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

Nicolas Daniel MIRASOL MORALES,

Petitioner,

v.

RON MURRAY, Facility Administrator of Mesa Verde Detention Center; ORESTES CRUZ, Field Office Director of the San Francisco Immigration and Customs Enforcement Office; DAVID J. VENTURELLA, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Attorney General of the United States, acting in their official capacities,

Respondents.

CASE NO. 1:26-at-02673

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

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that as soon as it may be heard in the United States District Court for Eastern District of California, Petitioner Nicolas Daniel Mirasol Morales will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local Rule 231. Because Petitioner's ongoing immigration detention in Respondents' custody violates the Due Process Clause of the Fifth Amendment, and to the extent Petitioner was re-detained violates the Fourth Amendment, to the United States Constitution, to the extent Petitioner is a *Garro Pinchi* class member, violates the binding order in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025), and violates the Administrative Procedures Act, Petitioner respectfully requests that this Court (1) immediately release Petitioner from Respondents' custody and enjoin Respondents from re-detaining Petitioner absent further order of this Court; (2) in the alternative, immediately release Petitioner from Respondents' custody and enjoin Respondents from re-detaining Petitioner unless Respondents 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 Petitioner's physical custody is required; and (3) require Respondents to return Petitioner to conditions of release no stricter than those Petitioner was subject to prior to his detention; and (4) require Respondents to return all property confiscated from Petitioner during Petitioner's arrest, processing, and/or detention, including but not limited to any personal identification, medical insurance card, money, legal documents, and other personal effects. To preserve this Court's jurisdiction, Petitioner further seeks an order (5) prohibiting the government from transferring Petitioner out of this District until these habeas proceedings have concluded.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the supporting Declaration of Jazmin Preciado detailing notice, the Proposed Order, and TRO Checklist filed herewith; the papers, evidence, and records on file in this action; and any other written or oral evidence or argument as may be presented at or before the time this motion is heard by the Court. This motion is also supported by the Petition for Writ of Habeas Corpus and any exhibits attached thereto.

1 Consistent with Civil Local Rule 231(b), Petitioner seeks relief at the earliest possible
2 opportunity. Petitioner is filing this motion within 1 day after filing his Petition for Writ of Habeas
3 Corpus.

4 Pursuant to Civil Local Rules 142 and 231(c)(5), and as detailed further in the supporting
5 Declaration of Jazmín Preciado, counsel for Petitioner, provided counsel for Respondents with
6 notice of this Motion and advised Respondents of the emergency reasons requiring Petitioner to
7 seek an *ex parte* application for a temporary restraining order. Since there is no Counsel for
8 Respondents assigned to this case yet, at 5:26AM when I filed the habeas petition, I emailed the
9 general email address provided online (usacae.ecf2241-imm@usdoj.gov). To the email, I attached
10 the habeas petition, stated the relief sought and the basis for relief, advised that a TRO would be
11 forthcoming within the next couple of hours, and asked whether Respondents would be amendable
12 to stipulate on release to avoid a TRO. I have yet to hear back. Given the urgency of the matter, I
13 will proceed with filing the TRO.

TABLE OF CONTENTS

NOTICE OF MOTION AND MOTION	i
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
BACKGROUND	2
STANDARD OF REVIEW	3
ARGUMENT	4
I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.....	4
A. Petitioner’s Detention Violates the Fifth Amendment’s Due Process Clause.....	4
1. Petitioner is Likely to Succeed on His Procedural Due Process Claim.....	4
2. Petitioner is Likely to Succeed on His Substantive Due Process Claim	7
B. Petitioner’s Detention May Violate the Binding <i>Garro Pinchi</i> Order Prohibiting Their Re-Detention Without a Material Change in Circumstances.....	8
C. Petitioner’s Detention May Violate the Fourth Amendment Prohibiting Re-Arrests Without New Probable Cause.	10
II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE INJURY ABSENT A TRO.....	10
III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER’S FAVOR.....	12
SECURITY	13
CONCLUSION.....	13

TABLE OF AUTHORITIES**Cases**

<i>A.A.H. v. Chestnut</i> , No. 1:25-CV-01758-DJC-EFB, 2025 WL 3640677 (E.D. Cal. Dec. 16, 2025)	9
<i>A.F.A.M. v. Albarran</i> , No. 25-CV-10492-AMO, 2025 WL 3752190 (N.D. Cal. Dec. 22, 2025)	9
<i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011)	4, 10
<i>Baca v. Moreno Valley Unified Sch. Dist.</i> , 936 F. Supp. 719 (C.D. Cal. 1996)	13
<i>California v. Azar</i> , 911 F.3d 558 (9th Cir. 2018)	12
<i>Castellon v. Kaiser</i> , No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025)	7
<i>Cnty. of Sacramento v. Lewis</i> , 523 U.S. 833 (1998)	6
<i>Cordero Pelico v. Kaiser</i> , No. 25-CV-07286-EMC, 2025 WL 2822876 (N.D. Cal. Oct. 3, 2025)	6, 9
<i>D.A.M. v. Barr</i> , 486 F. Supp. 3d 404 (D.D.C. 2020)	5
<i>Demore v. Kim</i> , 538 U.S. 510 (2003)	6
<i>Doe v. Becerra</i> , No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025)	8
<i>Env't Prot. Info. Ctr. v. Carlson</i> , 968 F.3d 985 (9th Cir. 2020)	12
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992)	1
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973)	7
<i>Galvez v. Jaddou</i> , 52 F.4th 821 (9th Cir. 2022)	12
<i>Garro Pinchi v. Noem</i> , 792 F. Supp. 3d 1025 (N.D. Cal. 2025)	9

