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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6
7 **IMESH PERERA,**
8 **Plaintiff,**

9 **v.**

10 **DAVID W. JENNINGS, et al.,**
11 **Defendants.**

Case No. 21-cv-04136-BLF

**ORDER GRANTING MOTION FOR
TEMPORARY RESTRAINING ORDER**

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13 Petitioner-Plaintiff Imesh Perera filed a petition for writ of habeas corpus and complaint for
14 injunctive and declarative relief in this action on June 1, 2021 against Respondent-Defendants U.S.
15 Immigration and Customs Enforcement (“ICE”) San Francisco Field Office Director David W.
16 Jennings, Acting ICE Director Tae D. Johnson, DHS Secretary Alejandro Mayorkas, and Attorney
17 General Merrick Garland (collectively “Defendants”). ECF 1; Compl., ECF 18-2. Perera
18 simultaneously filed a motion seeking a temporary restraining order (“TRO”) and an order to show
19 cause why a preliminary injunction should not issue. ECF 4; Mot., ECF 18-3. The Court ordered
20 that notice be given to Defendants and held a motion hearing on June 10, 2021.
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22 As set forth below, Perera’s motion is GRANTED. Respondents-Defendants, and their
23 agents and employees, are ORDERED TO SHOW CAUSE before this Court why a preliminary
24 injunction should not issue under the same terms as this temporary restraining order. The hearing
25 on the Order to Show Cause will be held on July 15, 2021 at 9:00 am. Briefing shall be submitted
26 as provided in the Order Granting Motion for Temporary Restraining Order.
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28 **I. BACKGROUND**

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The declarations and associated exhibits of Judah Lakin and Scott Mossman establish the following facts. *See* Lakin Decl., ECF 1-1; Mossman Decl., ECF 18-1. Perera was born in Sri Lanka in 1990 to Marian and Prince Perera. Perera and his family came to the United States in 2002 based on his mother’s H-1B visa. Mossman Decl. ¶ 4. Along with the rest of his family, Perera adjusted to lawful permanent resident status in 2007. *Id.* ¶ 5. His parents became U.S. citizens in 2012. *Id.* On May 21, 2010, Perera was convicted in the Superior Court of California, County of Placer, for transportation of a controlled substance in violation of California Health and Safety Code § 11379(a). *Id.* ¶ 6. On August 18, 2010, Mr. Perera and ten co-defendants were indicted on federal controlled substances charges in the U.S. District Court for the Eastern District of California. *Id.* On March 20, 2015, Perera pled guilty to conspiracy to distribute and possess with intent to distribute MDMA and BZP in violation of 21 U.S.C. §§ 846 and 841(a)(1). *Id.* ¶ 7. Because Perera had spent nearly five years in custody at that point, the court ordered him released at the time of the plea. *Id.* On September 10, 2015, the court sentenced Perera to 50 months with credit for time served and a term of supervised release of 36 months. *Id.*

The past six years have proved transformative for Perera. He has successfully completed probation and avoided further criminal arrests or charges. Perera Decl. ¶¶ 13-15; Lakin Decl. at Ex. F (Letter from Probation Officer). He has pursued a college education, studying real estate and business administration, while working full-time. Perera Decl. ¶ 16; Lakin Decl. at Ex. K (Sierra College Transcript), Ex. L (Letter from counselor at Sierra College), Ex. Q (Letter from program technician at Sierra College). He has climbed the ranks at Safeway, earning five promotions in four years and ultimately becoming a store director responsible for 130 employees. Perera Decl. ¶ 17-19. He has committed himself to spiritual development and devotion as well as his church community. Perera Decl. ¶¶ 13, 30; Lakin Decl. at Ex. C (Letter from Marian and Prince Perera); Lakin Decl. at Ex. M (Letter from Perera’s Priest). He is engaged to a U.S. citizen, who is pregnant with their first child, a son. Lakin Decl. at Ex. D (Letter from Chloe Enriquez). He bought a home

1 so his son would have somewhere “safe and secure” to grow up. Perera Decl. ¶ 18. As Perera
2 explains: “I now know that time is the one thing you can’t get back and I have lived my life every
3 day since being released from federal custody with that understanding.” Perera Decl. ¶ 15.

