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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Chancely FANFAN, María MALDONADO CRUZ, and Elesban ANGEL MENDEZ,

Petitioners,

v.

Christopher J. LAROSE, Warden, Otay Mesa Detention Center; Daniel A BRIGHTMAN, Field Office Director, San Diego Field Office, United States Immigration and Customs Enforcement; Todd M. LYONS, Acting Director, United States Immigration and Customs Enforcement; Kristi NOEM, Secretary of Homeland Security, Pamela Jo BONDI, Attorney General *in their official capacities,*

Respondents.

Case No.: 25cv03291-DMS-BJW

PETITIONERS' *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

Date and Time: TBD
Before: Honorable Dana M. Sabraw

PETITIONERS' EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Petitioners hereby move this Court for an *ex parte* Temporary Restraining Order requiring Respondents to immediately release Petitioners from their custody and enjoining Respondents from re-detaining Petitioners without a pre-deprivation hearing at which the government would bear the burden of proving that material changes in circumstances justify re-detention. A hearing on this Motion will take place at a date and time to be set before the Judge assigned to this case. Petitioners support their Motion with the attached Memorandum of Points and Authorities and exhibits.[1]

[1] Pursuant to Local Rule 83.3(g), on November 25, 2025, undersigned counsel informed Assistant U.S. Attorneys Janet A. Cabral and Erin Dimbleby via email that Petitioners intended to file this *ex parte* Motion for Temporary Restraining Order before this Court within one or two days. *See* Declaration of Monika Y. Langarica ¶ 8.

Assistant U.S. Attorney Erin Dimbleby informed undersigned counsel that their office requests two weeks to file a response to the Motion. In light of the urgency of this matter, Petitioners oppose such a long delay while they remain unlawfully imprisoned. However, because of the upcoming Thanksgiving holiday, and to the extent this Court intends to order Respondents to file a response to the Motion, Petitioners do not oppose a deadline of early next week, as a matter of professional courtesy.

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INTRODUCTION

Petitioners Chancely Fanfan, Maria Maldonado Cruz, and Elesban Angel Mendez are unlawfully detained in Respondents' custody at the Otay Mesa Detention Center and seek their immediate release through a Temporary Restraining Order (TRO). The Department of Homeland Security (DHS) previously processed and released Petitioners from immigration custody and placed them in removal proceedings, which are still pending. Since then, Petitioners have had no criminal contact, attended all court hearings, and otherwise scrupulously sought to comply with the conditions of their release. Indeed, there are no material changed circumstances related to flight risk or danger that justify their re-detention. Nevertheless, U.S. Immigration and Customs Enforcement (ICE) agents recently summoned Petitioners to seemingly benign "check-in" appointments at its San Diego offices and re-detained them, as it has done to at least dozens of other individuals who are now confined in indefinite detention for no legitimate reason.

Petitioners' re-detention is unlawful because they received no pre-deprivation hearing to determine whether material changes in their circumstances now render them a danger to the community or flight risk such that their detention is suddenly warranted. Had they received such hearings, it would have been clear that Petitioners have engaged in no activity between the time of their prior release from custody and their recent check-in that justifies re-detention; they do not present a danger to the community, nor do they pose a risk of flight, as they have appeared at all required hearings in their removal proceedings. In fact, at the time of their arrest, Petitioners were actively complying with ICE's request that they appear for a check-in.

Petitioner Chancely Fanfan is seeking asylum after fleeing gang violence in Haiti that targeted him because of Christian ministry work and left his house burned down. He presented himself at a United States port of entry in October 2024, at which time U.S. Customs and Border Protection (CBP) agents inspected him and questioned him thoroughly about any prior criminal history, gang affiliation, tattoos,

and his fear of return to Haiti. CBP then released him on parole with a Notice to Appear in immigration court. In the year that he has lived in the United States, Mr. Fanfan has worked hard—sometimes in excess of 80 hours per week—to provide for his family, including his eleven-month-old U.S. citizen son. He has also devoted himself to continuing his ministry work at a San Diego Baptist church, and has worked to advance his asylum case. He has "followed every rule" and complied with all conditions of his immigration case. Nonetheless, on October 20, 2025, ICE agents abruptly re-detained Mr. Fanfan at a check-in that they instructed him to appear at after his immigration court hearing. Agents gave Mr. Fanfan no reason for the arrest other than that it was what "the government" required.

Petitioner Maria Maldonado Cruz is a 42-year-old wife and mother who arrived in the United States with her daughter over six years ago after fleeing political persecution in Honduras. She presented herself to Border Patrol agents to seek asylum soon after arriving in the United States. After questioning her about her fear of return and whether she had any criminal history, agents processed, inspected, and released Ms. Maldonado Cruz on her own recognizance and with a Notice to Appear in immigration court. Since then, Ms. Maldonado Cruz has dutifully attended her court hearings and made a life for herself, including by working to provide for her daughter, participating in church, and marrying her U.S.-citizen husband. On October 15, 2025, ICE agents abruptly arrested Ms. Maldonado Cruz after she presented herself at ICE offices in the San Diego federal building for reasons completely unrelated to her individual circumstances; the only reason ICE provided was that they were instructed to arrest everyone who appeared for check-ins that day.

Elesban Angel Mendez has resided in the United States for nearly 20 years. In 2014, police arrested Mr. Angel Mendez for driving under the influence (DUI). Soon after the arrest, ICE officers took him into custody at the Otay Mesa Detention Center. The next day, ICE released him on his own recognizance with instructions to appear for periodic check-ins and fight his removal case while not detained. Since

then, Mr. Angel Mendez has complied with all terms of his immigration proceedings, has had no new criminal contact, and complied with all terms of his DUI plea, including probation. Nonetheless, on October 14, 2025, ICE arrested Mr. Angel Mendez at a check-in that it summoned him to. ICE gave Mr. Angel Mendez no justification for his arrest other than that the Trump administration required it.