1	<i>Garro Pinchi v. Noem</i> ,	
2	No. 25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025)	
		passim
3	<i>Garro Pinchi v. Noem</i> ,	
4	No. 5:25-cv-05632-PCP, Dkt. 38 (N.D. Cal. filed Oct. 10, 2025).....	2
5	<i>Hernandez v. Sessions</i> ,	
6	872 F.3d 976 (9th Cir. 2017).....	9, 11, 12
7	<i>Hurd v. D.C., Gov't</i> ,	
8	864 F.3d 671 (D.C. Cir. 2017)	7
9	<i>Index Newspapers LLC v. U.S. Marshals Serv.</i> ,	
10	977 F.3d 817 (9th Cir. 2020).....	12
11	<i>Jackson v. Indiana</i> ,	
12	406 U.S. 715 (1972).....	9
13	<i>Jones v. Blanas</i> ,	
14	393 F.3d 918 (9th Cir. 2004).....	8
15	<i>Jorgensen v. Cassidy</i> ,	
16	320 F.3d 906 (9th Cir. 2003).....	13
17	<i>Martinez v. Clark</i> ,	
18	124 F.4th 775 (9th Cir. 2024)	8
19	<i>Mathews v. Eldridge</i> ,	
20	424 U.S. 319 (1976).....	7
21	<i>Melendres v. Arpaio</i> ,	
22	695 F.3d 990 (9th Cir. 2012).....	11
23	<i>Morrissey v. Brewer</i> ,	
24	408 U.S. 471 (1972).....	7
25	<i>Nielsen v. Preap</i> ,	
26	586 U.S. 392 (2019).....	6
27	<i>Nken v. Holder</i> ,	
28	556 U.S. 418 (2009).....	4
	<i>Nozzi v. Hous. Auth. of City of Los Angeles</i> ,	
	806 F.3d 1178 (9th Cir. 2015).....	7
	<i>Ortega v. Bonnar</i> ,	
	415 F. Supp. 3d 963 (N.D. Cal. 2019)	6, 8, 9
	<i>Padilla v. U.S. Immigr. and Customs Enf't</i> ,	
	704 F. Supp. 3d 1163 (W.D. Wash. 2023).....	10

1	<i>People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency,</i>	
2	766 F.2d 1319 (9th Cir.), amended, 775 F.2d 998 (9th Cir. 1985)	13
3	<i>Perez v. Albarran,</i>	
4	No. 1:25-CV-01540-DAD-CSK, 2025 WL 3187578 (E.D. Cal. Nov. 14, 2025)	9
5	<i>Rodriguez Diaz v. Garland,</i>	
6	83 F.4th 1177 (9th Cir. 2023)	8
7	<i>Rodriguez Diaz v. Garland,</i>	
8	53 F.4th 1189 (9th Cir. 2022)	7
9	<i>Rosales-Mireles v. United States,</i>	
10	585 U.S. 129 (2018)	11
11	<i>Saravia v. Sessions,</i>	
12	280 F. Supp. 3d 1168 (N.D. Cal. 2017), <i>aff'd sub nom. Saravia for A.H. v. Sessions</i> , 905 F.3d	
13	1137 (9th Cir. 2018)	10
14	<i>Singh v. Andrews,</i>	
15	No. 1:25-CV-00801-KES-SKO (HC), --- F. Supp. 3d ---, 2025 WL 191867 (E.D. Cal. July 11,	
16	2025)	6, 8, 9
17	<i>Singh v. Holder,</i>	
18	638 F.3d 1196 (9th Cir. 2011)	8
19	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.,</i>	
20	240 F.3d 832 (9th Cir. 2001)	4
21	<i>Valencia Zapata v. Kaiser,</i>	
22	801 F. Supp. 3d 919 (N.D. Cal. 2025)	8, 10
23	<i>W.C. v. Bowen,</i>	
24	807 F.2d 1502 (9th Cir.), as amended on denial of reh'g, 819 F.2d 237 (9th Cir. 1987)	5
25	<i>Warsoldier v. Woodford,</i>	
26	418 F.3d 989 (9th Cir. 2005)	11
27	<i>Weldemichael v. Warden of Golden State Annex,</i>	
28	No. 1:25-CV-01553-EFB, 2026 WL 84080 (E.D. Cal. Jan. 12, 2026)	9
	<i>Winter v. Nat. Res. Def. Council, Inc.,</i>	
	555 U.S. 7 (2008)	4
	<i>Wolff v. McDonnell,</i>	
	418 U.S. 539 (1974)	6
	<i>Young v. Harper,</i>	
	520 U.S. 143 (1997)	7
	<i>Zadvydas v. Davis,</i>	