4 On April 21, 2021, ICE took Perera into custody and initiated removal proceedings.
5 Mossman Decl. ¶ 8. Since then, ICE has detained Perera at Golden State Annex, a private detention
6 facility in McFarland, California. *Id.* ICE refused Perera the opportunity to post a bond for release
7 from custody during the removal proceedings. *Id.* ¶¶ 8, 15. On May 25, 2021, Perera denied the
8 charge of removability against him. *Id.* ¶ 13. If the immigration judge ultimately sustains the charge
9 of removability, Perera intends to apply for withholding of removal to Sri Lanka pursuant to INA §
10 241(b)(3), 8 U.S.C. § 1231(b)(3) and the Convention Against Torture, and deferral of removal under
11 the Convention Against Torture. *Id.* ¶ 14; *see also* Perera Decl. ¶ 31. In particular, country conditions
12 research indicates that Sri Lankan government officials incite and acquiesce in violence against
13 Christians. *Id.*

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16 On June 1, 2021, Perera filed the petition, complaint, and instant motion for a temporary
17 restraining order. ECF 1; ECF 4. The same day, the Court issued an order directing Defendants to
18 respond to the motion and directing Perera to serve Defendants with notice of the order via email.
19 *See* ECF 8. Plaintiff has confirmed service as authorized. ECF 9. On June 7, 2021, Defendants filed
20 an opposition brief. Opp., ECF 20. On June 8, 2021, with permission of the Court, Perera filed a
21 reply brief. Reply, ECF 22.

22 II. JURISDICTION

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24 The Court first considers whether jurisdiction lies within this district. ICE is currently
25 detaining Perera at the Golden State Annex facility in McFarland, CA. Golden State Annex is a
26 private facility that falls within the area of responsibility of the San Francisco Field Office of ICE
27 Enforcement and Removal Operations. Respondent-Defendant Jennings is the Field Office Director
28 of ICE’s San Francisco Field Office. Compl. ¶¶ 12, 16, 39.

1 In *Rumsfeld v. Padilla*, the Supreme Court applied the “immediate custodian rule” to a
 2 habeas petition filed by a U.S. citizen detained in military custody in South Carolina. 542 U.S. 430-
 3 432 (2004). The immediate custodian rule is the long-held “default rule” that the proper respondent
 4 to a habeas petition challenging present physical confinement “is the warden of the facility where
 5 [a] prisoner is being held, not the Attorney General or some other remote supervisory official.” *Id.*
 6 at 435–39. *Padilla* refused to decide who the proper respondent is in the immigration detention
 7 context, however.

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 9 “Courts in this district repeatedly have held, both before and since *Lopez-Marroquin*,¹ that
 10 *Padilla* does not extend to cases such as this one where the immediate custodian lacks any actual
 11 authority over the immigrant detainee.” *Domingo v. Barr*, No. 20-CV-06089-YGR, 2020 WL
 12 5798238, at *2 (N.D. Cal. Sept. 29, 2020). This Court concurs with the approach taken by Judge
 13 Yvonne Gonzalez Rogers in *Domingo* as well as other courts in and beyond this district. *See, e.g.*,
 14 *Montoya Echeverria v. Barr*, No. 20-CV-02917-JSC, 2020 WL 2759731, at *3-4 (N.D. Cal. May
 15 27, 2020); *Zepeda Rivas v. Jennings*, No. 20-CV-02731-VC, 2020 WL 2059848, at *2 (N.D. Cal.
 16 April 29, 2020); *Rodriguez Sanchez v. Decker*, No. 18-CV-8798 (AJN), 2019 WL 3840977, at *2
 17 (S.D.N.Y. Aug. 15, 2019); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1187 (N.D. Cal. 2017). As
 18 such, this Court has subject matter jurisdiction and may grant relief pursuant to 28 U.S.C. § 2241.
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20 **III. LEGAL STANDARD**

21 The standard for issuing a temporary restraining order is identical to the standard for issuing
 22 a preliminary injunction. *Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 832, 839
 23 n.7 (9th Cir. 2001); *Lockheed Missile & Space Co. v. Hughes Aircraft*, 887 F. Supp. 1320, 1323
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 27 ¹ In *Lopez-Marroquin v. Barr*, the Ninth Circuit issued an order in which it transferred a habeas
 28 petition to immigration detention to the United States District Court for the Southern District of
 California. No. 18-72922, 2020 WL 1808002 (9th Cir. Apr. 9, 2020). The paragraph-long order
 cited to *Padilla*, but did not offer any facts about the petition, which was originally filed as an
 emergency motion to remand pursuant to the All Writs Act. *Id.*

