LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
VICTORIA PETTY (SBN 338689)
vpetty@lccrsf.org
131 Steuart Street # 400
San Francisco, CA 94105
Telephone: (415) 543-9444 ext. 226
Attorney for Petitioner

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ERNESTO GIOVANNI CALDERON RAMIREZ,

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director for the San Francisco Field Office of ICE Enforcement and Removal Operations;

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security;

DAVID VENTURELLA, Acting Director for U.S. Immigration and Customs Enforcement;

TODD BLANCHE, Attorney General of the United States and head of the Department of Justice,

Respondents.

CASE NO. 3:26-CV-11633

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

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that Petitioner Ernesto Giovanni Calderon Ramirez ("Mr. Ramirez" or "Petitioner") hereby moves ex parte, pursuant to Federal Rule of Civil Procedure 65(b), for a temporary restraining order (1) ordering Respondents to immediately release him from custody on the same conditions as his previous release; (2) enjoining Respondents from re-detaining him without first providing at least seven days' notice and a hearing before a neutral decisionmaker at which Respondents must prove by clear and convincing evidence that his detention is justified by danger or flight risk, considering alternatives to detention and his ability to pay a bond; (3) enjoining Respondents from transferring him outside the Northern District of California or removing him from the United States while this action is pending; and (4) ordering Respondents to return all personal property and documents taken from him at the time of his arrest.

This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Verified Petition for Writ of Habeas Corpus (ECF No. 1) ("Pet."), the Declaration of Victoria Petty ("Petty Decl."), the Proposed Order filed herewith, and any other materials the Court may consider.

Pursuant to Civil Local Rule 65-1, Petitioner's counsel gave Respondents' counsel notice of this action and of this motion on October 8, 2026, first at 12:43 p.m., before the petition was filed, and again at 3:08 p.m., after it was filed. Petty Decl. ¶¶ 2–3. Counsel will serve this motion and all supporting papers on Respondents' counsel by email upon filing. Petty Decl. ¶ 4.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Mr. Ramirez is in ICE custody today because he did what a federal agent told him to do. An agent with Homeland Security Investigations ("HSI") texted him that if he did not come in for a face-to-face interview, there was "a good possibility that the children will not be released" to his home. Petty Decl. Ex. A at 2; Pet. ¶ 29. The children are his stepson and his wife's niece, whom his wife, Ms. Garcia, has applied to sponsor out of Office of Refugee Resettlement ("ORR") custody. Pet. ¶ 20. Mr. Ramirez arrived on time this morning with an interpreter. Officers turned the interpreter away, asked him nothing about the children, and arrested him. Pet. ¶¶ 32–33.

This Court has seen this case before. In *Velazquez v. Albarran*, No. 3:26-cv-04111, 2026 WL 1235437 (N.D. Cal. May 5, 2026), the petitioner entered the United States in 2019, was briefly detained, was released on her own recognizance, and was re-detained years later at a routine ICE check-in. *Id.* at *1. This Court granted a temporary restraining order the same day, ordered her immediate release, and enjoined her re-detention without notice and a pre-deprivation hearing, because her release "reflected a determination by the government that she was neither a flight risk nor a danger to the community" and nothing indicated that had changed. *Id.* at *2–3; *see also Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 WL 3281422 (N.D. Cal. Nov. 25, 2025) (ordering release of petitioner who was originally apprehended at the border and detained years later at San Francisco ICE Field Office).

Mr. Ramirez's case is the same in every material respect. He was apprehended near the border in 2019, released into the community, and has never been convicted of a crime. The only difference is that Respondents used the pretext of child reunification to bring him in. His detention violates procedural and substantive due process, and it rests on the Re-Detention Policy

stayed in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025). The Court should order his immediate release.

II. STATEMENT OF FACTS

The Verified Petition sets out the facts in full, Pet. ¶¶ 15–38, and Mr. Ramirez summarizes here only those most relevant to this motion. In March 2019, immigration authorities apprehended Mr. Ramirez and his son near the border, held them for three to five days, and released them into the community, fitting Mr. Ramirez with an ankle monitor. Pet. ¶¶ 15–17. He reported for check-ins, and in 2019 officers removed the monitor and did not replace it. Pet. ¶ 18. His removal proceedings were dismissed in 2022 without an order of removal. Pet. ¶ 19. He lives in the Bay Area with Ms. Garcia and their two sons, whom he supports by working in construction and as a delivery driver. Pet. ¶¶ 5–6. He has no criminal convictions, and the District Attorney has confirmed that no criminal complaint was ever issued arising from his 2023 arrest. Pet. ¶ 37; Petty Decl. Ex. C.