1	533 U.S. 678 (2001).....	1, 6, 9
2	<i>Zinerman v. Burch</i> ,	
3	494 U.S. 113 (1990).....	7
4	Statutes	
5	8 U.S.C. § 1182.....	2, 3, 4
6	8 U.S.C. § 1226(c)	2, 3, 4
7	8 U.S.C. § 1229a.....	2, 3, 4
8		
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INTRODUCTION

Petitioner Nicolas Daniel Mirasol Morales files this motion for a temporary restraining order (TRO) ordering their immediate release.

Petitioner's re-detention is unconstitutional under the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.").

In addition, Petitioner may be a member of the certified class in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973, 1010–11 (N.D. Cal. 2025). On December 19, 2025, the *Garro Pinchi* court held that the Department of Homeland Security's (DHS) new policy of re-arresting and re-detaining class members despite no change in their individual circumstances as to their dangerousness or flight risk likely violates the Administrative Procedure Act (APA). *Id.* at 1027. The *Garro Pinchi* court thus "stay[ed] DHS's re-detention policy pending final resolution of [the plaintiffs'] APA claims," and "postpone[d] the effective date of the re-detention policy within ICE's San Francisco area of responsibility until the entry of a final judgment in this action." *Id.* at 1034–40. Thus, Respondents may not implement their policy of re-arresting and re-detaining noncitizens within ICE's San Francisco Area of Responsibility absent a material change in circumstances as to flight risk or dangerousness. To the extent Petitioner is *Garro Pinchi* class member, Respondents appear to have re-detained Petitioner without a material change in circumstances as to their flight risk or dangerousness in violation of the December 19, 2025 *Garro Pinchi* order, which remains in effect.

Furthermore, Petitioner's arrest prior to an NTA being filed also violates the APA. Formal removal proceedings are strictly governed by procedural requirements. Specifically, 8 U.S.C. § 1229(a) provides that a removal proceeding is commenced only when the DHS files a Notice to Appear ("NTA") with the Immigration Court. The filing of an NTA is the threshold event that initiates proceedings and establishes the jurisdiction of the Immigration Court over the noncitizen.

1 To the extent that Petitioner was arrested prior to properly being in removal proceedings, the
2 government lacked authority to detain and in so doing acted in violation of the APA.

3 Moreover, Petitioner's re-detention without new probable cause may be unconstitutional
4 under the Fourth Amendment's prohibition against unreasonable seizures. The Fourth Amendment
5 protects the right of all persons present in the United States to be free from unreasonable seizures
6 by government officials. Petitioner therefore has the right to be free from unreasonable seizures.
7 As a corollary to that right, the Fourth Amendment prohibits re-arrest on the same charge without
8 a material change in circumstances. To the extent that Petitioner was re-arrested on the same charge
9 without a material change in circumstances, Petitioner's re-arrest violated the Fourth Amendment.

10 For the reasons described in detail herein, Petitioner could not have brought this habeas
11 petition and TRO sooner. Because Petitioner is likely to succeed on the merits of his claims and
12 his ongoing detention imposes irreparable harm, Petitioner respectfully requests that this Court
13 order his immediate release. To maintain this Court's jurisdiction, the Court should also prohibit
14 the government from transferring Petitioner out of this District or removing them from the country
15 until these habeas proceedings have concluded.

16 BACKGROUND

17 Petitioner is a noncitizen who is currently detained by Immigration and Customs
18 Enforcement ("ICE") in Respondents' custody at Mesa Verde Detention Center. Petition for Writ
19 of Habeas Corpus ("Pet.") ¶ 1. Petitioner is a 32-year-old citizen of Argentina, lawfully admitted
20 to the United States on a B-2 visitor visa in August 2020. Pet. ¶ 2. Petitioner's visa status expired
21 in early 2021, during the global COVID-19 pandemic, when international travel restrictions made
22 departure from the United States impossible. *Id.* Unable to travel home and strapped for money,
23 when he was offered an employment opportunity, he could not turn it down. *Id.* He has resided
24 continuously in the United States since that time, maintaining good moral character and establishing
25 strong family and community ties in the San Francisco Bay Area. Pet. ¶ 3. Respondents knew
26 Petitioner was living in the United States and allowed him to remain at liberty. Pet. ¶ 4. Respondents
27 had previously encountered Petitioner upon his arrival at a U.S. port of entry with a visitor visa as
28 he was legally required to undergo an inspection by an immigration officer who determined his

1 admissibility and granted his entry. *Id.* Respondents had chosen to allow Petitioner to remain non-
2 detained, upon a determination that Petitioner was neither dangerous nor a flight risk. *Id.*

3 Yet, despite no material change in circumstances as to Petitioner's flight risk or
4 dangerousness, Respondents arrested Petitioner on or around June 27, 2026 in Oakland, CA. Pet. ¶
5 6.

