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11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION

14 John DOE,

15 Petitioner-Plaintiff,

16 v.

17 MOISES BECERRA, Acting Field Office
18 Director of Sacramento Office of Detention and
19 Removal, U.S. Immigrations and Customs
20 Enforcement; U.S. Department of Homeland
21 Security;

22 Caleb VITELLO, Acting Director, Immigration
23 and Customs Enforcement, U.S. Department of
24 Homeland Security;

25 Kristi NOEM, in her Official Capacity,
26 Secretary, U.S. Department of Homeland
27 Security; and

28 Pam BONDI, in her Official Capacity, Attorney
General of the United States;

Tonya ANDREWS, in her Official Capacity,
Facility Administrator at Golden State Annex,
McFarland, California;

Respondents-Defendants.

Case No. 25-260

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION: HEARING
REQUESTED**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local rules of this Court, Petitioner hereby moves this Court for an order enjoining Defendants Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE), Pam Bondi, in her official capacity as the U.S. Attorney General, and Tonya Andrews, in her official capacity as Facility Administrator at Golden State Annex, McFarland, California to release Petitioner-Plaintiff John Doe (Mr. Doe) until he is afforded a hearing, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that Petitioner's re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Johnny Sinodis with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful re-incarceration, which was imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order enjoining ICE to release him from custody unless and until he is afforded a hearing before on the question of whether his re-incarceration would be lawful. The only mechanism to ensure that he is not continuously unlawfully detained in violation of his due process rights is an ex-parte temporary restraining order from this Court.

Dated: February 24, 2025

Respectfully Submitted

/s/Johnny Sinodis

Oona Cahill

Attorneys for Petitioner-Plaintiff

Table of Contents

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION i

Table of Contents i

Table of Authorities iv

I. INTRODUCTION..... 1

II. STATEMENT OF FACTS AND CASE 3

III. LEGAL STANDARD 10

IV. ARGUMENT..... 10

A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER..... 10

1. Petitioner is Likely to Succeed on the Merits of His Claim That in This Case the Constitution Required a Hearing Before a Neutral Adjudicator Prior to Any Re-Incarceration by ICE..... 11

a. Petitioner Has a Protected Liberty Interest in His Conditional Release 12

b. Petitioner’s Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Bond 16

i. Petitioner’s Private Interest in His Liberty is Profound..... 18

ii. The Government’s Interest in Keeping Petitioner in Detention Without a Hearing is Low and the Burden on the Government to Release Him from Custody Unless and Until He is Provided a Hearing is Minimal..... 19

iii. Without Release from Custody until the Government Provides a Due Process Hearing, the Risk of an Erroneous Deprivation of Liberty is High, and Process in the Form of a Hearing Would Decrease That Risk..... 25

2. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief..... 27

3. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order 29

1 **V. CONCLUSION** 30
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Authorities

Cases	Page(s)
<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011)	10, 27
<i>Almanza-Arenas v. Lynch</i> , 815 F.3d 469 (9th Cir. 2016)	4
<i>Ariz. Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014)	30
<i>Barahona v. Garland</i> , 993 F.3d 1024 (8th Cir. 2021)	22
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	27
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979)	27
<i>Castro-Cortez v. INS</i> , 239 F.3d 1037 (9th Cir. 2001)	26
<i>Chalkboard, Inc. v. Brandt</i> , 902 F.2d 1375 (9th Cir.1989)	26
<i>Cooper v. Oklahoma</i> , 517 U.S. 348 (1996)	19
<i>Diouf v. Napolitano</i> , 634 F.3d 1081 (9th Cir. 2011)	26
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	29
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992)	19
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973)	13, 14

