Tania D. Narciso (CA SBN #318280)
tania@hopelawpc.com
Hope Law Office of Tania Dominguez, PC
1650 Oregon St. Suite 104
Redding, CA 96001
Telephone: (530) 291-1787
Facsimile: (530) 206-5471

Attorney for Petitioner Mirlena Jasmin Figueroa

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Mirlena Jasmin Figueroa,

Petitioner-Plaintiff,

v.

CHRISTOPHER CHESTNUT, Warden, California City Detention Facility; SERGIO ALBARRAN, Acting Field Office Director, U.S. Immigration and Customs Enforcement San Francisco; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security,

Respondents-Defendants.

No. 26-2751

PETITIONER'S EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3

INTRODUCTION.....5

FACTUAL BACKGROUND.....6

ARGUMENT.....9

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

A. Petitioner is likely to succeed in establishing that her detention violates the *Accardi* doctrine.....10

B. Petitioner's detention violates substantive due process because her prolonged detention puts her at risk given her specific circumstances.....12

1. Length of Detention.....13
2. Government's Contribution to Any Delay.....13
3. Flight Risk and Dangerousness.....14
4. Alternatives to Detention.....15
5. Conditions of Detention.....15

C. The government violated procedural due process by depriving petitioner of the opportunity to contest her arrest and detention before a neutral decision maker.....16

II. PETITIONER WILL CONTINUE TO SUFFER SERIOUS AND IRREPARABLE INJURY ABSENT A TRO.....19

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH STRONGLY IN PETITIONER'S FAVOR.....20

SECURITY.....21

CONCLUSION.....22

TABLE OF AUTHORITIES

Cases

A.E. v. Andrews, No. 1:25-cv-00107, 2025 WL 1424382 (E.D. Cal. May 16, 2025).....18

Alcaraz v. I.N.S., 384 F.3d 1150, 1162 (9th Cir. 2004).....11

All. for the Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011).....9,10

Baird v. Bonta, 81 F4th 1036, 1040 (9th Cir. 2023).....20

Baca v. Moreno Valley Unified Sch. Dist., 936 F. Supp. 719, 738 (C.D. Cal. 1996).....21

Barker v. Wingo, 407 U.S. 514, 532 (1972).....19

Church of Scientology of Cal. V. United States, 920 F2d 1481, 1487 (9th Cir 1990).....10

Cnty. of Sacramento v. Lewis, 523 U.S. 833 (1998).....12

Diep v. Wofford, No. 1:24-cv-01238, 2025 WL 6047444 (E.D. Cal. Feb. 25, 2025).....18

Doe v. Becerra, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025) 18

Doe v. Chestnut, 810 F. Supp 3d 1169 (E.D. Cal. 2025) 12

Doe v. Noem, __ F. Supp. 3d __, 2025 WL 1141279 (W.D. Wash. Apr. 17, 2025).....

Garcia Barrera v. Andrews, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025).....6

GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199 (9th Cir. 2000).....19

Hernandez v. Sessions, 872 F.3d 976 (9th Cir. 2017).....5

Hurd v. D.C., Gov't., 864 F.3d 671, 683 (D.C. Cir. 2017).....17

Jackson v. Indiana, 406 U.S. 715, 738 (1972) 14

Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 2003).....21

Jimenez v. Wolf, No. 19-cv-07996-NC, 2020 WL 510347 (N.D. Cal. Jan. 30, 2020).....18

Jimenez Garcia v. Kaiser, 2025 WL 2453970 (N.D. Cal. Aug. 17, 2025).....6

Johnson v. Ryan, 55 F.4th 1167 (9th Cir. 2022).....17

Martinez v. Clark, 124 F.4th 775 (9th Cir. 2024).....18

Mathews v. Eldridge, 424 U.S. 319 (1976) 17

Mission Power Engineering Co. v. Continental Casualty Co., 883 F. Supp. 488 (C.D. Cal. 1995) 9

Moreno Galvez v. Cuccinelli, 492 F. Supp. 3d 1169 (W.D. Wash. 2020).....20

Moreno Galvez v. Jaddou, 52 F.4th 821 (9th Cir. 2022).....20

Nozzi v. Hous. Auth. Of City of Los Angeles, 806 F.3d 1178 (9th Cir. 2015) 17

People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency, 766 F.2d 1319 (9th Cir.).....21