Petitioners' re-detention under these circumstances violates the Due Process Clause. It violates substantive Due Process because it is not justified by any legitimate government purpose. It violates procedural Due Process because Petitioners' prior release from custody gave rise to a protectable liberty interest that could not be taken from them without a pre-deprivation hearing. Petitioners' interest in obtaining that modest process far outweighs the government's interest in detaining them without it, and the risk of error is great where, as here, the government has not conducted a pre-deprivation hearing to assess whether changed circumstances justify re-detention. For similar reasons, their detention also violates the Immigration and Nationality Act (INA), which requires hearings to justify detention in cases like these. Finally, Petitioners' re-detention is arbitrary and capricious in violation of the Administrative Procedure Act (APA) because the agency has never articulated a justifiable reason for re-detaining Petitioners—indeed, it cannot.

Accordingly, Petitioners seek a TRO ordering their immediate release and restraining Respondents from re-detaining them without a pre-deprivation hearing.

STATEMENT OF FACTS

I. Petitioners Chancely Fanfan, Maria Maldonado Cruz and Elesban Angel Mendez Were Unlawfully Re-Detained and Remain in Respondents' Custody

A. Chancely Fanfan

Petitioner Chancely Fanfan is a 31-year-old man who is seeking asylum from Haiti. He is married and is a father to an eleven-month-old, U.S.-citizen baby who he has not seen or held since he was abruptly detained on October 20 of this year. Declaration of Chancely Fanfan (Fanfan Decl.) ¶¶ 1, 19-22.

Mr. Fanfan arrived to the United States with his now-wife on October 21, 2024. *Id.* ¶ 3. They waited in Mexico to receive an appointment to present themselves at a port of entry via the CBP One app because it was "very important to [him] to wait for an appointment so that [they] could do things the right way." *Id.* ¶ 5. At the port of entry, CBP took Mr. Fanfan into custody and processed him for several hours, during which time agents questioned him about whether he has tattoos, gang affiliation, and prior arrests, and then released him pursuant to parole authority and with a Notice to Appear. *Id.* ¶ 7-8. Once in the United States, Mr. Fanfan has devoted himself to providing for his family, being a good father to his United States citizen baby, and continuing his ministry work, now at a Baptist church in San Diego. *Id.* ¶¶ 12-15. He has "followed every rule" in the United States; he has had no prior criminal contact, or even driving infractions, and he has never missed a court date or appointment with ICE. *Id.* ¶ 12.

On October 20, Mr. Fanfan appeared for a Master Calendar Hearing at the San Diego Immigration Court, and the immigration judge gave him time to find an attorney, setting his next hearing for January 2026. *Id.* ¶ 19. After the hearing concluded, Mr. Fanfan dutifully complied with a letter from ICE requiring him to appear for a check-in after his hearing, by reporting to the second floor of 880 Front Street (the same building where his court hearing occurred) for what he thought was going to be a routine check-in with ICE. *Id.* ¶ 21. However, at the check-in an ICE agent told Mr. Fanfan he would be arresting him for no reason other than that "the government" required it. *Id.* ¶¶ 22-23. Mr. Fanfan pleaded with the agent not to detain him, explaining that he has a small baby who needs him and has done everything that has been asked of him, but the ICE agent was unmoved. *Id.*

ICE agents took Mr. Fanfan to the basement of the federal building and kept him there overnight in horrific conditions—confined in small quarters with about ten other men and only able to use a toilet in the same small room in front of the other detained individuals. *Id.* ¶ 26. He slept on the floor with his head on a thin mat

that he shared as a pillow with several others because ICE provided insufficient mats for everyone, with only an aluminum sheet to protect him from the extremely cold temperature. *Id.* ICE kept the lights on overnight. *Id.* Mr. Fanfan observed ICE agents congratulate each other for their arrests, exclaiming "you're on fire" when they took Mr. Fanfan to the basement. "It broke [his] heart to see the way they treated [them] and were so happy about it." *Id.* ¶ 27.

While in the basement, Mr. Fanfan experienced pain in his chest and eventually was taken to a hospital, while shackled from his hands and feet. *Id.* ¶ 24-25. Medical staff gave him medication and told him that his discharge paperwork would have important information about follow-up care. *Id.* ¶ 24. They provided that paperwork to ICE, but ICE has never provided it to him, and to this day does not know what the medical professionals recommended for his chest pain. *Id.*

After being detained in the basement of the federal building overnight upon his return from the hospital, ICE transferred Mr. Fanfan to the Otay Mesa Detention Center, where he has languished in detention for over a month without being able to see his wife or baby, who will be celebrating his first birthday on December 10. *Id.* ¶ 28-33. He has also been unable to access adequate medical care for the chest pain he continues to suffer, or to properly communicate with his attorney to prepare for his immigration case. *Id.* ¶¶ 28, 30-33. Mr. Fanfan has not had an opportunity to seek release on bond and understands that ICE and the immigration court take the position that he is not eligible to seek such release from an immigration judge. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

B. Maria Maldonado Cruz

Petitioner Maria Maldonado Cruz is a 42-year old woman who is seeking asylum from Honduras. Declaration of Maria Maldonado Cruz (Maldonado Cruz Decl.) ¶¶ 2-3. She has been unlawfully detained in Respondents' custody since October 15, 2025. *Id.* ¶ 18.

Ms. Maldonado Cruz has lived in the United States for six years. *Id.* ¶ 3.