1 *Gonzalez-Castillo v. Garland*,
 2 47 F.4th 971 (9th Cir. 2022) 1, 22
 3 *Gonzalez-Fuentes v. Molina*,
 4 607 F.3d 864 (1st Cir. 2010)..... 13, 14, 18
 5 *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda*,
 6 415 U.S. 423 (1974) 10
 7 *Griffin v. Wisconsin*,
 8 483 U.S. 868 (1987) 18
 9 *Haygood v. Younger*,
 10 769 F.2d 1350 (9th Cir. 1985)..... 17, 18
 11 *Hernandez Lara v. Barr*,
 12 962 F.3d 45 (1st Cir. 2020)..... 22
 13 *Hernandez v. Sessions*,
 14 872 F.3d 976 (9th Cir. 2017) 12, 25, 27, 30
 15 *Hernandez-Lara v. Lyons*,
 16 10 F.4th 19 (1st Cir. 2021) 22
 17 *Hurd v. District of Columbia*,
 18 864 F.3d 671 (D.C. Cir. 2017)..... 13, 18
 19 *Johnson v. Williford*,
 20 682 F.2d 868 (9th Cir. 1982) 14
 21 *Jones v. Blanas*,
 22 393 F.3d 918 (9th Cir. 2004) 18
 23 *Jorge M. F. v. Wilkinson*,
 24 2021 WL 783561 (N.D. Cal. Mar. 1, 2021) 12
 25 *Kentucky Dep’t of Corrections v. Thompson*,
 26 490 U.S. 454 (1989) 12
 27 *Lopez v. Heckler*,
 28 713 F.2d 1432 (9th Cir. 1983)..... 30

1 *Lynch v. Baxley*,
 2 744 F.2d 1452 (11th Cir. 1984) 18
 3 *Mathews v. Eldridge*,
 4 424 U.S. 319 (1976) 17, 19, 24
 5 *Matter of Sugay*,
 6 17 I&N Dec. (BIA 1981)..... 11, 12
 7 *Melendres v. Arpaio*,
 8 695 F.3d 990 (9th Cir. 2012) 29, 30
 9 *Morrissey v. Brewer*,
 10 408 U.S. 471 (1972) Passim
 11 *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*,
 12 743 F.2d 1365 (9th Cir. 1984) 27
 13 *Ortega v. Bonnar*,
 14 415 F. Supp. 3d 963 (N.D. Cal. 2019)..... 12
 15 *Panosyan v. Mayorkas*,
 16 854 F. App’x 787 (9th Cir. 2021)..... 11
 17 *Preap v. Johnson*,
 18 831 F.3d 1193 (9th Cir. 2016) 27
 19 *Preminger v. Principi*,
 20 422 F.3d 815 (9th Cir. 2005) 30
 21 *Radiowala v. Atty Gen. United States*,
 22 930 F.3d 577 (3d Cir. 2019) 22
 23 *Saravia v. Sessions*,
 24 280 F. Supp. 3d 1168 (N.D. Cal. 2017)..... 11, 22
 25 *Singh v. Holder*,
 26 638 F.3d 1196 (9th Cir. 2011) 18
 27 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*,
 28 240 F.3d 832 (9th Cir. 2001) 10

1 *U.S. v. Knights*,
 2 534 U.S. 112 (2001) 18
 3 *United States ex rel. Bey v. Connecticut Board of Parole*,
 4 443 F.3d 1079 (2d Cir. 1971) 23
 5 *Valle del Sol Inc. v. Whiting*,
 6 732 F.3d 1006 (9th Cir. 2013) 30
 7 *Vargas v. Jennings*,
 8 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020) 12
 9 *Villalobos Sura v. Garland*,
 10 8 F.4th 1161 (9th Cir. 2021) 22
 11 *Winter v. Nat. Res. Def. Council, Inc.*,
 12 555 U.S. 7 (2008) 10
 13 *Young v. Harper*,
 14 520 U.S. 143 (1997) 13, 14
 15 *Youngberg v. Romeo*,
 16 457 U.S. 307 (1982) 18
 17 *Zadvydas v. Davis*,
 18 533 U.S. 678 (2001) 12, 19, 23, 26
 19 *Zepeda v. I.N.S.*,
 20 753 F.2d 719 (9th Cir. 1983) 29
 21 *Zinerman v. Burch*,
 22 494 U.S. 113 (1990) 17
 23 *Zinerman*,
 24 494 U.S. 17, 18
 25
 26 **Statutes**
 27 8 U.S.C. § 1226(a) 26
 28 8 U.S.C. § 1226(b) 11

