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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

Crisoforo DonJuan German

Petitioner-Plaintiff,

v.

Todd M. LYONS, interim Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

Markwayne Mullin, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

Todd Blanch, in his Official Capacity, Attorney General of the United States;

Eric Rokosky, acting Warden Eloy Detention Center, Eloy Arizona;

Timothy COURCHAINE, in his Official Capacity, United States Attorney, District of Arizona.

Respondents-Defendants.

Case No. _____

PETITION's MOTION FOR TEMPORARY RESTRAINING ORDER and PRELIMINARY INJUNCTION

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

NOTICE OF MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the District of Arizona, that Petitioner Crisoforo DonJuan German hereby moves the Court for emergency relief in the form of a temporary restraining order ("TRO") and preliminary injunction enjoying Respondents from removing Petitioner from the United States or relocating Petitioner outside of the District of Arizona pending further Order of the Court, and ordering their release during the pendency of this action. Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this Court order Petitioner's immediate release from Respondents' custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative. This motion is based on this Notice of Motion and the accompanying Memorandum of Points and Authorities.

Respectfully submitted on this April 22, 2026,

/s/ Jose L Chaidez
Jose L. Chaidez
Attorney for Petitioner
Mr. Crisoforo DonJuan German

MEMORANDUM OF POINTS AND AUTHORITIES INTRODUCTION AND FACTUAL BACKGROUND

On August 26, 2025, Petitioner was encountered at Phoenix Police Department after ICE hold was placed. Upon his release for subsequently dismissed charged, ICE detained Petitioner. without notice or cause. Respondent arrested and detained Petitioner without notice or cause. Petitioner is currently held in Florence Processing Center in Florence, Arizona where he has been placed in removal proceedings and is scheduled for an Individual Hearing

Nothing about Petitioner's encounter justified their arrest and detention. Mr. Marlon Pastor Cabrera was subjected to detention by ICE agents without reasonable suspicion, arrested without a warrant or probable cause, and subjected to Removal Proceedings. 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.

As a result of their 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). Petitioner therefore seeks a TRO and preliminary injunction enjoying Respondents from removing them from the United States, from relocating them out of the District of Arizona pending this litigation and ordering their release. A TRO is necessary to avoid irreparable harm and to ensure that this Court is not deprived of jurisdiction over their claims should they be removed from the United States or relocated outside of this District.

LEGAL STANDARD

Mr. Crisoforo DonJuan German is entitled to a temporary restraining order if they establish that they are "likely to succeed on the merits, . . . likely to suffer irreparable harm in the

absence of preliminary relief, that the balance of equities tip in [her] 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 the preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if they raise "serious questions" as to the merits of their claims, the balance of hardships tips "sharply" in their favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d1127, 1135 (9th Cir. 2011). All factors here weigh decisively in Petitioner's favor.

ARGUMENT

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. Petitioner's detention violates substantive due process because she is neither a flight risk nor a danger to the community.

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

To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas,* 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined

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

The Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called "mandatory" detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) ("Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons."); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) ("Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it."). Petitioner, who has no criminal record, has strong community ties with three United States children is neither a danger nor a flight risk. Therefore, their detention is both punitive and not justified by a legitimate purpose, violating their substantive due process rights.

First, because Petitioner had no criminal history, and has had no intervening criminal history or arrests since coming to the United States nearly 24 years ago, there is no credible argument that they are a danger to the community.

Second, as to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. There is no basis to argue that Petitioner, who when encounter, did not resist arrest, and did not attempt the flee, is a flight risk. Petitioner has no criminal history or history of failing to appear at hearings since being in the United States. Moreover, Petitioner has a filed

application for relief, asylum application, before the immigration court and a pathway to lawful permanent residence, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't,* 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). In sum, Petitioner's compliance with the laws and community ties demonstrate they are neither a danger nor flight risk. Accordingly, Petitioner's ongoing detention is unconstitutional, and substantive due process principles require her immediate release.