She entered the United States on August 16, 2019, and immediately turned herself in to Border Patrol to request asylum. *Id.* She was taken to a Border Patrol station in Texas, where agents asked her about the basis of her asylum claim, and whether she had any criminal history. *Id.* ¶ 4. After questioning her, Border Patrol agents processed and later released Ms. Maldonado Cruz with a Notice to Appear in immigration court and a document indicating she had been released on her own recognizance. *Id* ¶ 5. As a condition of her release, she was instructed to appear for regular check-ins with ICE, which she did without incident for nearly six years. *Id.* ¶¶ 5-6. Ms. Maldonado Cruz began attending immigration court hearings in January 2020 and she filed her asylum application within a year of her entry into the United States. *Id.* ¶ 7. In 2023, her court proceedings were administratively closed. *Id.* ¶ 8. In 2025, she learned the government had reopened her removal proceedings. *Id.* Ms. Maldonado Cruz never missed a scheduled immigration court hearing. *Id.* ¶ 7.

In the six years that she has lived in the United States, Ms. Maldonado Cruz has built a life in California, working as a domestic worker, in restaurants, and in food distribution in order to provide for her family, including her adult daughter who completed high school in the United States. *Id.* ¶¶ 9, 12. She is also a member of St. Francis of Assisi in Vista, California. *Id.* ¶ 9. Earlier this year, Ms. Maldonado Cruz fell in love with and married her U.S.-citizen husband, Fernando Piña, whom she met through her work. *Id.* ¶¶ 10-11.

Ms. Maldonado Cruz was most recently scheduled to appear in immigration court in September of this year, but her court date was canceled. *Id.* ¶ 14. On October 7, 2025, Ms. Maldonado Cruz's father, who still lived in Honduras, passed away, and she went to her brother's house so they could mourn together. *Id.* ¶¶ 15-16. When she arrived, her brother told her she had received mail, which turned out to be a notice summoning her to an ICE check-in days earlier on October 2, 2025. *Id.* ¶¶ 16-17. As soon as she realized that the date of the check-in had passed, she contacted an immigration lawyer to resolve the mistake as soon as possible; she had never

missed an ICE appointment before. *Id.* ¶ 18. On October 15, Ms. Maldonado Cruz and her lawyer went to the ICE offices at 880 Front Street in San Diego. *Id.* ¶ 19. Ms. Maldonado Cruz did not think she faced a risk of detention because she "was trying to follow instructions and [she] was there with her lawyer." *Id.*

At that visit, she was told that she would be detained. She "did not understand why this was happening" in light of her consistent record of attendance at her immigration proceedings and her lack of criminal history. *Id.* ¶ 20. The ICE officer who arrested her disregarded those factors and instead told Ms. Maldonado Cruz's lawyer that he had been instructed to arrest everyone who appeared for a check-in that day. Declaration of Matthew Holt (Holt Decl.) ¶ 6. ICE officers handcuffed her and took her to the basement, where they confined her for two nights with about a dozen other women at one time. Maldonado Cruz Decl. ¶¶ 21-22. ICE provided only "raw" burritos to eat, and restricted her from using the phone to call her lawyer or family. *Id.* ¶¶ 19-25. After two nights in the small room in the federal building, ICE transferred her to the Otay Mesa Detention Center. *Id.* ¶ 26. At Otay Mesa, Ms. Maldonado Cruz has not had a full night of sleep since she arrived; the sounds of other women who are sick and coughing, or who scream out of desperation, keep her awake. *Id.* ¶ 26. Ms. Maldonado Cruz has been told by her attorneys that under current practices, she is ineligible to seek bond from an immigration judge. *Id.* ¶ 32. The hardest part of her detention has been being away from her family, including her daughter and her U.S.-citizen husband. *Id.* ¶ 29. It has been especially difficult for Ms. Maldonado Cruz to grieve her father's death without her family. *Id.* ¶ 30.

C. Elesban Angel Mendez

Petitioner Elesban Angel Mendez is a husband and father to two U.S. citizen teenaged daughters, who has lived in the United States for nearly 20 years, since 2006. Declaration of Elesban Angel Mendez (Angel Mendez Decl.) ¶ 3. He is currently unlawfully detained at the Otay Mesa Detention Center; he has been unlawfully detained in ICE custody since October 14, 2025. *Id.* ¶ 2. On September

21, 2014, Mr. Angel Mendez was arrested for DUI. *Id.* ¶ 4. On the same day he was arrested, ICE took him into immigration custody. *Id.* ¶¶ 4-5. The following day, on September 22, ICE released him from custody on an order of release on recognizance. *Id.* ¶ 5. He was told to appear for periodic ICE check-ins and that he would have to fight his removal case while outside of detention. *Id.* He later had court and pled guilty to the September DUI charge and was sentenced to two days of custody, probation, a fine, classes, and to attend a first time conviction program. *Id*. ¶ 7. In the more than 10 years since, he complied with all of those terms, as well as the terms of his immigration case, including appearing for periodic check-ins and for court hearings. *Id.* ¶¶ 7-8. He applied for cancellation of removal in 2016 and was issued an employment authorization document pursuant to that application, but in 2017 his case administratively closed for reasons related to a congressionally-imposed limit on the number of cancellation cases that immigration judges may issue per year. *Id.* ¶ 8; 8 U.S.C. 1229b(e)(1).

Mr. Angel Mendez is a devoted father, husband, and worker. He has worked on an egg farm since 2019. Angel Mendez Decl. ¶ 12. He and his family live on the egg farm; he pays rent with part of his work hours. *Id.* He provides for his family, including by paying for his eldest daughter's medical assistant schooling. *Id.* ¶ 22.

Earlier this year, ICE reopened Mr. Angel Mendez's court case and the court set a hearing in August, but it was later rescheduled to December. *Id.* ¶ 13. In late September, he received a letter in the mail instructing him to appear for a check-in at ICE offices at 880 Front Street on October 14. *Id.* He appeared for the check-in with his eldest U.S. citizen daughter and his sister. *Id*. ¶ 15. Soon after Mr. Angel Mendez was called back into ICE offices, an ICE agent told him that he would be arresting Mr. Angel Mendez because "under President Trump every person who is here illegally had to be arrested." *Id.* ¶ 16. The ICE agents did not allow Mr. Angel Mendez to say goodbye to his daughter. *Id.* When ICE agents took him to the elevator in handcuffs, Mr. Angel Mendez heard his daughter cry out "no, dad, no!"