1 22 U.S.C. § 263b(a) 1
2 California Vehicle Code § 10851(a) 4
3 § 10851 4
4
5 **Rules**
6 Fed. R. Civ. P. 65(b) 10
7
8 **Regulations**
9 8 C.F.R. § 236.1(c)(9) 11, 25, 26
10 8 C.F.R. § 1208.30 3
11
12
13
14
15
16
17
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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. Doe, by and through undersigned counsel, hereby files this
3 motion for a temporary restraining order and preliminary injunction to order the U.S. Department
4 of Homeland Security’s (DHS) Immigration and Customs Enforcement (ICE) to release him
5 from custody unless and until he is afforded notice and a hearing before a neutral decisionmaker
6 on the question of whether his bond should be revoked and, if so, whether he must be re-
7 incarcerated because ICE establishes by clear and convincing evidence that he is a danger to the
8 community or a flight risk.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED] Congress has recognized that “INTERPOL member countries
22 have repeatedly misused INTERPOL’s databases and processes, including Notice and Diffusion
23 mechanisms, to conduct activities of an overtly political or other unlawful character and in
24 violation of international human rights standards, including by making requests to harass or
25 persecute political opponents, human rights defenders, or journalist.” 22 U.S.C. § 263b(a).
26 Additionally, several circuit courts, including the Ninth Circuit, have observed that Red Notices
27 are “not independently vetted for factual and legal justification” and are insufficient to establish
28 probable cause to justify an arrest. *Gonzalez-Castillo v. Garland*, 47 F.4th 971, 978 (9th Cir.

1 2022) (internal quotations omitted). Petitioner has steadfastly denied that he has engaged in any
2 of the alleged conduct. The allegations are politically motivated and serve as a continuation of
3 the egregious harm that Petitioner suffered in [REDACTED] before he fled for his life. In fact, it is well
4 known and documented that the [REDACTED] government levies false criminal cases and accusation
5 against individuals like Petitioner who are [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
12 has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a
13 change in circumstances since the individual's release. That authority, however, is proscribed by
14 the Due Process Clause because it is well-established that individuals released from incarceration
15 have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of
16 Petitioner's case, due process required notice and a hearing, *prior to any revocation of his*
17 *conditional release*. As DHS deprived him of his due process rights by re-detaining him without
18 notice or a hearing, Petitioner must be released from custody unless and until he is afforded a
19 hearing before a neutral adjudicator at which the government demonstrates by clear and
20 convincing evidence that he is a danger or a flight risk and the Court takes into consideration
21 alternatives to detention and Petitioner's ability to pay a new bond amount.

22 Petitioner meets the standard for a temporary restraining order. He will suffer immediate
23 and irreparable harm absent an order from this Court enjoining the government to release him
24 from detention unless and until he receives a hearing before a neutral adjudicator, as demanded
25 by the Constitution. Since holding federal agencies accountable to constitutional demands is in
26 the public interest, the balance of equities and public interest are also strongly in Petitioner's
27 favor.

1 **II. STATEMENT OF FACTS AND CASE**

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

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23 [REDACTED]

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[REDACTED]

On January 25, 2025, officials in the new Trump administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office was instructed to make 75 arrests per day.⁶

⁶ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 On January 28, 2025, when Petitioner arrived at the ICE office in Sacramento, California,
2 for his routine check-in, ICE, without prior notice or a hearing, took him into custody.

3 ICE did not move the Sacramento Immigration Court, where Petitioner's removal
4 proceedings were pending case, for a bond re-determination prior to detaining him.

5 Petitioner asked the ICE officers why they were detaining him, when he had been
6 complying with his conditions of release and no circumstances had changed since his check-in a
7 month a prior. ICE stated that the reason for his re-detention was the new administration and the
8 new President, which authorized them to do so. Sinodis Decl. at Ex. L (Motion for Immediate
9 Release).

10 On January 29, 2025, undersigned counsel spoke via phone with ICE SDDO Robertson,
11 who stated ICE took Petitioner into custody because of the INTERPOL Red Notice and criminal
12 allegations against Petitioner in [REDACTED]. *Id.* Undersigned counsel informed SDDO
13 Robertson that ICE has known about the Red Notice and allegations against Petitioner since at
14 least March 7, 2024, when ICE submitted the INTERPOL Red Notice and other documents to
15 the Immigration Court, and likely much longer. *Id.* SDDO Robertson confirmed that Petitioner's
16 sudden re-detention was based solely on the allegations in the INTERPOL Red Notice. *Id.*
17 SDDO Robertson further stated that ICE had not moved to reconsider Petitioner's prior bond,
18 confirming that ICE believes it can unilaterally reconsider a previously issued bond. *Id.*

19 On January 29, 2025, ICE transferred Petitioner to the Golden State Annex (GSA),
20 located at 611 Frontage Rd., McFarland, California 93250, where he remains incarcerated.