Salazar v. Kaiser, 2025 WL 2456232 (E.D. Cal. Aug 26, 2025) 6

Singh v. Andrews, 2025 WL 1918679 (E.D. Cal. July 11, 2025) 6

Singh v. Holder, 638 F.3d 1196 (9th Cir. 2011) 18

Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832 (9th Cir. 2001) 9

United States v. Briggs, 697 F.3d 98, 103 (2d Cir. 2012) 13

United States ex. rel. Accardi v. Shaughnessy, 347 U.S. 260, 226 (1954).....10

Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005).....19

Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008) 9

Wolff v. McDonnell, 418 U.S. 539, 558 (1974) 12

Zadvydas v. Davis, 533 U.S. 678 (2001) 5, 12, 14, 16, 17, 20

Zinermon v. Burch, 494 U.S. 113 (1990) 16

Statutes

APA § 10(e); 5 U.S.C. § 706(2)(A).....10

Other Authorities

ICE Directive 11032.4 *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals*.....11

INTRODUCTION

Petitioner, Mirlena Jasmin Figueroa ("Petitioner") brings the present Ex-Parte Application for Temporary Restraining Order ("TRO") asking the Court to order Petitioner be immediately released form custody. Petitioner meets all the requirements that would merit the grant of a present application for a TRO.

Petitioner is a 39-year-old citizen of El Salvador. She has been living in the United States since on or about April 12, 1989 and has been a Lawful Permanent Resident since on or about July 23, 2004. Petitioner has five U.S. Citizen children and is currently pregnant with her sixth child. Petitioner's U.S. Citizen mother and children live in Las Vegas, Nevada, where Petitioner lived prior to being detained.

Petitioner was detained by DHS Immigration and Customs Enforcement (ICE) on or about February 24, 2019. She was served with a Notice to Appear on March 19, 2019, released on her own recognizance and placed in removal proceedings. Petitioner complied with all requirements of the Immigration Court. On March 3, 2026, Petitioner was re-detained by DHS Immigration and Customs Enforcement (ICE) in Las Vegas, Nevada. Petitioner's detention does not stem from any new criminal convictions. As a result of her 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, 995-95 (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 also faces numerous additional

irreparable harms due to her detention because she has a high-risk pregnancy and struggles with bipolar disorder with psychotic features. *See* Exhibit 1, Inmate Condensed Chart Report. Furthermore, Petitioner only has one functional lung. The environment she has been placed is traumatic and lacks adequate safeguards from dangerous encounters. It wasn't until Petitioner located Counsel and gathered the necessary funds to retain counsel, that she was able to file the instant habeas petition and TRO.

In light of this irreparable harm, and because she is likely to succeed on the merits of her due process claims, Petitioner respectfully requests that this Court issue a temporary restraining order ("TRO") immediately releasing her from custody and enjoining the government from rearresting her 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 repeatedly granted the exact relief Petitioner seeks. *See*, e.g., *Salazar v. Kaiser,* 2025 WL 2456232, at *2 (E.D. Cal. Aug 26, 2025) (converting request for TRO to request for preliminary injunction and granting relief); *Garcia Barrera v. Andrews*, 2025 WL 2420068, at *3 (E.D. Cal. Aug. 21, 2025); *Jimenez Garcia v. Kaiser*, 2025 WL 2453970, at *3 (N.D. Cal. Aug. 17, 2025) (granting TRO); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction). To maintain this Court's jurisdiction, Petitioner respectfully requests that the Court prohibit the government from transferring Petitioner out of this District and removing her from the country until these proceedings have concluded.

FACTUAL BACKGROUND

Petitioner is a married 39-year-old citizen of El Salvador. She entered the United

States on or about April 12, 1989, at or near San Ysidro, California. She was granted lawful permanent resident status on or about June 23, 2004. Petitioner is married to a U.S. Citizen and has five U.S. Citizen children. Petitioner is currently pregnant with her sixth child. She has a high-risk pregnancy as this would be her sixth C-section. Petitioner also suffers from bipolar disorder. *See* Ex. 1, Inmate Condensed Chart Report. In 2020, Petitioner had a lung removed after complications from Sepsis and COVID-19. As a result, Petitioner was left with one functioning lung. As her pregnancy advances, it is becoming very difficult for her to breath.