Id. ¶ 17. He "felt deep sadness and helplessness when [he] heard his daughter[.]" *Id.* ¶ 18. Mr. Angel Mendez was also taken to the basement of 880 Front Street where he spent one night under horrible conditions. *Id.* ¶¶ 17, 19. He has been detained at Otay Mesa Detention Center since October 15, and has suffered being away from and unable to provide for his wife and daughters. *Id* ¶¶ 19-21. He is "so sad" that he may miss his youngest daughter's milestone birthday, and he is "extremely worried" because his employer has only given the family until January before they will have to leave their home unless Mr. Angel Mendez returns to work. *Id.* ¶¶ 21, 23.

II. ICE's Cruel Enforcement Tactics at 880 Front Street

Petitioners' experiences are a feature of ICE's enforcement tactics in recent months to target people doing exactly what the government has asked of them: appearing for immigration court hearings and ICE check-ins. Specifically, in the late spring and summer of this year, ICE began arresting people who showed up for their immigration court hearings at the fourth floor of 880 Front Street in downtown San Diego.[2] After significant public outcry and court orders limiting this practice, ICE's San Diego Field Office shifted its tactics.[3] The agency continues to prey on people who are doing as they are told, but it now targets those appearing for appointments to which ICE summoned them.[4] Since about October 2025, ICE has been issuing letters instructing individuals, including those with ongoing removal proceedings, to appear for "check-ins" or "interviews" at ICE offices on the second floor of the same federal building at 880 Front Street where individuals appear for immigration court.[5]

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[2] Sofia Mejias-Pascoe, *Ice takes people into custody outside court in San Diego*, INews Source (May 22, 2025), https://inewsource.org/2025/05/22/ice-san-diego-immigration-court/

[3] *See, e.g.*, *Make the Rd. New York v. Noem,* No. 25-CV-190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 29, 2025).

[4] Kate Morrissey, *ICE in San Diego has a new policy- detain everyone,* Daylight San Diego (Oct. 10, 2025), https://www.daylightsandiego.org/ice-in-san-diego-has-a-new-policy-detain-everyone/; Lillian Perlmutter, *Asylum-seekers now held for days- in a downtown San Diego basement*, Times of San Diego (Oct. 20, 2025), https://timesofsandiego.com/politics/2025/10/20/asylum-seekers-held-basement-san-diego-ice/

[5] *Id.*

ICE hands some individuals these letters at their immigration court hearings, instructing them to appear for a check-in on the second floor immediately after their hearing, and it sends others the letters in the mail.[6] At the check-ins, ICE arrests and detains them. The New York Times reported that in one two-week period in October 2025, "more than 120 people were seen being detained after attending check-ins with immigration officials" on the second floor of 880 Front Street.[7]

Once in ICE detention, most of these individuals have no administrative recourse to seek release, due to recent changes to longstanding law and policy that now misclassifies them as ineligible for bond hearings before an immigration judge. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025). In addition to being separated from their families and communities, individuals are also subjected to deplorable conditions of detention—first in basement rooms of the federal building at 880 Front Street unsuited for overnight detention, and later at immigration jails like the Otay Mesa Detention Center. The families of detained individuals agonize on the outside not knowing when or if they will see their loved ones again or how they will provide for their families. *Id.*[8] Taken together, these policies and practices amount to a trap that punishes people for seeking to comply with the requirements of their immigration cases. ICE lures them to unassuming offices in a federal building where agents seek to detain them quietly and outside of the public eye, without regard for whether they are a danger to the community or a flight risk, before subjecting them to indefinite detention under appalling conditions of detention.

STANDARD OF REVIEW

A court may grant an *ex parte* TRO where "immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). As discussed below, Petitioners readily

[6] *Id.*
[7] Jesus Jimenez, *Emotional Glimpses of an Immigration Crackdown in a San Diego Courthouse*, New York Times (Nov. 8, 2025), https://www.nytimes.com/card/2025/11/08/us/immigration-ice-san-diego-courthouse
[8] *Id.*

satisfy this requirement because they are suffering ongoing irreparable injury as a result of their unlawful detention.

The standard for a TRO is the same as for a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush &* Co, 240 F.3d 832 (9th Cir. 2001); *Velazquez-Hernandez v. ICE*, 500 F.Supp.3d 1132, 1141 (S.D. Cal. 2020). The party seeking relief "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in their favor, and [4] that an injunction is in the public interest." *City & Cnty. of San Francisco v. USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019) (quoting *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008)). "Likelihood of success on the merits is the most important factor." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quotations omitted). Where the government is the opposing party, the third and fourth factors merge. *Nken v. Holder,* 556 U.S. 418, 435 (2009).

Additionally, in the Ninth Circuit, courts may "employ an alternative 'serious questions' standard, also known as the 'sliding scale' variant of the *Winter* standard." *Fraihat v. ICE*, 16 F.4th 613, 635 (9th Cir. 2021) (cleaned up). Under that test, Plaintiffs must show "serious questions going to the merits and a balance of hardships that tips sharply toward the plaintiff[s]" along with "a likelihood of irreparable injury and that the injunction is in the public interest" *Id.* (internal citations omitted).