21 On January 30, 2025, undersigned counsel spoke with ICE DO Vermillion by phone, who
22 stated that ICE would not consider setting a bond for Petitioner, and that Petitioner would need
23 to file a motion for bond before an IJ. *Id.*

24 On January 30, 2025, Petitioner filed a Motion for Immediate Release with the
25 Sacramento Immigration Court on the basis that ICE had unlawfully detained him without the
26 opportunity for a pre-deprivation hearing in violation of his due process rights. *Id.* at Ex. L
27 (Motion for Immediate Release). Petitioner also submitted a notice that he intended to oppose a
28

1 Motion to Change Venue filed by DHS within the ten days permitted by regulation. *Id.* at Ex. M
2 (Notice of Intent to Respond in Opposition).

3 On January 31, 2025, without ruling on Petitioner’s Motion for Immediate Release, the IJ
4 transferred venue of proceedings to the Adelanto Immigration Court. *Id.* at Ex. N (Order
5 Granting Change of Venue). Four days later, on February 4, 2025, the Sacramento Immigration
6 Court rejected Petitioner’s Motion for Immediate Release on the basis that venue had been
7 changed to Adelanto. *Id.* at Ex. O (Rejection Notice). In addition to being unlawfully re-arrested,
8 Petitioner’s incarceration is problematic for yet another reason. [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Intervention from this Court is therefore required to ensure that Petitioner does not
4 continue to suffer irreparable harm.

5 **III. LEGAL STANDARD**

6 Petitioner is entitled to a temporary restraining order if he establishes that he is “likely to
7 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
8 that the balance of equities tips in [his] favor, and that an injunction is in the public interest.”
9 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D.*
10 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
11 temporary restraining order standards are “substantially identical”). Even if Petitioner does not
12 show a likelihood of success on the merits, the Court may still grant a temporary restraining
13 order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips
14 “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild*
15 *Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner
16 overwhelmingly satisfies both standards.

17 **IV. ARGUMENT**

18 **A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER**

19 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
20 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
21 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
22 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
23 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). As explained *infra*
24 at Section III.A.1, when Petitioner was re-arrested prior to receiving a hearing before a neutral
25 adjudicator or any material change in circumstances, it clearly violated his due process rights.
26 Petitioner has already suffered irreparable injury in the form of incarceration and will continue to
27 suffer irreparable injury each day he remains detained without due process.

1 **1. Petitioner is Likely to Succeed on the Merits of His Claim That**
2 **in This Case the Constitution Required a Hearing Before a**
3 **Neutral Adjudicator Prior to Any Re-Incarceration by ICE**

4 Petitioner is likely to succeed on his claim that, in his particular circumstances, the Due
5 Process Clause of the Constitution prevents Respondents from re-arresting Petitioner without
6 first providing a pre-deprivation hearing before a neutral adjudicator where the government
7 demonstrates by clear and convincing evidence that there has been a material change in
8 circumstances such that Petitioner is now a danger or a flight risk.

9 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
10 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
11 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
12 revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec.
13 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest
14 noncitizens. There, the BIA held that "where a previous bond determination has been made by an
15 immigration judge, no change should be made by [the DHS] absent a change of circumstance."
16 *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond
17 determination was made by an immigration judge *and* where the previous release decision was
18 made by a DHS officer." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd*
19 *sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The
20 Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an
21 individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th
22 Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot redetain Panosyan.").

23 ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests
24 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F.
25 Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
26 (9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus,
27 under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously
28 released on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at
1176; *Matter of Sugay*, 17 I&N Dec. at 640.

1 ICE’s power to re-arrest a noncitizen who is at liberty following a release on bond is also
2 constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
3 Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
4 requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that ICE
5 should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect
6 Petitioner’s weighty interest in his freedom from detention.