1 (N.D. Cal. 1995). An injunction is a matter of equitable discretion and is “an extraordinary remedy
2 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*
3 *v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking preliminary
4 injunctive relief must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to
5 suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in
6 his favor, and [4] that an injunction is in the public interest.” *Id.* at 20. “[I]f a plaintiff can only show
7 that there are serious questions going to the merits – a lesser showing than likelihood of success on
8 the merits – then a preliminary injunction may still issue if the balance of hardships tips sharply in
9 the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Friends of the Wild Swan v.*
10 *Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted).

12 **IV. DISCUSSION**

13 **A. Analysis**

14 **1. Likelihood of Success on the Merits**

15 The Court begins its analysis by considering Perera’s showing on the first *Winter* factor,
16 likelihood of success on the merits. Perera argues that 8 U.S.C. § 1226(c), as applied to him, is
17 unconstitutional under the Due Process Clause. Mot. at 11-18. The Due Process Clause of the Fifth
18 Amendment to the United States Constitution forbids the government from depriving a person of
19 life, liberty, or property without due process of law. U.S. Const. Amend. V. The protection applies
20 to “all ‘persons’ within the United States, including aliens, whether their presence here is lawful,
21 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). 28 U.S.C. §
22 2241(c)(3) authorizes a district court to grant a writ of habeas corpus whenever a petitioner is “in
23 custody in violation of the Constitution or laws or treaties of the United States.” This includes claims
24 by non-citizens challenging the constitutionality of their detention without bail. *Demore v. Kim*, 538
25 U.S. 510, 516-17 (2003). Detention violates due process absent “adequate procedural protections”
26 or “special justification[s]” sufficient to outweigh one’s “constitutionally protected interest in
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1 avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (quoting *Kansas v. Hendricks*, 521 U.S.
2 346, 356 (1997)).

3 At issue here is Perera’s detention under 8 U.S.C. § 1226(c). Federal immigration law
4 authorizes DHS to arrest and initially detain an alien who has entered the United States and is
5 believed to be removable. 8 U.S.C. § 1226(a). Certain classes of non-citizens are subject to
6 mandatory detention and may not, under the text of § 1226(c), be released until the removal
7 proceedings conclude. *Jennings v. Rodriguez*, 138 S. Ct. 830, 837-38 (2018). For example, non-
8 citizens who have committed certain crimes of “moral turpitude” are subject to mandatory detention.
9 8 U.S.C. §§ 1226(c), 1227(a)(2)(A)(ii) (“Any alien who at any time after admission is convicted of
10 two or more crimes involving moral turpitude ... is deportable.”).

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12 Courts routinely review as-applied constitutional challenges to § 1226(c) detention. *See, e.g.*,
13 *Romero Romero v. Wolf*, No. 20-CV-08031-TSH, 2021 WL 254435, at *2 (N.D. Cal. Jan. 26, 2021);
14 *Arizmendi v. Kelly*, No. CV-17-4791-JAT (DMF), 2018 WL 3912279, at *4 (D. Ariz. July 23, 2018),
15 *report and recommendation adopted*, No. CV-17-04791-PHX-JAT, 2018 WL 3872228 (D. Ariz.
16 Aug. 15, 2018); *Rodriguez v. Barr*, 488 F. Supp. 3d 29, 37 (W.D.N.Y. 2020); *Martinez-Done v.*
17 *Decker*, 56 F. Supp. 3d 535 (S.D.N.Y. 2014); *see also Nielsen v. Preap*, 139 S. Ct. 954, 972 (2019)
18 (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that
19 is, constitutional challenges to applications of the statute as we have now read it.”). A lawful
20 permanent resident detained under § 1226(c) “could be entitled to an individualized determination
21 as to his risk of flight and dangerousness if the continued detention became unreasonable or
22 unjustified”—such as if there were “an unreasonable delay by the [government] in pursuing and
23 completing deportation proceedings.” *Demore*, 538 U.S. at 532, (Kennedy, J., concurring) (citations
24 omitted); *see also Preap*, 139 S. Ct. at 982, 985 (Section 1226(c) “creates serious constitutional
25 problems” by denying a bond hearing to a noncitizen “who committed a crime many years before
26 and has since reformed, living productively in a community” (Breyer, J., dissenting)). In this case,
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1 review is prompted by the fact that ICE delayed Perera’s detention for six years, three years of which
2 he was on federal supervised release, and thus his whereabouts were continuously known to the
3 government.