Petitioner was detained by DHS Immigration and Customs Enforcement (ICE) on or about February 24, 2019. She was served with a Notice to Appear on March 19, 2019 and placed in removal proceedings. Petitioner was released on her own recognizance from ICE custody on March 19, 2019. On March 3, 2026, Petitioner was re-detained by DHS Immigration and Customs Enforcement (ICE) in Las Vegas, Nevada. Petitioner has been the victim of sex trafficking by her U.S. Citizen spouse who in the past has forced her to engage in prostitution and other criminal acts against her will. Prior to being detained, Petitioner was working on preparing a T nonimmigrant visa as part of her removal defense prior to being detained.

Petitioner has the following criminal history: On April 28, 2009, Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the offense of DUI. On June 7, 2010, Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the offense Of Petit Larceny, in violation of Nevada Revised Statutes 205.240. On May 30, 2012

Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the 2nd offense of DTJl. On October 31, 2012, Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the offense of Petit Larceny, in violation of Nevada Revised Statutes 205.240. On January 8, 2013, Petitioner was convicted in the Municipal Court, Henderson, Nevada for the offense of Petit Larceny, in violation of Nevada Revised Statutes 205.240. On March 18, 2013, Petitioner was convicted in the Municipal Court, Las Vegas, Nevada for the offense of Unlawful Use/Possession of Drug Paraphernalia. On August 22, 2013, Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the offense of Solicit/Engage in Prostitution, in violation of Nevada Revised Statutes 12.08.020.

On August 26, 2013, Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the offense of Possession Drug not for interstate commerce. On June 4, 2014, Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the offense of Solicit/Engage in Prostitution, In violation of Nevada Revised Statutes 12.08.020. On August 31, 2015, Petitioner was convicted in the Justice Court, Las Vegas, Nevada for the offense of Possession of drug not for interstate commerce. On February 24, 2019, Petitioner was arrested and charged by the Las Vegas Metropolitan Police Department for Possession/Receiving/Transfer Stolen Vehicle.

On or about March 2, 2026, Petitioner was arrested for drug possession. Petitioner was going to be released without charges but on on March 3, 2026, the Henderson Detention Center notified the Enforcement Removal Office in Las Vegas of the Immigration Detainer for Petitioner and indicated she was ready for release. On March 3, 2026, ERO Las Vegas transported Petitioner from the ERO Las Vegas sub-office for

further processing. On April 7, 2026, Petitioner was transported from the Henderson Immigration Detention Facility to California City Detention Facility where she is currently being detained. During her transfer to California City, Petitioner's was forced to walk with her hands and feet were restrained, despite her pregnancy. The detention center has facilitated only one outside visit for obstetric care and Petitioner has only had one ultrasound since being detained. Petitioner's ongoing detention continues to cause her irreparable harm and constitutes an unlawful deprivation of liberty.

ARGUMENT

Ex parte applications are for extraordinary relief. *See Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488 (C.D. Cal. 1995). Petitioner must show (i) that they "will be irreparably prejudiced if the underlying motion is heard according to the regular noticed motion procedures" and (ii) that they are "without fault in creating the crisis that requires ex parte relief, or that the crisis occurred as a result of excusable neglect." *Mission Power*, 883 F. Supp. At 293)[1].

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 balance of equities tips in [their] favor," and that (4) "an injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); see *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)

[1] The Ex parte requirements and TRO requirements overlap because the "irreparable prejudice that would occur if the motion is heard on the regular noticed motion procedures." Therefore, Petitioner will not separately address the ex parte requirements of irreparable prejudice.

(noting the analysis for issuing a temporary restraining order and a preliminary injunction is substantially the same). Even if the movant raises only "serious questions" as to the merits of their claims, the court can grant relief if the balance of hardships tips "sharply" in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135. Here, the factors weigh heavily in Petitioner's favor.

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

The likelihood of success factor weighs in Petitioner's favor because (A) Petitioner is more than likely to success in establishing that her detention violates the *Accardi* doctrine, (B) Petitioner's detention violates substantive due process; and (C) The government violated procedural due process by depriving Petitioner of the opportunity to contest her arrest and detention before a neutral arbiter.