7 Federal district courts in California have repeatedly recognized that the demands of due
8 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in
9 DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a
10 noncitizen on bond, like Petitioner, *before* ICE re-detains him. *See, e.g., Ortega v. Bonmar*, 415
11 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
12 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
13 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

14 Courts analyze procedural due process claims such as this one in two steps: the first asks
15 whether there exists a protected liberty interest under the Due Process Clause, and the second
16 examines the procedures necessary to ensure any deprivation of that protected liberty interest
17 accords with the Constitution. *See Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454,
18 460 (1989).

19 **a. Petitioner Has a Protected Liberty Interest in His**
20 **Conditional Release**

21 Petitioner’s liberty from immigration custody is protected by the Due Process Clause:
22 “Freedom from imprisonment—from government custody, detention, or other forms of physical
23 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*
24 *Davis*, 533 U.S. 678, 690 (2001).

25 For [REDACTED] preceding his re-detention on January 28, 2025, Petitioner exercised that
26 freedom [REDACTED]. Sinodis
27 Decl. at Ex. A (Notice of Custody Redetermination). Although he was released on bond (and
28 thus under government custody), he retained a weighty liberty interest under the Due Process

1 Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143,
2 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408
3 U.S. 471, 482-483 (1972).

4 More importantly, following DHS’s discovery of the INTERPOL Notice and politically
5 motivated charges in [REDACTED], Petitioner continued presenting himself before ICE for his
6 regular check-in appointments. Specifically, he appeared on January 27, 2024, and December 17,
7 2024, and each time, ICE did not seek to re-arrest him. ICE instead gave him a future date and
8 time to appear again.

9 In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
10 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of
11 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
12 form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the
13 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to
14 live up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
15 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
16 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
17 valuable and must be seen within the protection of the [Fifth] Amendment.” *Id.*

18 This basic principle—that individuals have a liberty interest in their conditional release—
19 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
20 *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
21 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
22 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
23 probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit
24 has explained, when analyzing the issue of whether a specific conditional release rises to the
25 level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
26 conditional release in the case before them with the liberty interest in parole as characterized by
27 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
28 marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683

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b. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Bond

Petitioner asserts that, here, (1) where his detention is civil, (2) where he has diligently complied with ICE's reporting requirements on a regular basis, (3) where he has a substantial application for asylum pending before the Immigration Court, (4) where the *only* change in circumstances ICE could possibly point to is politically motivated criminal allegations [REDACTED]

[REDACTED] and that ICE has been aware of since

[REDACTED]

1 2023 yet did not re-arrest him, and (5) where ICE officers stated to Petitioner that circumstances
2 had not changed and they were taking the action because of the new administration, due process
3 mandates that he was required to receive notice and a hearing before a neutral adjudicator prior
4 to any re-arrest or revocation of a bond.

5 “Adequate, or due, process depends upon the nature of the interest affected. The more
6 important the interest and the greater the effect of its impairment, the greater the procedural
7 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769
8 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court
9 must “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient
10 administration of” its immigration laws in order to determine what process he is owed to ensure
11 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set
12 forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing
13 test: “first, the private interest that will be affected by the official action; second, the risk of an
14 erroneous deprivation of such interest through the procedures used, and the probative value, if
15 any, of additional or substitute procedural safeguards; and finally the government’s interest,
16 including the function involved and the fiscal and administrative burdens that the additional or
17 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
18 *Eldridge*, 424 U.S. 319, 335 (1976)).

19 The Supreme Court “usually has held that the Constitution requires some kind of a
20 hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.
21 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
22 are “the only remedies the State could be expected to provide” can post-deprivation process
23 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one
24 of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible
25 in preventing the kind of deprivation at issue” such that “the State cannot be required
26 constitutionally to do the impossible by providing predeprivation process,” can the government
27 avoid providing pre-deprivation process. *Id.*

28 Because, in this case, the provision of a pre-deprivation hearing was both possible and

1 valuable to preventing an erroneous deprivation of liberty, ICE was required to provide
2 Petitioner with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *See*
3 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918,
4 932 (9th Cir. 2004); *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307,
5 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals
6 awaiting involuntary civil commitment proceedings may not constitutionally be held in jail
7 pending the determination as to whether they can ultimately be recommitted). Under *Mathews*,
8 “the balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation
9 hearing before a neutral adjudicator, which ICE failed to provide.