In 2026, Ms. Garcia applied to sponsor her son (Mr. Ramirez's stepson) and niece out of ORR custody. Pet. ¶ 20. The couple completed background checks, DNA testing, and a home study, and their home was tentatively approved for the children's placement. Pet. ¶ 24. After questioning Ms. Garcia at 630 Sansome Street, an agent who identified himself as "Chris" texted Mr. Ramirez to request an interview. Pet. ¶¶ 25–27. When Mr. Ramirez explained that his wife was the sponsor applicant and offered to answer questions by text, the agent refused: "Sir, we need to do the interview face to face, and if we do not do your interview, there is a good possibility that the children will not be released to your home." Petty Decl. Ex. A at 1–2; Pet. ¶¶ 28–29. The agent then sent an HSI appointment notice directing Mr. Ramirez to the "8th Floor Duty Agent Desk" at 7:00 a.m. on October 8, 2026, to "[d]iscuss sponsorship of minor child." Petty Decl. Ex. B; Pet. ¶ 31.

Mr. Ramirez complied. Officers barred his interpreter, conducted no interview, and arrested him, telling him he was detained because he had entered without inspection, a fact Respondents have known since 2019. Pet. ¶¶ 32–34. ICE served him with a Notice to Appear for a hearing in immigration court in McFarland, California, on October 28, 2026. Pet. ¶ 35.

III. LEGAL STANDARD

The standard for a temporary restraining order is substantially identical to the standard for a preliminary injunction. *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). A movant must establish "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, "serious questions going to the merits" suffice "if the balance of hardships tips sharply in the plaintiff's favor, and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014). Where the government is the opposing party, the last two factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

IV. ARGUMENT

A. Mr. Ramirez Is Likely to Succeed on the Merits.

1. Respondents Violated Procedural Due Process.

The Due Process Clause protects "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty," *Zinermon v. Burch*, 494 U.S. 113, 127 (1990), even where that liberty is revocable, *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

Mr. Ramirez has a protected liberty interest in his release. A person released on conditions "has relied on at least an implicit promise that [release] will be revoked only if he fails to live up to the . . . conditions." *Morrissey*, 408 U.S. at 482. As this Court has explained, a noncitizen's release after initial apprehension "reflect[s] a determination by the government that [he is] neither a flight risk nor a danger to the community," and he "has a strong interest in remaining at liberty unless [he] no longer meets those criteria." *Velazquez*, 2026 WL 1235437, at *2. Respondents released Mr. Ramirez in 2019, removed his ankle monitor rather than replace it, and left him free for seven years. Pet. ¶¶ 17–18, 38.

The *Mathews v. Eldridge* factors confirm that he was entitled to a hearing before Respondents took that liberty away. 424 U.S. 319, 335 (1976); *see Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1030–36 (N.D. Cal. 2025) (applying *Mathews* in similar circumstances). His interest in freedom from imprisonment "lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. The risk of erroneous deprivation was total: he received no process of any kind, and no neutral decisionmaker has ever found that he poses a danger or flight risk. And the government's interest in dispensing with a hearing is minimal, because custody hearings are routine. Courts in this District have therefore repeatedly ordered the release of noncitizens re-detained without a pre-deprivation hearing. *See, e.g.*, *Velazquez*, 2026 WL 1235437, at *2–3; *Mucu Maaz v. Albarran*, No. 5:26-cv-08452-BLF, 2026 WL 2447545, at *4 (N.D. Cal. Aug. 20, 2026); *Hernandez Serrano v. Albarran*, No. 26-cv-03452-EKL, 2026 WL 1611876, at *3 (N.D. Cal. June 4, 2026).

The manner of the arrest compounds the violation. Mr. Ramirez had no opportunity to be heard precisely because he was led to believe his appearance would result in an interview about the children's sponsorship, not an arrest. Petty Decl. Exs. A, B. Respondents already had his

name, A-number, and home address. *Id.* Ex. B. Due process does not permit the government to substitute a pretext for notice.