A. Petitioner is likely to succeed in establishing that her detention violates the *Accardi* doctrine.

The Administrative Procedure Act ("APA) imposes limits on executive branch agencies to ensure complies with the laws and Constitution. It requires that Courts "shall hold unlawful and set aside agency action…found to be…arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law." APA § 10(e); 5 U.S.C. § 706(2)(A). Pursuant to the *Accardi* doctrine, an administrative agency is required to adhere to its own internal operating procedures that affect the fundamental rights of individuals., even self-imposed policies and processes that limit otherwise discretionary decisions. *See United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 226 (1954); *Church of Scientology of Cal. V. United* States, 920 F2d 1481, 1487 (9th Cir 1990). This

doctrine extends beyond formal regulations. *Alcaraz v. I.N.S.*, 384 F.3d 1150, 1162 (9th Cir. 2004).

Here, Petitioner is likely to succeed on the merits of her claim that her detention violates the ICE Directive 11032.4 *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals* (July 1, 2021), available at https://www.ice.gov/doclib/detention/11032.4_IdentificationMonitoringPregnantPostpartumNursingIndividuals.pdf. The ICE directive specifically states that ICE should not detain individuals known to be pregnant unless release is prohibited by law or exceptional circumstances exist. Exceptional circumstances exist only in the following circumstances: (1) the individual poses national security concerns; or (2) the individual poses an imminent risk of death, violence, or physical harm to any individual. *Id.* at 3.4. There is no evidence that Petitioner is a threat to national security nor that she poses an imminent risk of harm to any individual.

Furthermore, Petitioner's ongoing detention despite her high-risk pregnancy egregiously violates ICE's binding policy directive. The government's failure to follow its own policies is prejudicial to Petitioner and has the potential to cause her and her unborn child great harm. The detention center has only facilitated only one outside visit for obstetric care, and she has only had one ultrasound since being detained. She is currently experiencing trouble breathing as her pregnancy progresses as she only has one functioning lung. Therefore, Petitioner is likely to succeed on the merits of her claim that her detention is a violation of the *Accardi* doctrine.

B. Petitioner's detention violates substantive due process because her prolonged detention puts her at risk given her specific circumstances

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.

Here, petitioner has a vital interest in remaining free from DHS custody. She has been subjected to prolonged detention given her specific circumstances. Courts have conducted a case-by-case analysis and applied a five-factor test to determine whether an immigration detainee is subject to prolonged detention. The test determines (1) the length of detention and whether it is excessive to its regulatory purpose; (2) the government's contribution to any delay; (3) the evidence supporting the determination that detention is warranted to prevent flight risk or community danger; (4) whether the government interests in ensuring appearance at future proceedings and protecting the community could be protected through alternatives to detention that are less harsh; and (5) the conditions of detention and how they compare to conditions under which pretrial criminal detainees or people convicted of crimes are held. *Doe v. Chestnut*, 810 F. Supp 3d 1169 (E.D. Cal.

2025).

1. Length of Detention

There is no bright-line rule on what Courts consider prolonged detention, but for every specific circumstance, due process does impose some limit. *United States v. Briggs*, 697 F.3d 98, 103 (2d Cir. 2012). Here, Petitioner has been detained since March 3, 2026. Petitioner is about five months pregnant and has only had one ultrasound since being detained. Furthermore, Petitioner has a high-risk pregnancy with five previous C-sections and one functioning lung. Based on her specific circumstances, Petitioner has been detained an excessive amount of time given the government's regulatory purpose.

2. Government's Contribution to Any delay

Petitioner was detained on March 3, 2026 and had her first immigration court hearing on March 16, 2026. On April 7, 2026, she was transported from the Henderson Immigration Detention Facility to California City Detention Facility where she is currently being detained. She's had two more immigration court hearings on May 20, 2026 and June 16, 2026. On May 20, 2026, the immigration court conducted a judicial competency inquiry given her bipolar disorder diagnosis and continued the case to allow Petitioner to seek counsel. On June 16, 2026, Petitioner's Counsel requested additional attorney preparation time as she had just been retained by Petitioner. Various delays in Petitioner's immigration proceedings have contributed to the duration of her detention. Some of these delays are attributable to Petitioner, the government, and the fact that proceedings take time.

3. Flight Risk and Dangerousness

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).