10 **i. Petitioner’s Private Interest in His Liberty is**
11 **Profound**

12 Under *Morrissey* and its progeny, individuals conditionally released from serving a
13 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
14 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
15 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
16 entitles him to constitutional due process before he is re-incarcerated—apply with even greater
17 force to individuals like Petitioner, who have been released pending civil removal proceedings,
18 rather than parolees or probationers who are subject to incarceration as part of a sentence for a
19 criminal conviction. Parolees and probationers have a diminished liberty interest given their
20 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*
21 *Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the
22 courts have held that the parolee cannot be re-arrested without a due process hearing in which
23 they can raise any claims they may have regarding why their re-incarceration would be unlawful.
24 *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a
25 truly weighty liberty interest even though he was under conditional release prior to his re-arrest.

26 What is at stake in this case for Petitioner is one of the most profound individual interests
27 recognized by our legal system: whether ICE may unilaterally nullify a prior bond decision and
28 be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding
physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation

1 omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by
2 the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533
3 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms
4 of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”);
5 *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

6 Thus, it is clear that there is a profound private interest at stake in this case, which must
7 be weighed heavily when determining what process he is owed under the Constitution. *See*
8 *Mathews*, 424 U.S. at 334-35.

9 **ii. The Government’s Interest in Keeping**
10 **Petitioner in Detention Without a Hearing is**
11 **Low and the Burden on the Government to**
12 **Release Him from Custody Unless and Until**
13 **He is Provided a Hearing is Minimal**

14 The government’s interest in keeping Petitioner in detention without a due process
15 hearing is low, and when weighed against Petitioner’s significant private interest in his liberty,
16 the scale tips sharply in favor of releasing Petitioner from custody unless and until the
17 government demonstrates by clear and convincing evidence that he is a flight risk or danger to
18 the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the
19 Court considers that the process Petitioner seeks—release from custody pending notice and a
20 hearing regarding whether his bond should be revoked and, if so, whether a new bond amount
21 should be set—is a standard course of action for the government. In the alternative, providing
22 Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether
23 there is clear and convincing evidence that Petitioner is a flight risk or danger to the community
24 would impose only a *de minimis* burden on the government, because the government routinely
25 provides this sort of hearing to detained individuals like Petitioner.

26 As immigration detention is civil, it can have no punitive purpose. The government’s
27 only interests in holding an individual in immigration detention can be to prevent danger to the
28 community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*,
533 U.S. at 690. In this case, the government cannot plausibly assert that it had a sudden interest
in detaining Petitioner in January 2025 due to alleged dangerousness based on politically

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7 Moreover, the “fiscal and administrative burdens” that release from custody unless and
8 until a pre-deprivation bond hearing is provided would impose are nonexistent in this case. *See*
9 *Mathews*, 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process,
10 but rather his release from custody until a routine hearing regarding whether his bond should be
11 revoked and whether he should be re-incarcerated takes place.

12 In the alternative, providing Petitioner with an immediate hearing before this Court (or a
13 neutral decisionmaker) regarding bond is a similarly routine procedure that the government
14 provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
15 opportunity to determine whether the fact of unverified and politically motivated criminal
16 allegations [REDACTED] that the government has been aware of for a year or more changes the
17 dangerousness analysis sufficiently to require a different amount of bond—or if bond should be
18 revoked. But there was no justifiable reason to re-incarcerate Petitioner and ship him to Golden
19 State Annex prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even
20 where the State has an “overwhelming interest in being able to return [a parolee] to
21 imprisonment without the burden of a new adversary criminal trial if in fact he has failed to
22 abide by the conditions of his parole . . . the State has no interest in revoking parole without
23 some informal procedural guarantees.” 408 U.S. at 483.

24 Release from custody until ICE (1) moves for a bond re-determination before an
25 Immigration Judge and (2) demonstrates by clear and convincing evidence that Petitioner is a
26 flight risk or danger to the community is far *less* costly and burdensome for the government than

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28 ²⁰ *See* “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26,
2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs
2 to the public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting
3 to a total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court
4 chooses to order a hearing for Petitioner at which the government bears the burden of justifying
5 his continued detention, the government would bear no additional cost if the hearing is scheduled
6 within seven days, rather than allowing Petitioner to sit in detention for days or weeks awaiting a
7 hearing. This is particularly true where, as here, DHS has been in possession of the only
8 information it has relied on to justify a dangerousness determination for months on end without
9 taking any action.