ARGUMENT

I. Petitioners Are Likely to Succeed on the Merits of Their Claims

A. Petitioners' re-detention violates the Due Process Clause of the Fifth Amendment.

The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. This protection applies to noncitizens. *Zadvydas v Davis,* 533 U.S. 678, 693 (2001). "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." *Id.* at 690. While immigration laws afford ICE discretion over its decisions to arrest, detain, and revoke prior releases, those decisions are nonetheless constrained by the requirements of the Constitution, including the Due Process Clause. *See generally Zadvydas,* 533 U.S at 690; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

i. *Substantive Due Process*

Civil detention must "bear[] a reasonable relation to [its] purpose." *Zadvydas*, 533 U.S. at 690 (cleaned up). In the immigration context, detention only comports with substantive Due Process when it furthers the government's legitimate goals of "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Id*. Thus, ICE detention, which is constitutionally constrained as a form of nominally "civil" detention to be non-punitive in nature, violates substantive Due Process where it is not justified by flight risk or danger to the community, or where it is motivated by anything other than those two legitimate purposes. *See id.*

Here, Respondents re-detained Petitioners despite having no flight risk or danger-based justifications to do so; in fact, Petitioners Fanfan and Maldonado Cruz have never had contact with the criminal legal system in the United States, including since their previous release from Respondents' custody, and Petitioner Angel Mendez has had no new criminal contact since his last release from ICE custody. All Petitioners have sought to comply with all requirements Respondents have imposed on them. Indeed, when Petitioner Maria Maldonado Cruz accidentally missed a check-in appointment with ICE for the first time in six years because she did not receive the notice in time, she promptly contacted an immigration lawyer and sought to correct the issue by presenting herself at ICE offices with her lawyer within a matter of days. Maldonado Cruz Decl. ¶ 18. Under these circumstances, Petitioners' detention cannot serve a legitimate government purpose and therefore contravenes their substantive Due Process rights.

Moreover, ICE re-detained Petitioners pursuant to a blanket policy pursuant to which ICE claims authority to arrest and detain all noncitizens who it alleges are not lawfully present in the United States, without regard for whether they are a flight risk or dangerous.[9] Indeed, the ICE agent who arrested Mr. Fanfan told him explicitly that the reason for his detention was simply that "the government was requiring" the agent to do it, not that the agent himself made the "decision." Fanfan Decl. ¶ 23. ICE gave Ms. Maldonado Cruz's lawyer and Mr. Angel Mendez similar reasons. Holt Decl. ¶ 6; Angel Mendez Decl. ¶ 16. Detention pursuant to such a policy violates substantive Due Process because it is unrelated to the two regulatory purposes of immigration detention; it authorizes detention indiscriminately, based on status alone, regardless of any consideration of danger or flight risk. *See id.* Regardless of whether the policy is a product of arrest quotas, a desire to deter unlawful migration, or to encourage voluntary deportation, the detentions cannot comport with substantive Due Process because such a detention policy does not serve a legitimate government purpose. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188-189 (D.D.C. 2015) (citing *Kansas v. Crane*, 534 U.S. 407, 412 (2002). (observing that "[i]n discussing civil commitment more broadly, the [Supreme] Court has declared such general deterrence justifications impermissible" and finding likely contrary to Due Process a policy pursuant to which DHS detained "one particular individual" for purposes of "sending a message of deterrence to other[s] who may be considering immigration"); *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S. 346, 361-62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

Thus, Petitioners' re-detention violates substantive Due Process.

ii. *Procedural Due Process*

Petitioners' re-detention also violates procedural Due Process. Under

[9] Kate Morrissey, *ICE in San Diego has a new policy- detain everyone*, Daylight San Diego (Oct. 10, 2025), https://www.daylightsandiego.org/ice-in-san-diego-has-a-new-policy-detain-everyone/

Mathews v. Eldridge, 424 U.S. 319 (1976), courts evaluate procedural Due Process by balancing (1) the private interest affected; (2) the risk of erroneous deprivation of such interest; and (3) the government's interest. *Id.* at 335.

There is no question that freedom from government imprisonment is a profound private interest that "lies at the heart of the liberty that" Due Process protects. *Zadvydas,* 533 U.S. at 690. In cases where an individual has been previously released from government custody, the release itself creates a liberty interest in remaining out of custody. *Morrisey v. Brewer*, 408 U.S. 471, 482 (1972). In the immigration context courts have consistently found the private interest in "retaining [] liberty" is significant, *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035 (N.D. Cal. 2025), even where "ICE has the initial discretion to detain or release a noncitizen pending removal proceedings," *Id.* at 1032 (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 143250 at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F.Supp.3d 963, 969 (N.D. Cal. 2019). Courts in this district have specifically recognized that individuals have a significant liberty interest in both "continued freedom after *release on own recognizance*," *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, Dkt. No. 14 at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in "freedom from imprisonment" after "the government grants a [noncitizen] *parole* into the country," *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added).

As numerous district courts within the Ninth Circuit and around the country have found, where individuals subject to ICE re-detention have "not received any bond or custody hearing, the risk of an erroneous deprivation of liberty is high because neither the government nor [the petitioner] has had an opportunity to determine whether there is any valid basis for her detention." *Pinchi*, 792 F. Supp.

3d at 1035 (citing *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025) (cleaned up)). Indeed, where a petitioner "was previously released following a determination that he posed no flight risk or danger to the community, and absent any new evidence showing a material change in circumstances, the risk of erroneous detention without a hearing is substantial." *Alegria Palma*, No. 25-cv-1942-BJC-MMP, Dkt. No. 14 at *6.

The requirement that the government conduct a pre-deprivation hearing to determine whether changed circumstances justify *re-detention* is especially crucial to safeguard Due Process because the prior "[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). That is certainly true in Petitioners' cases. *See* 8 C.F.R. 1236.1(c)(8) (authorizing release of noncitizens under 1226(a) if they "would not pose a danger to property or persons," and are "likely to appear for any future proceeding"); 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens deemed "neither a security risk nor a risk of absconding"). "To be lawful" their re-detention "must be based on evidence that the circumstances relevant to that original release decision have changed." *Saravia* 280 F. Supp at 1196; *see also Sanchez*, 2025 WL 2770629 at *3 ("To satisfy due process, those changed circumstances must represent individualized legal justification for detention." (internal citation omitted)). Where, as here, the government has failed to conduct *any* individualized determination of whether changed circumstances justify Petitioners' re-detention—let alone pre-deprivation hearings—the risk of erroneous deprivation is too high to comport with Due Process.

