
 (“Pet.”) at 5; Declaration of Jordan Weiner (“Weiner Decl.”) ¶ 5. He lives in East Palo Alto,
 California with his wife and four children. Weiner Decl. at ¶ 5. His oldest child is 18 years old
 and the youngest is 11 years old. *Id.* Mr. Orellana Reyes works as a dishwasher in a restaurant.
Id.

Mr. Orellana Reyes has a pending derivative U visa application. *Id.* The principal U visa
 applicant is his daughter, who was the minor victim of a serious crime. *Id.* He has employment
 authorization based on his pending U visa application. *Id.* Upon information and belief, he has a
 bona fide U visa determination. *Id.*

Mr. Orellana Reyes was apprehended by immigration officials on March 1, 2026 when
 they pulled over his vehicle. *Id.* He is currently in ICE custody. *Id.*

Mr. Orellana Reyes has no criminal history. *Id.*

Mr. Orellana Reyes is being deprived of his liberty without any permissible justification.
 He and his family are suffering harm as a result of his arbitrary detention. *Id.* He is the main
 breadwinner for the family. *Id.* His wife and four children are at risk of homelessness if Mr.
 Orellana Reyes is not released. *Id.*

ARGUMENT

To warrant a TRO, a movant must show (1) they are “likely to succeed on the merits,”
 (2) they are “likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the

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

10 **I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.**

11 **A. Petitioner’s detention violates due process.**

12
13 The Due Process Clause applies to “all ‘persons’ within the United States, including
14 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
15 *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against
16 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
17 exercise of power without any reasonable justification in the service of a legitimate government
18 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from
19 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
20 the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

21
22 To comply with substantive due process, the government’s deprivation of an individual’s
23 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is
24 “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
25 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
26 (“[T]he government has no legitimate interest in detaining individuals who have been determined
27 not to be a danger to the community and whose appearance at future immigration proceedings can
28

1 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
2 absent, immigration detention serves no legitimate government purpose and becomes
3 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*
4 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
5 government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-
6 CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after
7 finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates *either* that the
8 government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him”).

9
10 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
11 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
12 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
13 pursuing and completing deportation proceedings, it could become necessary then to inquire
14 whether the detention is not to facilitate deportation, or to protect against risk of flight or
15 dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019)
16 (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—
17 that is, constitutional challenges to applications of the statute as we have now read it.”).
18 Therefore, even if Petitioner has a removal order, his detention without changed circumstances is
19 unconstitutional while his U-visa is pending.

20
21 Further, in granting Petitioner deferred action pursuant to a U visa petition, “USCIS
22 solicited applications from eligible [noncitizens], instituted a standardized review process, and
23 sent formal notices indicating whether the [petitioner] would receive the [four]-year forbearance.”
24 *Regents*, 591 U.S. at 18. “These proceedings are effectively adjudications.” *Id.* (cleaned up).
25 “[T]he result of these adjudications—DHS’s decision to grant deferred action...—is an
26 affirmative act of approval” that “confer[s] affirmative immigration relief.” *Id.* “[D]eferred action
27 recipients are considered ‘lawfully present’ for purposes of, and therefore eligible to receive
28

1 [federal] benefits.” *Id.* at 1902 (citations omitted). Thus, a grant of [deferred action] constitutes a
2 conferred benefit that requires procedural safeguards before it can be terminated.” *Inland Empire*
3 *- Immigrant Youth Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 4998230, at
4 *19–20 (C.D. Cal. Apr. 19, 2018) (“Inland Empire”).

5 Because “[a]rbitrary civil detention is not a feature of our American government,”
6 *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), civil confinement is only permissible “in
7 certain special and narrow non-punitive circumstances,” where a “special justification” asserted
8 by the government “outweighs the individual’s constitutionally protected interest in avoiding
9 physical restraint.” *Zadvydas*, 533 U.S. at 690 (cleaned up).

11 The two traditionally accepted justifications for keeping someone in civil immigration
12 custody do not warrant the imprisonment of Petitioner, who received deferred action. “The first
13 justification—preventing flight—is weak or nonexistent where removal seems a remote
14 possibility.” *Id.* at 679. By definition, the removal of someone with deferred action is necessarily
15 “a remote possibility” until it is formally revoked. *Id.*

17 “Preventive detention based on the second justification—protecting the community—has
18 been upheld only when limited to specially dangerous individuals and subject to strong
19 procedural protections.” *Id.* Here, any such justification would be specious. By definition,
20 someone with deferred action has passed background checks and been vetted for national security
21 and public safety risks as a necessary prerequisite to receiving deferred action. *See, e.g.*, PM, vol.
22 3, pt. C, chap. 5. Furthermore, prior to being detained by ICE, Petitioner was necessarily living
23 free in the United States with ICE’s knowledge and approval. When the government seeks to
24 detain a noncitizen it has previously subjected to robust vetting and determined presents no
25 security or flight risks, it must provide the person with a pre-detention hearing to prove changed
26 circumstances that warrant civil incarceration.