10 **iii. Without Release from Custody until the**
11 **Government Provides a Due Process Hearing,**
12 **the Risk of an Erroneous Deprivation of**
13 **Liberty is High, and Process in the Form of a**
14 **Hearing Would Decrease That Risk**

15 Releasing Petitioner from custody until he is provided a pre-deprivation hearing would
16 decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be
17 lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the
18 government is held to show that there has been sufficiently changed circumstances such that the
19 [REDACTED], bond determination should be altered or revoked because clear and
20 convincing evidence exists to establish that Petitioner is a danger to the community or a flight
21 risk.

22 Under the process that ICE maintains is lawful—which affords Petitioner no process
23 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so, as ICE did
24 on January 28, 2025. Petitioner has already been erroneously deprived of his liberty, and the risk
25 he will continue to be deprived is high if ICE is permitted to keep him detention after making a
26 unilateral decision to re-detain him. Pursuant to 8 C.F.R. § 236.1(c)(9), an arrest of Petitioner
27 automatically revokes his bond. Thus, the regulations permit ICE to unilaterally nullify a bond
28 order without oversight of any kind. After re-arrest, ICE makes its own, one-sided custody
determination and can decide whether the agency wants to hold Petitioner without a bond, or
grant him a new bond. 8 C.F.R. § 236.1(c)(9). In this instance, ICE has confirmed that it will not

1 consider bond for Petitioner and that he will need to be granted a bond by the Immigration Court.
2 When Petitioner attempted to do so, his case was transferred to a new immigration court. ICE’s
3 new custody determination will be subject to review by the IJ. 8 U.S.C. § 1226(a). However, as a
4 result, the actual *revocation* of Petitioner’s bond would evade any review by the IJ or any other
5 neutral arbiter. Under the current procedures, by the time Petitioner ends up in front of an IJ
6 seeking redetermination of his custody status, the IJ would only be considering whether
7 Petitioner has carried the burden to show that a new bond must be granted. The IJ will not be
8 considering whether ICE’s re-arrest was, in fact, lawful, because the bond has been revoked and
9 Petitioner has already have been deprived of his liberty interest. *See* 8 C.F.R. § 236.1(c)(9).

10 By contrast, the procedure Petitioner seeks—release from custody and reinstatement of
11 his prior bond until he is provided a hearing in front of a neutral adjudicator at which the
12 government proves by clear and convincing evidence that circumstances have changed to justify
13 his detention—is much more likely to produce accurate determinations regarding factual
14 disputes, such as whether a certain occurrence constitutes a “changed circumstance.” *See*
15 *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments
16 depending on credibility of witnesses and assessment of conditions not subject to measurement”
17 are at issue, the “risk of error is considerable when just determinations are made after hearing
18 only one side”). “A neutral judge is one of the most basic due process protections.” *Castro-*
19 *Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-*
20 *Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an
21 erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker,
22 rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d
23 1081, 1091-92 (9th Cir. 2011).

24 Due process also requires consideration of alternatives to detention at any custody
25 redetermination hearing that may occur. The primary purpose of immigration detention is to
26 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
27 Detention is not reasonably related to this purpose if there are alternatives to detention that could
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1 mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
2 detention must be considered in determining whether Petitioner’s re-incarceration is warranted.

3 * * *

4 As the above-cited authorities show, Petitioner is likely to succeed on his claim that the
5 Due Process Clause required notice and a hearing in Immigration Court *prior to any* re-
6 incarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding
7 this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

8 **2. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief**

9 Petitioner will suffer irreparable harm were he to remain deprived of his liberty and
10 subjected to continue incarceration by immigration authorities without being immediately
11 released and provided the constitutionally adequate process that this motion for a temporary
12 restraining order seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v.*
13 *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time
14 spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job;
15 it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972);
16 *accord Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984).
17 Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on
18 anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE
19 detention facilities, the economic burdens imposed on detainees and their families as a result of
20 detention, and the collateral harms to children of detainees whose parents are detained.”
21 *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor
22 conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG),
23 Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023
24 (2024) (reporting violations of environmental health and safety standards; staffing shortages
25 affecting the level of care detainees received for suicide watch, and detainees being held in
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1 administrative segregation in unauthorized restraints, without being allowed time outside their
2 cell, and with no documentation that they were provided health care or three meals a day).²¹

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28 ²¹ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
(last accessed Feb. 6, 2024).