Finally, there is no countervailing government interest that justifies Petitioners' re-detention where, as here, Petitioners present no danger or flight risk concerns. Petitioners Fanfan and Maldonado Cruz have no prior criminal history or contact with the criminal legal system whatsoever, and Mr. Angel Mendez has had

no new criminal contact since his last release from ICE custody in 2014. None of the Petitioners have ever missed a court date or done anything to suggest they are a risk of flight. *See* Statement of Facts, *supra*.

To the extent that Respondents seek to justify re-detention "to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures," or because providing pre-deprivation procedures would be "fiscally or administratively onerous," those excuses do not constitute a legitimate government interest that outweighs Petitioners' liberty interest. *Pinchi*, 792 F. Supp. 3d at 1036. Compared to the "staggering" "costs to the public of immigration detention," *Hernandez*, 872 F.3d at 996, "[t]he effort and cost required" of providing a hearing "is minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025).

Petitioners readily satisfy each of the *Mathews* factors; thus, their re-detention without a pre-deprivation hearing to assess whether material changes in circumstances justify their detention violates procedural Due Process, as a growing number of district courts around the country have held in similar circumstances.[10]

B. Petitioners' re-detention contravenes the INA.

For similar reasons, Petitioners' re-detention also violates the INA. Petitioners are detained under 8 U.S.C. 1226(a), which provides for detention of certain noncitizens "inside the United States" and "present in the country." *Jennings v.*

[10] *See, e.g.*, *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Faizyan v. Casey,* No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); *Ramazan M. v. Andrews,* No. 25-cv-01356-KES-SKO (HC), 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-MJP-TLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

Rodriguez, 584 U.S. 281, 288-89 (2018).[11] Section 1225(b)(2), in contrast, mandates detention for any noncitizen "who is an applicant for admission, if the examining immigration *officer* determines that a[] [noncitizen] *seeking admission* is not clearly beyond a doubt entitled to be admitted[.]" *See* 8 U.S.C. 1225(b)(2) (emphasis added); *Jennings*, 583 U.S. at 287 (describing section 1225 as relating to "borders and ports of entry"). As individuals who were arrested in the interior of the country at their ICE check-ins months and years after they arrived in the United States, Petitioners' re-detentions are governed by 8 U.S.C. 1226(a). In some cases, the government has argued that individuals like Petitioners are detained under section 1225(b)(2), but that claim is meritless.[12] Petitioners were plainly not "seeking admission" at the time of their re-detention. Moreover, any interpretation suggesting that section 1225(b)(2) governs Petitioners' detention would render superfluous recent amendments enlarging the category of people subject to the mandatory detention provision of 8 U.S.C. 1226, *see* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), and would contravene decades of agency policy and practice, including as articulated in implementing regulations. *See* 8 C.F.R. 1.2.[13] Thus, section 1226(a) governs.

Detention under the INA only "has two regulatory goals: ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690 (internal citations omitted).

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[11] Petitioners have no disqualifying criminal history that would subject them to 8 U.S.C. 1226(c) detention. *See* Statement of Facts, *supra*.

[12] Such an interpretation would not be entitled to this Court's deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86, (2024) (courts must exercise "independent judgment").

[13] Numerous courts in this district and beyond have rejected the agency's mischaracterization of individuals encountered in the interior of the country as subject to section 1225(b)(2) detention. *See, e.g.*, *Esquival-Ipina v. Larose*, No. 25-cv-2672, 2025 WL 2998361, at *4-5 (S.D. Cal. Oct. 24, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025). The agency's misclassification of individuals like Petitioners compounds the erroneous nature of their re-detention by also depriving them the opportunity of a bond hearing to contest the regulatory purpose of their detention. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Prior to re-detaining them, DHS had released Petitioners from its custody, necessarily determining they posed no danger or flight risk. That is because DHS released Petitioners on recognizance or on parole—each of which requires a finding that the noncitizen poses neither a danger nor a flight risk. *See* 8 C.F.R 1236.1(c)(8) (authorizing release of noncitizens under 1226(a) if they "would not pose a danger to property or persons," and are "likely to appear for any future proceeding"); 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens deemed "neither a security risk nor a risk of absconding"). Thus, § 1226(a) only authorizes re-detention after an individualized determination that some material change in circumstances related to flight risk or danger now justifies re-detention. *See Ortega*, 415 F.Supp.3d at 968 ("DHS re-arrests individuals only after a 'material' change in circumstances." (citing *Saravia*, 280 F.Supp.3d at 1197)); *United States v. Cisneros*, No. 19-CR-00280-RS-5, 2021 WL 5908407, at *2 (N.D. Cal. Dec. 14, 2021) ("[R]e-arrest can only occur if there has been a change in circumstances."); *Matter of Sugay*, 17 I&N Dec. 637, 640 (B.I.A. 1981) ("[W]here a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance.").

Here, Petitioners' re-detention flowed not from individualized determinations of changed circumstances, but rather from a blanket arrest policy. ICE communicated no justifications to Petitioners for their re-detention, and indeed, there are none. Petitioners Fanfan and Maldonado Cruz have *no* criminal history, let alone new criminal history, and Petitioner Angel Mendez has had no criminal contact since his last release from DHS custody. Nor have Petitioners intentionally failed to comply with any conditions or otherwise demonstrated risk of flight following their release from DHS custody. Thus, there are no changed circumstances that justify departure from the prior release and re-detention, and DHS did not engage in the required individualized determination prior to re-detaining them at their check-ins. Accordingly, Petitioners' re-detention violates 8 U.S.C. 1226(a).