28 Once a petitioner has established a protected liberty interest, as Petitioner has done here,

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

8
9 *First*, the private interest affected in this case is profound. When considering this factor,
10 courts look to "the degree of potential deprivation." *Nozzi v. Hous. Auth. of City of Los Angeles*,
11 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). The degree of
12 deprivation here is high. Petitioner has been completely deprived of his physical liberty.
13 Petitioner's detention has ripped from him the "free[dom] to be with family and friends and to
14 form the . . . enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Cutting someone
15 off from the "core values of unqualified liberty"—for Petitioner creates a "grievous loss." *Id.*
16 Moreover, because Petitioner faces *civil detention*, "his liberty interest is arguably greater than
17 the interest of the parolees in *Morrissey*." *See Ortega*, 415 F. Supp. 3d at 970. As someone in
18 civil detention, therefore, "it stands to reason that [Petitioner] is entitled to protections at least as
19 great as those afforded to a[n] . . . individual . . . accused but not convicted of a crime." *See*
20 *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

21
22 *Second*, "the risk of an erroneous deprivation [of liberty] is high" where, as here, "[the
23 petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No.
24 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*,
25 No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v.*
26 *Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025).

27
28 Because the private interest in freedom from immigration detention is substantial, due

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

8
9 *Third*, the government’s interest in detaining Petitioner without first providing notice
10 and submitting to a custody hearing is minimal. Immigration courts routinely conduct custody
11 hearings, which impose a “minimal” cost to the government. *See Doe*, 2025 WL 691664, at *6;
12 *A.E.*, 2025 WL 1424382, at *5. Petitioner has committed no crimes and was peacefully living
13 his life while waiting for the adjudication of his U-visa. Courts regularly hold that the
14 government’s interest in detention without a custody hearing is low when the petitioner “has
15 long complied with his reporting requirements.” *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL
16 1676854, at *3-*4 (N.D. Cal. June 14, 2025) (granting TRO prohibiting re-detention of
17 noncitizen without a pre-deprivation bond hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-
18 01434-JST, 2021 WL 783561, at *3-*4 (N.D. Cal. Mar. 1, 2021) (same); *Ortega*, 415 F. Supp.
19 3d at 970 (granting habeas petition ordering the same); *see also Valdez v. Joyce*, No. 25 CIV.
20 4627 (GBD), 2025 WL 1707737, at *4-*5 (S.D.N.Y. June 18, 2025) (granting habeas petition
21 and immediately releasing petitioner who had been detained without process, who had
22 “voluntarily attended his scheduled immigration court proceedings” and “established ties”
23 through his work and volunteering with the church).

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25
26 Overall, the government violated procedural due process by depriving Petitioner of the
27 opportunity to contest his arrest and detention before a neutral decisionmaker. Petitioner is also
28 neither a danger nor a flight risk. Therefore, his detention is also both punitive and not justified

1 by a legitimate purpose, violating his substantive due process rights.

2 For the foregoing reasons, Petitioner is likely to succeed on the merits of his claims. But
3 even if the Court disagrees, he presents at least “serious question[s] going to the merits,”
4 alongside a “balance of hardships” tipping decidedly in their favor. *All. for the Wild Rockies*,
5 632 F.3d at 1135. Indeed, the constitutional concerns delineated above are of the weightiest
6 order and beyond colorable. This Court should therefore enter the requested TRO.
7

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

10 Without a temporary restraining order, Petitioner will suffer immense irreparable injury.
11 Indeed, he faces such injury every day he remains in detention in violation of his Fifth
12 Amendment rights. He is also the main breadwinner for the family, and his partner and four
13 children risk homelessness if he is not released. Declaration of Jordan Weiner at 1. “It is well
14 established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable
15 injury.’” *Hernandez*, 872 F.3d at 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
16 Cir. 2012)). “When an alleged deprivation of a constitutional right is involved, most courts hold
17 that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d
18 989, 1001-02 (9th Cir. 2005) (internal quotation marks omitted). And the unlawful deprivation
19 of physical liberty is the quintessential irreparable harm. *See Hernandez*, 872 F.3d at 994
20 (holding that plaintiffs were irreparably harmed “by virtue of the fact that they [we]re likely to
21 be unconstitutionally detained for an indeterminate period of time”); *see also, e.g., Rosales-*
22 *Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount of actual jail
23 time is significant, and has exceptionally severe consequences for the incarcerated individual”
24 (cleaned up)).
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III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER'S FAVOR.

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

The public interest likewise weighs strongly in Petitioner’s favor. As another California district court recently concluded, “[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering.” *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M. F.*, 2021 WL 783561, at *3). More fundamentally, “[i]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citing *Padilla v. Immigr. & Customs Enf’t*, 953 F.3d 1134, 1147-48 (9th Cir. 2020) (internal quotation marks omitted)).

SECURITY

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

1 Cal. 1996). Finally, Plaintiff's showing of a high likelihood of success on the merits supports the
2 court's waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v.*
3 *Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir.
4 1985).

6 CONCLUSION

7 For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to
8 restore the *status quo ante* that (1) immediately releases him from Respondents' custody and
9 enjoins Respondents from re-detaining him absent further order of this Court; (2) in the
10 alternative, immediately releases him from Respondents' custody and enjoins Respondents from
11 re-detaining him unless they demonstrate at a pre-deprivation bond hearing, by clear and
12 convincing evidence, that Petitioner is a flight risk or danger to the community such that his
13 physical custody is required; and (3) prohibits the government from transferring him out of this
14 District and/or removing him from the country until these habeas proceedings have concluded.
15
16
17

18 Date: March 1, 2026

Respectfully Submitted,

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