4 In sum, the Court must decide whether § 1226(c), as applied here, violates Perera’s Fifth
5 Amendment procedural due process rights. “The fundamental requirement of due process is the
6 opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*,
7 424 U.S. 319, 333 (1976) (quotation omitted). Under *Mathews*, the “specific dictates of due process
8 generally requires consideration of three distinct factors: First, the private interest that will be
9 affected by the official action; second, the risk of an erroneous deprivation of such interest through
10 the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;
11 and finally, the Government’s interest, including the function involved and the fiscal and
12 administrative burdens that the additional or substitute procedural requirements would entail.” 424
13 U.S. at 335. The Court finds that the *Mathews* factors unquestionably weigh in favor of Perera.²

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16 First, the main private interest at stake in the instant matter is Perera’s “[f]reedom from
17 imprisonment—from government custody, detention, or other forms of physical restraint.”
18 *Zadvydas*, 533 U.S. at 690. Perera has an overwhelming interest here—regardless of the length of
19 his immigration detention—because “any length of detention implicates the same” fundamental
20 rights. *Rajnish v. Jennings*, No. 3:20-cv-07819-WHO, 2020 WL 7626414, at *6 (N.D. Cal. Dec. 22,
21 2020).

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23 Second, the risk of an erroneous deprivation is substantial. Put another way, the value of
24 providing Perera with a hearing is high. *Rajnish*, 2020 WL 7626414, at *9. While it is not the

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26 ² Acknowledging that Perera bears the burden of proving a TRO should issue, the Court
27 nonetheless highlights that Defendants’ discussion of *Mathews* was limited to a single footnote.
28 Opp. Br. at 17, fn. 3. In that footnote, the Defendants’ state only that *Mathews* is inapplicable here
because Perera’s detention is constitutional and mandatory. *Id.* But this contention ignores that
Perera is making an *as applied* challenge to his detention, which *Preap* explicitly permits. *Preap*,
139 S. Ct. at 972.

1 province of this Court to make a finding as to whether Perera is a flight risk or poses a danger to the
2 community, the Court determines that the record is abound with evidence that would support such
3 a finding by the immigration judge (“IJ”). Perera has submitted evidence showing his rehabilitation
4 since incarceration. After spending five years incarcerated for a crime he committed as a teenager,
5 he has completed probation and avoided further criminal arrests or charges. Perera Decl. ¶¶ 13-15;
6 Letter from Probation Officer. Beyond that, he has committed himself to his education, his career,
7 his church, and his growing family. Perera Decl. ¶ 13, 15-19, 30; Sierra College Transcript; Letter
8 from counselor at Sierra College; Letter from program technician at Sierra College; Letter from
9 Marian and Prince Perera; Letter from Perera’s Priest; Letter from Chloe Enriquez; *see also Preap*,
10 139 S. Ct. at 982 (emphasizing the constitutional concern implicated by denying a non-citizen a
11 bond hearing “who committed a crime many years before and has since reformed, living
12 productively in a community”). However, to date, no neutral decisionmaker has considered and
13 weighed this evidence. The IJ declined to reconsider ICE’s detention decision, accepting ICE’s
14 argument that the IJ lacked authority under § 1226(c). Mossman Decl. ¶¶ 15-16. Perera’s subsequent
15 release request to ICE on May 25, 2021 was apparently summarily denied by the same ICE
16 employees without consideration of any of Perera’s ample evidence of his rehabilitation and roots
17 in the community. Lakin Decl. ¶¶ 5-7. On this record, the risk of an erroneous decision is substantial
18 absent a neutral decisionmaker’s review. *See Rodriguez*, 488 F. Supp. 3d at 42 (finding significant
19 risk of erroneous deprivation where petitioner had to prove to a DHS official, as opposed to a neutral
20 decisionmaker, that he did not pose a danger or present a flight risk). That there is no remotely
21 certain end in sight to Perera’s custody only raises the risk of erroneous deprivation.
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25 Third, the government’s interest is low. The government certainly has an interest “in efficient
26 administration of the immigration laws at the border,” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982),
27 and in the “fiscal and administrative burdens that the additional or substitute procedural requirement
28 would entail,” *Mathews*, 424 U.S. at 335. But the Court emphasizes that the interest at stake is not