Nor can Respondents justify the detention by statute. They may contend that § 1225(b)(2)(A) mandates detention because Mr. Ramirez was apprehended shortly after entry in 2019. This Court rejected that argument in *Bernal* on materially identical facts, 2025 WL 3281422, at *2–5, and the Ninth Circuit has since held that noncitizens apprehended in the interior are subject to § 1226, not § 1225(b)(2)(A), *Rodriguez Vazquez v. Bostock*, 183 F.4th 1160 (9th Cir. 2026). Under § 1226(a), "detention is permitted . . . only if [the noncitizen] is dangerous or a flight risk," which Respondents cannot show. *Bernal*, 2025 WL 3281422, at *6. And "the government may never detain an individual that enjoys the protection of the Due Process Clause without a legal basis to do so." *Id.*

2. Mr. Ramirez's Detention Violates Substantive Due Process.

Civil detention must bear a "reasonable relation" to a non-punitive purpose, *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), and immigration detention has only two: ensuring appearance and preventing danger. *Zadvydas*, 533 U.S. at 690–92. Neither is served here. Mr. Ramirez reported for check-ins after his 2019 release, has lived openly for years, and walked into an ICE office at the government's request to help two children reunify with his family. Pet. ¶¶ 18, 32, 38. He has no criminal convictions. Pet. ¶ 37; Petty Decl. Ex. C. Nothing has changed since Respondents released him, so his detention serves no legitimate purpose.

***3. Mr. Ramirez's Re-Detention Violates the Stay Entered in* Garro Pinchi.**

Mr. Ramirez is a member of the class certified in *Garro Pinchi*, which challenges DHS's policy of re-detaining previously released noncitizens without any change in circumstances bearing on danger or flight risk (the "Re-Detention Policy"). 813 F. Supp. 3d at 1010. The court held that the policy is likely unlawful under the Administrative Procedure Act 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." *Id.* at 1026, 1038. Respondents re-detained Mr. Ramirez in San Francisco without any material change in his circumstances, and have now reopened his immigration proceedings. Pet. ¶¶ 4, 34, 38. The only explanation offered, his 2019 entry, is a fact Respondents knew when they released him. Pet. ¶ 34. His detention is unlawful for this independent reason.

B. Mr. Ramirez Is Suffering Irreparable Harm.

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez*, 872 F.3d at 994 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Because Mr. Ramirez's detention without a hearing is likely unconstitutional, "it follows inexorably" that he has shown irreparable harm. *Id.* at 995; *Velazquez*, 2026 WL 1235437, at *2. His detention also deprives Ms. Garcia and their two sons of their primary provider and fatherly support.

C. The Balance of Equities and the Public Interest Favor Relief.

"[T]he public has a strong interest in upholding procedural protections against unlawful detention." *Jorge M. F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021) (cleaned up). The government, by contrast, is not "harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir. 1983). At most, Respondents face a short delay if they can later justify detention to a neutral decisionmaker. *Velazquez*, 2026 WL 1235437, at *2.

D. The Requested Relief Restores the Status Quo and Preserves the Court's Jurisdiction.

A temporary restraining order releasing Mr. Ramirez restores the status quo, "the last uncontested status which preceded the pending controversy": his life in the community before

his likely unlawful detention. *Velazquez*, 2026 WL 1235437, at *2 (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). Mr. Ramirez also asks the Court to enjoin his removal and his transfer out of this District. Although this Court retains jurisdiction if he is moved, *see Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004), it enjoined transfer in *Bernal*, 2025 WL 3281422, at *7, and the threat here is concrete: Respondents have already served him with a Notice to Appear in McFarland, far from his family and counsel. Pet. ¶ 35.

E. The Court Should Waive Bond.

No security is needed where "there is no realistic likelihood of harm to [Respondents] from enjoining [their] conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003); *see Bernal*, 2025 WL 3281422, at *7. The Court should waive bond under Rule 65(c).

V. CONCLUSION

For these reasons, the Court should grant this motion and enter the proposed temporary restraining order.

Dated: October 8, 2026

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

By: */s/ Victoria Petty*

Victoria Petty (SBN 338689)
vpetty@lccrsf.org
131 Steuart Street # 400
San Francisco, CA 94105
Telephone: (415) 543-9444 ext. 226

Attorneys for Petitioner