6 On December 19, 2025, the Garro Pinchi court certified the following class: "All
7 noncitizens in the jurisdiction of the San Francisco ICE Field Office who (1) entered or will enter
8 the United States without inspection; (2) have been or will be charged with inadmissibility under
9 8 U.S.C. § 1182 and have been or will be released from DHS custody; and who (3) are in removal
10 proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings that have been dismissed
11 where the dismissal is not administratively final; and (4) are not subject to detention under 8
12 U.S.C. § 1226(c)." Garro Pinchi, 813 F. Supp. 3d at 1010–11. The Garro Pinchi court held that
13 the Re-Detention Policy is likely unlawful because it is arbitrary and capricious in violation of the
14 APA. *Id.* at 1027. After finding that the rest of the factors favoring preliminary relief were
15 satisfied, the court issued an order staying Respondents' Re-Detention Policy, effective
16 immediately. *Id.* at 1040. Under that order, Respondents may not implement their policy of re-
17 arresting and re-detaining class members, unless Respondents first make an individualized
18 determination that there are materially changed circumstances as to the class member's
19 dangerousness or flight risk. Petitioner may be a Garro Pinchi class member whose arrest violated
20 the binding Garro Pinchi order.

21 Petitioner suffers ongoing irreparable harm every day they remain in detention. Pet. ¶¶ 71-
22 73. Prior to their current detention, Petitioner established ties in the United States that are
23 disrupted by their ongoing detention. *Id.* ¶¶ 3-7.

24 STANDARD OF REVIEW

25 To warrant an ex parte TRO, a movant must show that: (1) they are "likely to succeed on
26 the merits;" (2) they are "likely to suffer irreparable harm in the absence of preliminary relief;"
27 (3) "the balance of equities tips in [their] favor;" and (4) "an injunction is in the public interest."
28 *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat.*

1 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see Stuhlberg Int'l Sales Co. v. John D. Brush &*
2 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analyses for issuing a temporary restraining
3 order and a preliminary injunction are substantially the same). Where the government is the
4 opposing party, the third and fourth factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In
5 this Circuit, even if the movant raises only "serious questions" as to the merits of their claims, the
6 court can grant relief if the balance of hardships tips "sharply" in their favor. *All. for the Wild*
7 *Rockies*, 632 F.3d at 1135. All factors here weigh decisively in Petitioner's favor.

8 **ARGUMENT**

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

10 **A. Petitioner's Detention Violates the Fifth Amendment's Due Process Clause.**

11 Petitioner has established a likelihood of success on his procedural and substantive due
12 process claims. The Due Process Clause applies to "all 'persons' within the United States,
13 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."
14 *Zadvydas*, 533 U.S. at 693. "The touchstone of due process is protection of the individual against
15 arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the
16 exercise of power without any reasonable justification in the service of a legitimate government
17 objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from
18 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
19 the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. Due process constrains
20 even "mandatory" immigration detention. *See Nielsen v. Preap*, 586 U.S. 392, 420 (2019) ("Our
21 decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,
22 constitutional challenges to applications of the statute as we have now read it."); *Demore v. Kim*,
23 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring).

24
25 **1. Petitioner is likely to succeed on their procedural due process claim.**

26 Petitioner's procedural due process claim is likely to succeed. A noncitizen who has lived
27 freely in society and has developed ties to their community has "a protected liberty interest"
28 under the Due Process Clause in remaining out of custody. *Singh v. Andrews*, 803 F. Supp. 3d

1 1035, 1046 (E.D. Cal. 2025); *see also, e.g., Claros v. Albarran*, 811 F. Supp. 3d 1062, 1066 (N.D.
2 Cal. 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). This is because “[t]he
3 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live
4 up to [release] conditions.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). The Constitution
5 “usually. . . requires some kind of a hearing *before* the State deprives a person of liberty or
6 property,” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even when that freedom is
7 lawfully revocable. *See Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (re-detention after release
8 on probation requires pre-deprivation hearing); *Morrissey*, 408 U.S. at 482 (same, for parole).

9 Respondents permitted Petitioner to live out of custody in the United States and develop
10 ties to their community. Pet. ¶¶ 44–45. Respondents’ decision constituted a determination that
11 Petitioner was neither a danger nor flight risk requiring physical custody. *See id.* ¶¶ 46–47. To the
12 extent Respondents allege Petitioner has any new criminal arrests, charges, or convictions; or any
13 new violations of ICE’s Intensive Supervision Appearance Program (ISAP) or supervision
14 conditions since Petitioner’s last encounter with Respondents, those new facts do not justify
15 taking Petitioner into custody without any process. *Id.* ¶¶ 48–49. Accordingly, Petitioner has a
16 protected interest in their liberty, and they have a right to due process before they can be deprived
17 of that interest. Thus, Petitioner has a protected interest in their liberty.