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. Here, Petitioner appeared at her immigration court hearings and has complied with all requirements of the Immigration Court. She was arrested on or about March 2, 2026 in Las Vegas then transferred to ICE custody. She has been in ICE detention ever since and has complied with any and all rules and requirements imposed on her since detention. Furthermore, she has substantial ties to the U.S. and has been a Lawful Permanent Resident for over 20 years. There is no reason to believe that she would not comply with appearance at immigration court hearings.

As to dangerousness to society, Petitioner does have prior criminal history, but she has complied with all requirements imposed on her. Her arrest on March 2, 2026 did not result in a conviction. In fact, Petitioner was going to be released from police custody but instead was transferred to ICE custody. Petitioner has shown rehabilitation and has completed several AA classes, even while in detention. Furthermore, Respondent suffers from bipolar disorder and has been the victim of sex trafficking by her U.S. Citizen husband. Thus, Petitioner is not a flight risk or a danger to the community and her ongoing detention is unconstitutional, and substantive due process principles require her immediate release.

4. Alternatives to Detention

The government's interest in ensuring Petitioner's appearance at future hearings and protecting the community could be accomplished through alternatives to detention that are less harsh. For example, Petitioner is amenable to GPS monitoring through ICE Intensive Supervision Appearance Program (ISAP), a smartphone application, reporting by telephone, ICE check-ins, or any other requirement the Court deems necessary. Petitioner will live with her mother and U.S. Citizen children in Las Vegas, Nevada. Petitioner also has a high-risk pregnancy and has difficulty breathing due to having one functional lung. Petitioner will need bed rest so alternatives to detention are more appropriate for her specific case.

5. Conditions of Detention

Petitioner was first held at the Henderson Detention Center then transferred to California City Detention Facility where she is currently being detained. ICE's Directive

11032.4 restricts the use of restraints for pregnant women during transport, in detention facility, or at an outside medical facility. However, during her transfer to California City, Petitioner was forced to walk while restrained from both hands and feet.

Furthermore, Petitioner suffers from bipolar disorder and is approximately five months pregnant with a high-risk pregnancy. Petitioner also has one functioning lung which causes her difficulty breathing as her pregnancy progresses. Petitioner requires adequate physical and mental health care that the detention facility cannot provide. The detention facility has not provided her with appropriate obstetric care as they have only facilitated one outside visit and one ultrasound since being detained. Several lawsuits have been filed against California City Detention Facility over inhumane conditions and inadequate medical care that deprives people of critical treatment. *See* Exhibit 2, News Articles. Petitioner declares that she is not receiving adequate medical treatment for her pregnancy given the high risk it poses.

Therefore, based on the totality of the circumstances, Petitioner is entitled to due process as she has been subjected to prolonged detention given her specific situation.

C. The government violated procedural due process by depriving petitioner of the opportunity to contest her arrest and detention before a neutral decision maker.

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).

Once a protected liberty interest has been established, such as 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 government's interest. *Id.*

First, when considering the private interest affected, 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). In this case, the degree of potential deprivation is profound because Petitioner was transferred from police custody to ICE custody and was not given an opportunity to defend herself in any pre-deprivation hearing. Furthermore, Petitioner was already in removal proceedings, working on gathering the necessary evidence to submit a T visa to USCIS in her defense. Being detained deprives her of the opportunity to defend herself because immigration courts do not have jurisdiction over T visas. It also deprives her of her freedom as she was not given an opportunity to contest her re-detention before a neutral decision maker prior to being detained. Therefore, Petitioner has a substantial private interest in being out of custody and her detention denies her of that liberty. *Zadvydas*, 533 U.S. at 690 ("Freedom 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.").

Furthermore, 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 v. 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).

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). Petitioner was released from ICE custody on her own recognizance on March 19, 2019. On or about March 3, 2026, Petitioner was re-detained by ICE without a pre-deprivation hearing before a neutral decision maker to determine her flight risk or danger to society prior to being confined. Furthermore, Petitioner's ongoing detention violates ICE's own directives of not detaining noncitizens known to be pregnant absent extraordinary circumstances, which do not exist here. Therefore, in this case, the risk of erroneous deprivation is high where Petitioner was not given a pre-deprivation hearing prior to being re-detained.

Third, the government's interest in detaining Petitioner without first providing notice and submitting a custody hearing is minimal given that she has been a Lawful Permanent Resident for over 22 years. 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. Here, Petitioner was re-detained by ICE without notice and without a custody hearing before a neutral arbiter.