1 whether the government may detain Perera, but whether they may do so without providing him an
2 individualized bond hearing. *See Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 765, 777 (N.D. Cal 2019)
3 (“the governmental issue at stake in this motion is the ability to detain Petitioner *without providing*
4 *him with [a] bond hearing*, not whether the government may continue to detain him.”(emphasis in
5 original)); *see also Zerezghi v. USCIS*, 955 F.3d 802, 810 (9th Cir. 2020) (explaining that while the
6 government’s general interest in immigration enforcement is substantial, the third *Mathews* factor
7 focuses on its specific interest in the procedures it is using for enforcement rather than on the
8 government’s general interest). Requiring the government to provide Perera with a bond hearing
9 does not meaningfully undermine the government’s interest in detaining non-citizens who pose a
10 danger to the community or are a flight risk. “[T]he government has no legitimate interest in
11 detaining individuals who have been determined not to be a danger to the community and whose
12 appearance at future immigration proceedings can be reasonably ensured by a lesser bond or
13 alternative conditions.” *Hernandez*, 872 F.3d at 994. The government’s interest in denying Perera
14 an individualized bond hearing is further diluted by the fact that it waited six years to detain him.
15 ICE was aware of Perera’s potential removability as early as 2010, and completed paperwork to
16 complete a removal case against him in 2017. Yet the government chose not to initiate proceedings
17 against Perera until April 2021. This time lapse significantly undermines the government’s interest
18 in mandatorily detaining him. *See Opp.* at 20 (suggesting that the government has a strong interest
19 in the quick execution of removal orders).

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22 Balancing the *Mathews* factors, it is clear that Perera is likely to succeed in establishing his
23 due process right to an individualized bond hearing. Perera’s interest is grave, as his fundamental
24 rights are implicated. A hearing would serve a valuable purpose in combatting any erroneous
25 deprivation of Perera’s constitutional rights. And the government’s interest is not seriously
26 undermined, as the relief Perera requests will still allow the government ample opportunity to
27 demonstrate that Perera’s detention is justified. In sum, the Court finds that Perera is likely to
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1 establish that § 1226(c) is unconstitutional as applied to him, and that his continued detention,
2 without an individualized bond hearing, violates the Due Process Clause.

3 **2. Irreparable Harm**

4 The Court finds that Perera will face irreparable harm absent relief. “It is well established
5 that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”
6 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,
7 373 (1976)). Because Perera is likely to succeed on the merits of his due process claim, he has
8 “carried [his] burden as to irreparable harm.” *Hernandez*, 872 F.3d at 995.
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10 The Ninth Circuit has highlighted the irreparable harms imposed on anyone subject to
11 immigration detention, such as “subpar medical and psychiatric care in ICE detention facilities, the
12 economic burdens imposed on detainees and their families as a result of detention, and the collateral
13 harms to children of detainees whose parents are detained.” *Id.* And there is copious evidence in the
14 record about the harm that Perera, in particular, will face, should he continue to be detained without
15 the possibility of bond. First and foremost, any loss of liberty is fundamental and substantial. *See*
16 *Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011). In Perera’s case, his first child is due in a few
17 months. Mot. at 6. Being absent for this once-in-a-lifetime occasion is his “worst nightmare,” a “loss
18 [he] will never be able to recover from,” and “a moment [he] will never be able to get back.” Perera
19 Decl. ¶ 29. Perera also stands to lose his job as a store director at Safeway and, consequently, his
20 home. *Id.* ¶¶ 19, 28. Finally, Perera’s fiancé stands to face additional psychological harms. Perera
21 Decl. ¶ 27; Letter from Chloe Enriquez; Lakin Decl. at Ex. CC (Letter from Dr. Amanda Lea Poe);
22 *see Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1,
23 2021) (recognizing the severe economic hardship and psychological harm family members of
24 detainees can face).
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27 **3. Balance of Equities and Public Interest**