18 To determine what process is due, courts in this Circuit apply the three-part test from
19 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See Rodriguez Diaz v. Garland*, 53 F.4th 1189,
20 1206-08 (9th Cir. 2022) (“assum[ing] without deciding” that *Mathews* applies in the immigration
21 detention context, and applying it). Under that test, the court weighs: (1) the private interest
22 affected; (2) the risk of erroneous deprivation and probable value of procedural safeguards; and
23 (3) the government’s interest. *Mathews*, 424 U.S. at 335. Here, the factors weigh heavily in favor
24 of releasing Petitioner and prohibiting his re-detention, absent a custody hearing at which the
25 government bears a clear-and-convincing burden of proof.

26 *First*, the private interest affected in this case is great, for “the degree of potential
27 deprivation” that Petitioner’s loss of liberty represents is profound. *Nozzi v. Hous. Auth. of City of*
28 *Los Angeles*, 806 F.3d 1178, 1193 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 341). Petitioner

1 has established ties in the United States and contributed to their family and/or community. *See* Pet.
2 ¶ 47. Petitioner's detention has ripped from them the "free[dom] to be with family and friends and
3 to form the . . . enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Respondents
4 have deprived Petitioner of the "core values of unqualified liberty," inflicting "a 'grievous loss'"
5 on Petitioner. *Morrissey*, at 482. Petitioner has established that his detention is resulting in grievous
6 loss. *See* Pet. ¶ 73. Moreover, because Petitioner faces civil detention, "[his] liberty interest is
7 arguably greater than the interest of the parolees in *Morrissey*." *See Ortega*, 415 F. Supp. 3d at
8 970; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

9 *Second*, "the risk of an erroneous deprivation of liberty is high where, as here, the petitioner
10 has not received any bond or custody redetermination hearing." *Singh*, 2025 WL 1918679 at *7
11 (citation modified). As Respondents have provided Petitioner *no* procedural safeguards, "the
12 probable value of additional procedural safeguards, i.e., a bond hearing, is high." *Id.* (citation
13 modified). As "there has been no indication that Petitioner[] ha[s] become [a] flight risk[] or
14 danger[] to the community" since their prior release, "[a]bsent a pre-detention hearing in front of
15 a neutral arbiter, the risk of erroneous deprivation is high given the possibility that Petitioner[']s
16 re-detention will not be pursuant to a valid state interest." *Valencia Zapata v. Kaiser*, 801 F. Supp.
17 3d 919, 938 (N.D. Cal. 2025).

18 Because the private interest in freedom from immigration detention is substantial, due
19 process also requires that in cases like this one, the government bears the burden of proving "by
20 clear and convincing evidence that the [noncitizen] is a flight risk or danger to the community."
21 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011). "*Singh*'s constitutional holding . . .
22 remains binding law of our court." *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1179 (9th Cir. 2023)
23 (Paez, J., respecting the denial of rehearing en banc); *see Martinez v. Clark*, 124 F.4th 775, 784-
24 86 (9th Cir. 2024) (confirming that the government bears the "clear-and-convincing burden of
25 proof" at an immigration bond hearing ordered pursuant to the Due Process Clause); *Doe v.*
26 *Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025)
27 (ordering a pre-deprivation bond hearing in which the government bears the burden of proof by
28 clear and convincing evidence).

1 *Third*, the government’s interest in detaining Petitioner without first providing notice and
 2 an opportunity to be heard at a custody hearing is low. “In immigration court, custody hearings are
 3 routine and impose a minimal cost. The government’s interest is further diminished where a person
 4 ... does not have a criminal record.” *Singh*, 2025 WL 1918679, at *8 (citation modified). Nor
 5 would a hearing delay Respondents’ efforts to remove Petitioner: “Any such delay would be
 6 minimal, and in any case, Petitioner[] [is] currently subject to full removal proceedings. . . . And
 7 detention for its own sake is not a legitimate governmental interest.” *Cordero Pelico*, 2025 WL
 8 2822876, at *15; *see also Ortega*, 415 F. Supp. 3d at 970 (concluding the government may have
 9 an interest in re-arresting the petitioner, “but its interest in doing so without a hearing is low”).

10 “Petitioner’s immediate release is required to return him to the status quo ante—‘the last
 11 uncontested status which preceded the pending controversy.’” *Singh*, 2025 WL 1918679, at *10.
 12 In many similar cases raising due process claims, courts in this Circuit have repeatedly granted
 13 emergency relief in the form of the petitioners’ immediate release, and prohibited ICE from re-
 14 detaining the petitioners without a pre-deprivation hearing at which the government bears a clear
 15 and convincing burden of proof that physical custody is required. *See, e.g., id.* at *10; *Garro Pinchi*
 16 *v. Noem*, 792 F. Supp. 3d 1025, 1038 (N.D. Cal. 2025); *Perez v. Albarran*, No. 1:25-CV-01540-
 17 DAD-CSK, 2025 WL 3187578, at *5 (E.D. Cal. Nov. 14, 2025); *A.A.H. v. Chestnut*, No. 1:25-
 18 CV-01758-DJC-EFB, 2025 WL 3640677, at *3 (E.D. Cal. Dec. 16, 2025); *Weldemichael v.*
 19 *Warden of Golden State Annex*, No. 1:25-CV-01553-EFB, 2026 WL 84080, at *7 (E.D. Cal. Jan.
 20 12, 2026). The same result is warranted here.