C. Petitioners' re-detention is arbitrary and capricious in violation of the APA.

Finally, Petitioners' re-detention is arbitrary and capricious. To be reviewable under the APA, a challenged action must constitute final agency action, which includes "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. 551(13). Agency action is final where (1) it marks the "consummation" of the agency's decision-making process and is therefore not "of a merely tentative or interlocutory in nature;" and (2) is an action "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–178 (1997) (internal citations omitted).

Courts must hold unlawful and set aside agency action that is arbitrary and capricious. 5 U.S.C. 706(2)(A). An action is arbitrary and capricious if the agency fails to "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 42–43 (1983) (internal quotation marks omitted). Agencies must "support and explain their conclusions with evidence and reasoned analysis." *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 648 (9th Cir. 2010). "[W]here the agency has failed to provide even the minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). Moreover, courts may not consider "impermissible" agency "*post hoc* rationalization." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations omitted).

ICE's decisions to re-detain Petitioners constitute final agency action because the re-detentions mark the "consummation" of the ICE's decision-making process on the question of Petitioners' custody, and they are actions "by which rights or obligations have been determined, or from which legal consequences will flow."

Bennett, 520 U.S. at 177-78. Indeed, the "practical and legal effects of the agency action" are that Petitioners have been deprived of their liberty for over a month and with no end in sight. *Or. Natural Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir. 2006); *see also* 5 U.S.C. 551(10)(A), (13) (defining "agency action" to include an agency's "prohibition, requirement, limitation, or other condition affecting the freedom of a person.").

Moreover, ICE's decisions to re-detain Petitioners were arbitrary and capricious in violation of the APA where the agency failed to contemporaneously (or ever) articulate any flight-risk or danger-based justifications for the decisions. ICE has never once provided Petitioners documentation explaining the reasons for their abrupt re-detention, nor has it otherwise offered explanations, other than broad statements that their arrests were required by "the government." Fanfan Decl. ¶ 23. The ICE officer who arrested Ms. Maldonado Cruz even explicitly told her lawyer that he had instructions to arrest everyone who appeared for check-ins that day, disregarding individualized circumstances which should have counseled against her detention. Holt Decl. ¶ 6-8. An ICE agent told Mr. Angel Mendez that he was arresting him because "under President Trump" all persons who are unlawfully present "had to be arrested." Angel Mendez Decl. ¶ 16. Indeed, the agency could not offer explanations because there are none. *See* Statement of Facts, *supra*. Thus, ICE did not and cannot offer a "satisfactory explanation" for its decisions to re-detain Petitioners, is there a "rational connection" between the facts—Petitioners' lack of intervening criminal history or flight risk factors—and the choice it made to detain them. *State Farm*, 463 U.S. at 42-43. ICE failed to provide "even the minimal level of analysis," *Encino Motorcars*, 579 U.S. at 221, let alone "reasoned analysis" that the APA requires. *Ctr. for Biological Diversity,*, 623 F.3d at 648.

Thus, ICE's decisions to re-detain Petitioners were arbitrary and capricious in violation of the APA, and the agency cannot now seek to provide post-hoc justification to cure its unlawful action. *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123,

1147 (D. Or. 2025) (finding termination of parole arbitrary and capricious where ICE "provide[d] no record evidence of an articulation by the agency of *any* reason for the change to terminate Petitioner's parole, let alone a rational basis for its decision"); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *5-6 (W.D. Wash. Oct. 7, 2025) (finding an "absence of contemporaneous explanation" where "[t]he record does not reflect any deliberative process, any consideration of [petitioner's] individual circumstances, or any articulated reasoning for why the agency changed its eight-year-old determination that he was not a flight risk or danger to the community," rendering the revocation of prior release on recognizance arbitrary and capricious).

For these reasons, Petitioners are likely to succeed on the merits of their claims. Alternatively, Petitioners have raised "serious questions" going to the merits of their claims, thus favoring the issuance of the TRO. *Fraihat*, 16 F.4th at 635.

II. Petitioners Continue to Suffer Irreparable Harm

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The Ninth Circuit has specifically recognized irreparable harm resulting from unconstitutional immigration detention. *Hernandez*, 872 F.3d at 994. This is sufficient to justify emergency relief. *See Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

While unnecessary to warrant a TRO under the present circumstances, Petitioners have also demonstrated that their continued detention is detrimental to them and their families. Petitioner Chancely Fanfan remains detained and separated from his wife and eleven-month-old U.S. citizen son. Fanfan Decl. ¶ 31. He is suffering being unable to provide for his family or watch his baby grow, and is anguished over the prospect of missing his only son's first birthday on December

10. *Id* ¶ 3. He also continues to suffer from chest pain for which he has not received adequate medical attention while at the Otay Mesa Detention Center—in fact he has not received anything other than heartburn tablets. *Id.* at 28. Moreover, his detention has interfered with his ability to communicate with his lawyer and prepare for his asylum case. *Id.* ¶ 32. Petitioner Maria Maldonado Cruz has likewise suffered immensely while being detained and separated from her family, especially during her time of grief in the wake of her father's death. Maldonado Cruz Decl. ¶¶ 29-30. She cannot reliably speak with her mother in Honduras during this time, which has been difficult. *Id.* ¶ 30. She has also struggled not being able to provide for her family or properly continue her immigration case. *Id.* ¶¶ 31-33. Finally, she has not been able to eat most of the food—which she describes as "raw," "completely cold," and "mush"—nor has she had a full night of sleep since she was detained more than a month ago. *Id.* ¶¶ 26-27. Petitioner Elesban Angel Mendez has suffered being away from his wife and U.S. citizen daughters, and being unable to provide for his family. Angel Mendez Decl. ¶ 21. He is "extremely worried" because his family will lose their housing in January if he cannot get out detention and resume his work by then. *Id.* He, too, is anguished at the prospect of missing his youngest daughter's 15-year-old birthday, which is a major milestone in his culture, on December 11. *Id.* at 23.