Thus, Respondents violated Petitioner's due process rights when they detained her without notice and without a custody hearing before a neutral arbiter. Here, only an order releasing Petitioner and enjoining re-detention—unless Respondents provide Petitioner with a custody hearing where the government bears the burden of proof—would return the parties to the "last uncontested status which preceded the pending controversy." *Doe v. Noem*, __ F. Supp. 3d __, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000).

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

Petitioner will be unlawfully detained by the government for an indefinite period of time absent a temporary restraining order. "The time spent in jail awaiting trial has a detrimental impact on the individual. It often means a loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972). "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)(quoting Wright, Miller, & Kane, Federal Practice and Procedure, §

2948.1 (2d ed. 2004)). "Freedom 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*, 533 U.S. at 690. Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (Moreno II), aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022).

Petitioner is currently being detained at the California City Detention Facility in California City, California. Since her arrest on March 3, 2026, Petitioner remains unlawfully detained, depriving her of her physical liberty. Petitioner suffers from bipolar disorder and is approximately five months pregnant with a high-risk pregnancy. Furthermore, Petitioner has one functioning lung making difficult for her to breath as she progresses in her pregnancy. Petitioner requires adequate physical and mental health care that the detention facility cannot provide. Several lawsuits have been filed against California City Detention Facility over inhumane conditions and inadequate medical care that deprives people of critical treatment. *See* Ex. 2, News Articles. Thus, if Petitioner continues to be unlawfully detained, she faces irreparable harm absent a grant of temporary restraining order.

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

When "the nonmoving party is the government, the last two *Winter* factors merge." *Baird v. Bonta,* 81 F4th 1036, 1040 (9th Cir. 2023). Because Petitioner is a Lawful Permanent Resident for over 20 years, has five U.S. Citizen children, has a high-risk

pregnancy, suffers from bipolar disorder, has extensive ties to the U.S., the balance of hardships and public interest factors weigh in favor of a preliminary injunction.

Furthermore, it is in the public interest to ensure that the government complies with due process and its own directives. In this case, Petitioner was not given an opportunity of a pre-deprivation bond hearing prior to being re-detained. Requiring the government to release Petitioner and ordering her not be re-detained absent a bond hearing before a neutral arbiter would be consistent with federal law, providing Petitioner with the due process right that the U.S. Constitution requires.

Thus, the violation of Petitioner's rights under the U.S. Constitution tip the balance of the equities and the public interest strongly in Petitioner's favor.

SECURITY

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). Therefore, there is no security necessary in this case.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests the Court to grant a TRO and (1) immediately release her from Respondent's custody and enjoin Respondents from re-detaining her absent further order of this Court; (2) in the alternative, immediately release her from Respondent's custody and enjoin Respondents from re-detaining her 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 her physical custody is required; and (3) prohibit the government from transferring her out of this District and/or removing her from the country until these habeas proceedings have been concluded; (4) grant any other relief the Court deems necessary.

Dated: July 10, 2026,

Respectfully Submitted,

/s/ Tania D. Narciso

Tania D. Narciso (CA SBN #318280)
tania@hopelawpc.com
Hope Law Office of Tania Dominguez, PC
1650 Oregon St. Suite 104
Redding, CA 96001
Telephone: (530) 291-1787
Facsimile: (530) 206-5471

Attorney for Petitioner Mirlena Jasmin Figueroa

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Tania D. Narciso, represent Petitioner *Mirlena Jasmin Figueroa* and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petitioner's Ex Parte Motion for Temporary Restraining Order are true and correct to the best of my knowledge and belief.

Executed on July 10, 2026, in Redding, California.

/s/ Tania D. Narciso
Tania D. Narciso (CA SBN #318280)
tania@hopelawpc.com
Hope Law Office of Tania Dominguez, PC
1650 Oregon St. Suite 104
Redding, CA 96001
Telephone: (530) 291-1787
Facsimile: (530) 206-5471

Attorney for Petitioner Mirlena Jasmin Figueroa

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2026, I filed the foregoing Petitioner's Ex Parte Motion for Temporary Restraining Order electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated: July 10, 2026

/s/ Tania D. Narciso
Tania D. Narciso (CA SBN #318280)
Attorney for Petitioner