21 **2. Petitioner is likely to succeed on their substantive due process claim.**

22 Petitioner’s substantive due process claim is also likely to succeed. “Substantive due
 23 process requires that all forms of civil detention, including immigration detention, bear a
 24 ‘reasonable relation’ to a non-punitive purpose.” *A.F.A.M. v. Albarran*, No. 25-CV-10492-AMO,
 25 2025 WL 3752190, at *4 (N.D. Cal. Dec. 22, 2025) (citing *Jackson v. Indiana*, 406 U.S. 715, 738
 26 (1972)). “The Supreme Court has recognized only two permissible non-punitive purposes
 27 for immigration detention: ensuring a noncitizen’s appearance at immigration proceedings and
 28 preventing danger to the community.” *Id.* (citing *Zadvydas*, 533 U.S. at 690-92); *see Hernandez v.*

1 *Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (“[T]he government has no legitimate interest in
 2 detaining individuals who have been determined not to be a danger to the community and whose
 3 appearance at future immigration proceedings can be reasonably ensured by a lesser bond or
 4 alternative conditions.”). When Respondents released Petitioner, they determined that Petitioner
 5 posed no risk of flight or danger to the community. *See Garro Pinchi*, 2025 WL 3691938, at *2
 6 (“No matter which [detention] provision[] applies to a given noncitizen, . . . release is available
 7 only where a DHS officer or immigration judge has first determined that a noncitizen neither poses
 8 a threat to the public nor is likely to abscond.”); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176
 9 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)
 10 (“Release reflects a determination by the government that the noncitizen is not a danger to the
 11 community or a flight risk.”).

12 The facts since Petitioner’s release show that Petitioner continues *not* to pose any such risk.
 13 Petitioner is not a danger to the community. *See* Pet. ¶¶ 47–52, 54. Nor is Petitioner a flight risk.
 14 *See id.* ¶¶ 44–51, 55.

15 Because Respondents deprived Petitioner of their liberty despite the lack of materially
 16 changed circumstances to justify doing so, Petitioner’s detention “lack[s] a valid basis and
 17 violate[s] Petitioner[’s] right to be free from impermissible government custody.” *Valencia Zapata*
 18 *v. Kaiser*, 801 F. Supp. 3d 919, 939 (N.D. Cal. 2025) (finding habeas petitioners have demonstrated
 19 “at least a serious question” as to whether their detention violates their substantive due process
 20 rights “by failing to serve any valid purpose”).

21 **B. To the Extent Petitioner is a *Garro Pinchi* Class Member, His Detention Likely**
 22 **Violates the Binding Order Prohibiting His Re-Detention Without a Material**
 23 **Change in Circumstances.**

24 To the extent Petitioner is a member of the *Garro Pinchi* class, Respondents appear to have
 25 re-detained Petitioner in violation of the *Garro Pinchi* order. Petitioner is a *Garro Pinchi* class
 26 member if Petitioner: (a) is in the jurisdiction of the San Francisco ICE Field Office, (b) entered
 27 the United States without inspection, (c) was charged with inadmissibility under 8 U.S.C. § 1182
 28 and was released from DHS custody; (d) is in removal proceedings under 8 U.S.C. § 1229a,

1 including any § 1229a proceedings that have been dismissed where the dismissal is not
2 administratively final; and (e) is not subject to detention under 8 U.S.C. § 1226(c). *Garro Pinchi*,
3 813 F. Supp. 3d at 1010–11.

4 *Garro Pinchi* held that Respondents’ Re-Detention Policy is a final agency action and
5 therefore is reviewable under the APA. *Garro Pinchi*, 813 F. Supp. 3d at 1019–24. The court
6 concluded that no other bars precluded it from reaching the merits of Plaintiffs’ APA challenge.
7 *Id.* at 1024–26. On the merits, the court concluded that: Respondents failed to provide a reasoned
8 explanation for its new policy at the time of its implementation; any post hoc rationalization
9 Respondents provided for the Re-Detention Policy was based on legal error; Respondents failed
10 to consider released noncitizens’ serious reliance interests when implementing the new policy; and
11 Respondents failed to adequately consider noncitizens’ protected liberty interests when
12 implementing the new policy. *Id.* at 1026–36. Concluding that preliminary relief was warranted,
13 the court stayed Respondents’ implementation of the Re-Detention Policy within ICE’s San
14 Francisco Area of Responsibility pending final judgment. *Id.* at 1037–40.¹ Under the *Garro Pinchi*
15 order now in effect, Respondents within ICE’s San Francisco Area of Responsibility must revert
16 to their longstanding prior policy of *not* re-arresting and re-detaining class members unless they
17 first make an individualized determination that there are materially changed circumstances as to
18 the class member’s dangerousness or flight risk.