Petitioners have shown ongoing irreparable harm resulting from their unlawful detention, thus warranting an *ex parte* TRO.

III. The Balance of the Equities Favors Relief

The balance of the equities favors relief for Petitioners. "[N]either equity nor the public's interest are furthered by allowing violations of federal law to continue." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) ("[A party] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."); *see also*

Hernandez, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."). In this case, a TRO would simply require Respondents to stop violating the law and restore Petitioners to the status quo prior to the legal violation, which the equities favor.

Moreover, as discussed, Petitioners have no recent criminal histories that would render them dangers to the community; nor do they present risks of flight, especially not where their detention is a direct result of their attempts to report to ICE and otherwise comply with the conditions of their immigration cases. Thus, their continued unlawful detention does not serve the public interest.

Because the balance of the equities and public interest favor Petitioners, this Court should issue the TRO.

IV. No Statute Strips this Court of Jurisdiction and Exhaustion of Administrative Remedies Is Not Required

To the extent Respondents intend to raise it, the jurisdictional bar at 8 U.S.C. 1252(b)(9) does not apply in this case because Petitioners do not seek review of any removal orders. Indeed, none of them even have removal orders. And in any event, they challenge their detention, which is "collateral" to the removal process and thus "do[es] not fall within the scope of 1252(b)(9)." *Gonzalez v. ICE*, 975 F.3d 788, 810 (9th Cir. 2020). For similar reasons, section 1252(g) does not apply because it should be read "narrowly" to bar review only over the "three discrete actions," all involving exercises of discretion, named in the statute. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Re-detaining Petitioners is not a "decision or action" to "commence [their] proceedings, adjudicate [their] cases, or execute [their] removal orders." 8 U.S.C. 1252(g). The provision also "does not prohibit challenges to unlawful practices merely because they are in some fashion connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th

Cir. 2025). Moreover, section 1252(g) does not bar Due Process claims, which Petitioners raise here. *Walters v. Reno*, 145 F.3d 1032, 1032 (9th Cir. 1998).

Additionally, exhaustion is not required. The Ninth Circuit considers exhaustion of remedies for habeas petitioners a prudential requirement that may be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Two of these exceptions apply.

First, exhaustion is futile because the BIA, which issues definitive legal interpretations for DHS officers, has issued a precedential decision affirming DHS's policy of misclassifying bond eligible individuals who have not been previously admitted as subject to section 1225 mandatory detention. *See* Section I(B), *supra*; *Matter of Yajure Hurtado*, 29 I&N Dec.216 (B.I.A. 2025). The agency would therefore apply its binding precedent to deny Petitioners the opportunity to seek bond, rendering any effort to exhaust administrative remedies futile. Second, requiring exhaustion would result in further irreparable injury to Petitioners. Each day that Petitioners remain imprisoned constitutes a violation of their statutory and constitutional rights. *See Hernandez*, 872 F.3d at 995. The process of seeking bond and appealing its denial (as is almost certain to happen here) takes over six months in most cases, which would dramatically compound the irreparable injury from unlawful detention. *Rodriguez v. Bostock*, 349 F.R.D. 333, 347 (W.D. Wash. 2025).

Because relief from unlawful detention "must be speedy if it is to be effective," it would be unreasonable to require Petitioners to await this administrative process, particularly in light of binding, albeit erroneous, BIA precedent. *Stack v. Boyle*, 342 U.S. 1, 4 (1951). Indeed, a number of courts, including in this district, have waived exhaustion where the agency would necessarily apply the precedent of *Matter of Yajure Hurtado* to deny petitioners bond. *See, e.g.*, *Esquival-Ipina*, 2025 WL 2998361, at *4; *Garcia*, 2025 WL 2549431, at *5;

Valdovinos v. Noem, No. 25-cv-2439, slip op. at 9 (S.D. Cal. Sept. 25, 2025). This Court should do the same.

V. Release is the Only Proper Remedy

Petitioners request that this Court order their immediate release and prohibit Respondents from re-detaining them without a pre-deprivation hearing at which the government would bear the burden of proving that material changes in circumstances justify re-detention. Release is the only proper remedy because it is required to return Petitioners to the status quo ante, which is "the last uncontested status which preceded the pending controversy." *See, e.g., Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025) (ordering immediate release of noncitizen unlawfully re-detained without a pre-deprivation hearing) (internal citations omitted).[14] Thus, Petitioners are entitled to immediate release and to remain at liberty unless the government provides a pre-deprivation hearing at which it establishes a lawful justification for their detention.

CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' *ex parte* Motion for Temporary Restraining Order.

Dated: November 25, 2025

Respectfully submitted,

/s/ Monika Y. Langarica

Monika Y. Langarica
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[14] *See also C.L.V. v. Larose*, No. 25-cv-2795-JO-AHG, Dkt. 19 (S.D. Cal Oct. 30, 2025) (ordering release and enjoining re-detention without a pre-deprivation hearing); *Sphabmixay v. Noem*, No. 25-cv-2648-LL-VET, 2025 WL 3034071 (S.D. Cal Oct. 30, 2025) (ordering immediate release); *Tran v. Noem*, No. 25-cv-02391-BTM-BLM, 2025 WL 3005347 (S.D. Cal Oct. 27, 2025) (same); *McSweeney v. Warden*, No. 3:25-cv-02488-RBM-DEB, 2025 WL 2998376 (S.D. Cal Oct. 24, 2025) (same); *Thai v. Noem*, No. 3:25-cv-02436-RBM-MMP, Dkt 10, 12 (S.D. Cal Oct. 23, 2025) (same); *Phan v. Noem*, No. 3:25-cv-02422-RBM-MSB, 2025 WL 2898977 (S.D. Cal Oct 10, 2025) (same); *Constantinovici v. Bondi*, ---F.Supp.3d---, 2025 WL 2898985 (S.D. Cal 2025) (same).

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