28 Finally, the balance of the equities and the public interest tip sharply in favor granting

1 injunctive relief. “When the government is a party, these last two [*Winter*] factors merge.” *Drakes*
2 *Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418,
3 435 (2009)). The balance of the equities weigh strongly in favor of granting Perera relief. As
4 discussed at length above, Perera has a strong interest in an individualized bond hearing so he can
5 exercise his rights under the Constitution and have the chance to abate the imminent harms described
6 above. And granting relief would not deprive the government of the opportunity to prove to a neutral
7 decisionmaker whether Perera poses a threat to the community or a flight risk such that detainment
8 is necessary. Similarly, the public has a strong interest in upholding constitutional rights. *See*
9 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are
10 implicated when a constitutional right has been violated, because all citizens have a stake in
11 upholding the Constitution.”). The public is also served by ensuring that the government does not
12 expend its resources to detain individuals unnecessarily and without adequate process. *Lopez v.*
13 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair
14 procedures to all persons, even though the expenditure of governmental funds is required.”).
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16 **B. Burden of Proof at Bond Hearing**

17 Perera contends that if the Court orders an individualized bond hearing, “the government
18 should bear the burden at that hearing of proving by clear and convincing evidence that Mr. Perera
19 poses a danger or flight risk to justify his continued detention.” Mot. at 18. This Court agrees, and
20 Defendants do not argue otherwise. The Ninth Circuit has held that “the government must prove by
21 clear and convincing evidence that [a non-citizen] is a flight risk or a danger to the community to
22 justify denial of bond.” *Singh*, 638 F.3d at 1203. While the Ninth Circuit made this holding in the
23 context of *Casas* hearings, the Court determines that the reasoning applies with equal force here. In
24 particular, the Court finds that “it is improper to ask [Perera] to ‘share equally with society the risk
25 of error when the possible injury to the individual’—deprivation of liberty—is so significant.” *Id.*
26 at 1203-1204 (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979)); see also *Ixchop Perez v.*
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1 *McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020), *appeal dismissed sub nom. Perez v.*
2 *McAleenan*, No. 20-15511, 2020 WL 8970669 (9th Cir. Dec. 4, 2020) (“Accordingly, this court will
3 join the consensus view among District Courts concluding that after *Jennings* where ... the
4 government seeks to detain an alien pending removal proceedings, it bears the burden of proving
5 that such detention is justified.” (internal marks and citation omitted)).

6 **C. Security**

7 Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary
8 injunction or a temporary restraining order only if the movant gives security in an amount that the
9 court considers proper to pay the costs and damages sustained by any party found to have been
10 wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). The Ninth Circuit has “recognized that
11 Rule 65(c) invests the district court with discretion as to the amount of security required, if any.”
12 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation
13 omitted) (italics in original). “The district court may dispense with the filing of a bond when it
14 concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”
15 *Id.* District courts have routinely exercised their discretion to require no security in cases brought
16 by incarcerated people. *See, e.g., Jorge M.F.*, 2021 WL 783561, at * 4; *Vargas v. Jennings*, 2020
17 WL 5074312, at *5 (N.D. Cal. Aug. 23, 2021); *Orantes–Hernandez v. Smith*, 541 F. Supp. 351, 385
18 n.42 (C.D. Cal. 1982). This Court does the same here.

19 **V. ORDER**

20 The Court HOLDS as follows:

21 (1) Plaintiff’s application for a TRO is GRANTED.

22 (2) Respondents-Defendants and their agents and employees are ENJOINED from
23 continuing to detain Petitioner-Plaintiff for more than 7 days from the date of this order
24 without a bond hearing at which the government bears the burden of justifying Petitioner-
25 Plaintiff’s detention, by clear and convincing evidence.
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(3) This TRO is issued after notice and hearing. The Court SETS set the hearing for the preliminary injunction on July 15, 2021 at 9:00 am, or such later dates as the parties may request.

(4) The Temporary Restraining Order provisions set forth herein shall expire at 5:00 pm on July 15, 2021 unless before then Defendants consent, or the Court, for good cause, orders an extension.

(5) Defendants may file any papers in opposition to the issuance of a preliminary injunction no later than June 24, 2021.

(6) Perera may file any reply papers prior to the Show Cause hearing no later than July 1, 2021.

IT IS SO ORDERED.

Dated: June 11, 2021


BETH LABSON FREEMAN
United States District Judge