19 Yet, to the extent Petitioner is a *Garro Pinchi* class member, Respondents re-arrested
20 Petitioner and now continue to detain them despite no materially changed circumstances as to their
21 dangerousness or flight risk. Pet. ¶¶ 44–55. To the extent Respondents arrested Petitioner within
22 ICE’s San Francisco Area of Responsibility, the arrest violated the *Garro Pinchi* order. *Garro*
23 *Pinchi*, 813 F. Supp. 3d at 1039–40. This renders Petitioner’s arrest and ongoing detention
24 unlawful. “Agency action taken under a void rule has no legal effect.” *W.C. v. Bowen*, 807 F.2d
25 1502, 1505 (9th Cir.), *as amended on denial of reh’g*, 819 F.2d 237 (9th Cir. 1987). Accordingly,
26 “when a court with jurisdiction finds that the plaintiffs before it were harmed by an agency decision
27

28 ¹ A map depicting the geographic the jurisdiction of the San Francisco ICE Field Office is
available at <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFieldOffices.pdf>.

1 issued under an illegal rule, the court should vacate that wrongful decision as a remedy.” *D.A.M.*
2 *v. Barr*, 486 F. Supp. 3d 404, 416 (D.D.C. 2020) (applying *W.C. v. Bowen*). The *Garro Pinchi*
3 order was entered on December 19, 2025 at 3:43 p.m. If Respondents arrested Petitioner before
4 then, Respondents’ ongoing detention of Petitioner since the order’s issuance is unlawful. If
5 Respondents arrested Petitioner after the December 19, 2025 *Garro Pinchi* order, Petitioner’s
6 arrest and subsequent re-detention are unlawful. Regardless of the precise sequence of events,
7 Respondents violate the binding *Garro Pinchi* order every day that Petitioner continues to be
8 detained. Petitioner should be immediately released.

9
10 * * * * *

11 For the foregoing reasons, Petitioner is likely to succeed on the merits of his claims.
12 Alternatively, at a minimum, Petitioner presents at least “serious question[s] going to the merits”
13 of his claims, alongside a “balance of hardships” tipping decidedly in his favor. *All. for the Wild*
14 *Rockies*, 632 F.3d at 1135. This Court should enter the requested TRO.

15 **C. To the Extent Petitioner Was Re-detained, His Detention Likely Violates the**
16 **Fourth Amendment Prohibiting His Re-Detention Without a New Probable**
17 **Cause.**

18 The Fourth Amendment protects the right of all persons present in the United States to be
19 free from unreasonable seizures by government officials. Petitioner therefore has the right to be
20 free from unreasonable seizures. As a corollary to that right, the Fourth Amendment prohibits re-
21 arrest on the same charge without a material change in circumstances. Petitioner was re-arrested
22 on the same charge without a material change in circumstances. Petitioner’s re-arrest violated the
23 Fourth Amendment.

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

26 Every day Petitioner is unlawfully detained in violation of the Fifth Amendment’s Due
27 Process Clause inflicts an irreparable injury upon them. “It is well established that the deprivation
28 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at

1 994-95 (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged
2 deprivation of a constitutional right is involved, most courts hold that no further showing of
3 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005)
4 (citation modified).

5 Moreover, the unlawful deprivation of physical liberty is a quintessential irreparable harm.
6 See *Hernandez*, at 994 (holding that plaintiffs were irreparably harmed “by virtue of the fact that
7 they [we]re likely to be unconstitutionally detained for an indeterminate period of time”); see also,
8 e.g., *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing that “[a]ny amount
9 of actual jail time is significant, and has exceptionally severe consequences for the incarcerated
10 individual” (citation modified)).

11 In addition to their loss of liberty, Petitioner is also suffering additional ongoing irreparable
12 harms. Pet. ¶ 73. Petitioner is being irreparably harmed in the following ways: he is separated from
13 his family, particularly from his infant child during what we know to be a critical developmental
14 phase in the life a child during which even a few days of separation can result in toxic stress; he is
15 also being separated from his social network that has been his support during his time in this
16 country; it interrupted the wrap up process before relocation making it very difficult to ensure a
17 responsible exit from the country; and his detention has placed a significant psychological and
18 emotional strain on his wife who has struggled to find a lawyer to represent Petitioner during this
19 unexpected detention.

20 While not required to justify granting a TRO, Petitioner’s continued detention also inflicts
21 irreparable harm on their family, community, and well-being. Petitioner and his wife and infant
22 child were in the process of responsibly closing the chapter in their lives in the United States and
23 preparing to repatriate to Argentina. Petitioner’s detention abruptly shifted those plans sending
24 Petitioner’s wife into a whirlwind trying to figure out how find pro bono legal representation for
25 her husband, plan an international move, handle the logistics related to relocation abroad, all while
26 single parenting an infant and trying to figure out how to take care of the family’s financial
27 responsibilities when there is no income while Petitioner is detained.