B. **The government violated procedural due process by depriving Petitioner of the opportunity to contest her arrest and detention before a neutral decisionmaker.**

Noncitizens living in the United States like Petitioner have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. The Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding the same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

Accordingly, the Supreme Court has repeatedly held that individuals released from custody on bond, parole, or other forms of conditional release have a protected interest in their ongoing liberty, because "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Morrissey*, 408 U.S. at 482. "By whatever name, the[ir] liberty is valuable and must be seen within the protection of the [Due Process Clause]." *Id.* This liberty interest also applies to noncitizens, including those who have been conditionally released from immigration custody. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). Petitioner thus has a protected liberty interest in her freedom from physical custody. | Once a petitioner has established a protected liberty interest, as Petitioner has done here, courts in this circuit apply the Mathews test to determine what procedural protections

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

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

Second, "the risk of an erroneous deprivation [of liberty] is high" where, as here, "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, No. 1:25-cv-00107, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (quoting *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, at *3 (N.D. Cal. Jan. 30, 2020)); *see also Diep v. Wofford*, No. 1:24-cv-01238, 2025 WL 6047444, at *5 (E.D. Cal. Feb. 25, 2025). Respondents detained Petitioner as their vehicle broke down on the side of the road detaining them with no notice and no opportunity to contest their detention before a neutral arbiter. In such circumstances, when Respondents have provided no procedural safeguards, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." A.E., 2025 WL 1424382, at *5. This is

especially true here, where there is no criminal history and strong community suggesting that Petitioner poses a flight risk or danger to the community. Their detention instead appears to be motivated instead by Respondents' new arrest quotas and practice of leveraging detention to secure dismissal of ongoing proceedings under Section 240 of the Immigration and Nationality Act, to initiate expedited removal. Neither constitutes a lawful justification to detain a person who does not pose a flight risk or danger to the community.

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

Third, the government's interest in detaining Petitioner without first providing notice and submitting to a custody hearing is minimal. Immigration courts routinely conduct custody hearings, which impose a "minimal" cost to the government. *See Doe*, 2025 WL 691664, at *6; A.E., 2025 WL 1424382, at *5. Petitioner has an impeccable record of no criminal history; there is no reason to believe that between the date of their release and their court date that will change.

In short, Respondents violated Petitioner's due process rights when they detained them without notice and without a custody hearing before a neutral arbiter. For the foregoing reasons, Petitioner is likely to succeed on the merits of her claims. But even if the Court disagrees, Petitioner presents at least "serious question[s] going to the merits," alongside a "balance of hardships" tipping decidedly in their favor. All. for the Wild Rockies, 632 F.3d at 1135. Indeed, the constitutional concerns delineated above are of the weightiest order and beyond colorable. This Court should therefore enter the requested TRO.

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

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

As a result of their arrest and detention, Petitioner is also suffering additional ongoing irreparable harms. Petitioner, was ripped from their life and community.

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

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court grant a TRO to restore the status quo ante that (1) immediately releases her from Respondents' custody without electronic monitoring and enjoins Respondents from re-detaining them absent further order of this Court; (2) in the alternative, immediately releases them from Respondents' custody and enjoins Respondents from re-detaining unless they demonstrate at a pre-deprivation bond hearing, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that their physical custody is required; and (3) prohibits the government from transferring them out of this District and/or removing them from the country until these habeas proceedings have concluded.

Dated: April 22, 2026

Respectfully submitted,

/s/ Jose L. Chaidez
Jose L. Chaidez
Attorney for Petitioner

CERTIFICATE OF COUNSEL

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, I hereby certify that on April 22, 2026, I provided a copy of this Motion for a Temporary Restraining Order and Preliminary Injunction and Memorandum of Points and Authorities, the Petition for Writ of Habeas Corpus and Complaint, to Interim U.S. Attorney Timoth Courchaine and AUSA Denise Faulk by emailing copies to timothy. courchaine@usdoj.gov and denies.faulk@usdoj.gov.

Executed on this April 22, 2026, in Phoenix, Arizona

/s/ Jose L Chaidez
Jose L. Chaidez
Attorney for Petitioner
Mr. Crisoforo DonJuan German

CERTIFICATE OF COUNSEL

I hereby certify that on April 22, 2026, I served a copy of this Motion for a Temporary Restraining Order and Preliminary Injunction by email to the follow individuals:

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