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4 If Petitioner remains detained in an immigration jail, his health would be endangered. On
5 April 18, 2024, the U.S. Department of Homeland Security OIG released a report on the results
6 of an unannounced inspection at Golden State Annex that took place from April 18 to 20, 2023.²²
7 The OIG reviewed 10 medical grievances filed at Golden State Annex and found that “medical
8 staff did not act on any of the paper medical grievances within 24 hours as required...The
9 delayed action in response to medical grievances could negatively impact detainee’s health
10 care.” Detainees at Golden State Annex have also reported issues with spoiled food and lack of
11 attention to dietary needs that go unresolved.²³ Petitioner, [REDACTED]
12 [REDACTED] is likely to suffer irreparable harm in
13 these conditions.

14 Finally, as detailed *supra*, Petitioner contends that his re-arrest absent a hearing before a
15 neutral adjudicator violated his due process rights under the Constitution. It is clear that “the
16 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*
17 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
18 Thus, a temporary restraining order is necessary to prevent Petitioner from suffering irreparable
19 harm by remaining in unlawful and unjust detention.

20 **3. The Balance of Equities and the Public Interest Favor Granting** 21 **the Temporary Restraining Order**

22 The balance of equities and the public interest undoubtedly favor granting this
23 temporary restraining order.

24 First, the balance of hardships strongly favors Petitioner. The government cannot suffer
25 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*

26 ²² U.S. Dep’t of Homeland Security Office of Inspector General, OIG-24-23, Results of an Unannounced
27 Inspection of ICE’s Golden State Annex in McFarland, California (2024),
<https://www.oig.dhs.gov/sites/default/files/assets/2024-04/OIG-24-23- Apr24.pdf>.

28 ²³ See “Resistance, Retaliation, Repression: Two Years in California Immigration Detention,” ACLU of
Northern California (2024), available at: <https://www.aclunc.org/publications/resistance-retaliation-repression-two-years-california-immigration-detention>.

1 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed
2 in any legally cognizable sense by being enjoined from constitutional violations.”). Therefore,
3 the government cannot allege harm arising from a temporary restraining order or preliminary
4 injunction ordering it to comply with the Constitution.

5 Further, any burden imposed by requiring the DHS to release Petitioner from custody
6 until he is provided notice and a hearing before a neutral decisionmaker is both *de minimis* and
7 clearly outweighed by the substantial harm he will suffer as long as he continues to be detained.
8 *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of
9 affording fair procedures to all persons, even though the expenditure of governmental funds is
10 required.”).

11 Finally, a temporary restraining order is in the public interest. First and most importantly,
12 “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the
13 requirements of federal law, especially when there are no adequate remedies available.” *Ariz.*
14 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v.*
15 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the
16 government would effectively be granted permission to detain Petitioner in violation of the
17 requirements of Due Process. “The public interest and the balance of the equities favor
18 ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at
19 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public
20 interest benefits from an injunction that ensures that individuals are not deprived of their liberty
21 and held in immigration detention because of bonds established by a likely unconstitutional
22 process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public
23 interest concerns are implicated when a constitutional right has been violated, because all
24 citizens have a stake in upholding the Constitution.”).

25 Therefore, the public interest overwhelmingly favors entering a temporary restraining
26 order and preliminary injunction.

27 **V. CONCLUSION**

28 For all the above reasons, this Court should find that Petitioner warrants a temporary

1 restraining order and a preliminary injunction ordering that Respondents release him from
2 custody and refrain from re-arresting him unless and until he is afforded a hearing before a
3 neutral adjudicator on whether a change in bond amount or revocation of his bond is justified by
4 clear and convincing evidence that he is a danger to the community or a flight risk.

5
6 Dated: February 24, 2025

Respectfully submitted,

7 s/Johnny Sinodis

8 Johnny Sinodis

9 Oona Cahill

Attorneys for Petitioner