28 Finally, Petitioner could not reasonably have filed their habeas petition and motion for

1 TRO sooner. When Respondents unexpectedly detained Petitioner, Petitioner had no access to
 2 counsel willing to file a habeas petition on their behalf. He was detained at an airport while his
 3 wife thought he was on his trip and could not jump into action automatically to try to help him find
 4 legal representation. The detention took place in the middle of the night and on the weekend, when
 5 most nonprofit legal organizations are closed. Further, the family had just spent much of their
 6 savings in their relocation airplane tickets to Argentina, so the cost of private legal representation
 7 was prohibitive as she was quoted anywhere from \$6-10K to file the habeas petition. However, as
 8 soon as Petitioner's wife became aware of the arrest, she began desperately calling any phone
 9 numbers she could find to ask for help. She eventually reached out to the Alameda Rapid Response
 10 Hotline and was able to find representation on the habeas petition. Accordingly, any perceived
 11 delay was not due to Petitioner's lack of diligence; it was due instead to lack of access to habeas
 12 counsel, lack of financial resources for private representation, and the daunting challenges of
 13 securing habeas counsel while dealing with the consequences of detention. Meanwhile, every day
 14 that Petitioner has been unlawfully detained has compounded Petitioner's irreparable harm. Under
 15 all of these circumstances, Petitioner's unconstitutional, unlawful, and unnecessary continued
 16 detention constitutes irreparable harm justifying this emergency relief.

17 **III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST WEIGH** 18 **STRONGLY IN PETITIONER'S FAVOR.**

19 When the government is the party opposing the request for emergency relief, the balance
 20 of the equities and the public interest merge. *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 991
 21 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)). Here, the balance of
 22 equities overwhelmingly favors Petitioner, who faces irreparable injury in the form of ongoing
 23 constitutional violations and continued additional suffering if the TRO is not granted. *See* Section
 24 II, *supra*; *Hernandez*, 872 F.3d at 996 (when "[f]aced with . . . preventable human suffering, . . .
 25 the balance of hardships tips decidedly in plaintiffs' favor") (citation modified).

26 The public interest likewise weighs strongly in Petitioner's favor. Respondents' ongoing
 27 detention of Petitioner clearly violates federal law and the Constitution. Therefore, granting
 28 emergency relief will promote the public interest by upholding the rule of law. "[N]either equity

1 nor the public's interest are furthered by allowing violations of federal law to continue." *Galvez v.*
2 *Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022); *see also Index Newspapers LLC v. U.S. Marshals Serv.*,
3 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a
4 party's constitutional rights."); *Hernandez*, 872 F.3d at 996 ("The public interest benefits from an
5 injunction that ensures that individuals are not deprived of their liberty and held in immigration
6 detention because of bonds established by a likely unconstitutional process.").

7 SECURITY

8 No security is necessary here. Courts "may dispense with the filing of a bond when," as
9 here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct."
10 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). It is also proper to waive the bond
11 requirement in cases raising constitutional claims, because "to require a bond would have a
12 negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other
13 members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D.
14 Cal. 1996). Finally, Plaintiff's showing of a high likelihood of success on the merits supports the
15 court's waiving of bond in this case. *See, e.g., People of State of Cal. ex rel. Van De Kamp v.*
16 *Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985).

17 CONCLUSION

18 For the foregoing reasons, and to restore the *status quo ante* pending these proceedings,
19 Petitioner respectfully requests the Court grant a TRO, ordering as follows: (1) Respondent must
20 immediately release Petitioner from Respondents' custody on the same conditions that governed
21 his liberty prior to Petitioner's current detention; (2) Respondents are enjoined from re-detaining
22 Petitioner absent further order of this Court; *or in the alternative*, are enjoined from re-detaining
23 Petitioner unless Respondents provide Petitioner at least 14 days' notice that they will seek a pre-
24 deprivation bond hearing before a neutral arbiter where Respondents must prove, by clear and
25 convincing evidence, that Petitioner is a flight risk or danger to the community such that
26 Petitioner's physical custody is required; (3) Respondents must return to Petitioner all property
27 confiscated from Petitioner during Petitioner's arrest, processing, and/or detention, including but
28 not limited to any personal identification, medical insurance card, money, legal documents, and

1 other personal effects; (4) prohibits the government from imposing additional or more restrictive
2 conditions of release, such as a GPS ankle monitor or in-person check-ins, than those that were in
3 place prior to Petitioner's unlawful re-arrest, unless such restrictions are determined to be
4 necessary at a future pre-deprivation hearing; and (5) To preserve this Court's jurisdiction,
5 Respondents are enjoined from transferring Petitioner out of this District or removing Petitioner
6 from the country until these proceedings have concluded; and (6) No security shall be required.
7

8 Respectfully submitted,

9 Date: July 3, 2026

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