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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

John DOE,

Petitioner-Plaintiff,

v.

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

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

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

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. 2:25-cv-00647-DJC-DMC

REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION: HEARING REQUESTED

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

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INTRODUCTION

Petitioner, Mr. Doe, through undersigned Counsel, hereby submits this Reply in support of his Motion for a Temporary Restraining Order (TRO). ECF 2. The arguments and assertions advanced by Respondents in their opposition demonstrate that judicial intervention by this Court is essential to protecting Mr. Doe's rights. Respondents do not contest that Mr. Doe had a protected liberty interest in his conditional release on bond, nor do they substantively dispute that he was deprived of due process of law when the U.S. Immigration and Customs Enforcement (ICE), with no notice or hearing, unilaterally revoked that bond, which had been set by an Immigration Judge (IJ). Respondents instead assert that the existence of an INTERPOL Red Notice, which they learned about in [redacted], permitted them to arrest Mr. Doe two years later, on January 28, 2025, even though Respondents had previously determined Mr. Doe should not be re-incarcerated during three prior ICE check-ins on May 17, 2023, January 27, 2024, and December 17, 2024. Respondents nonchalantly add that, in any event, Mr. Doe is subject to mandatory detention, per 8 U.S.C. § 1225(b) and *Matter of M-S-*, 27 I&N Dec. 509 (BIA 2019), notwithstanding that (1) he had exercised his right to freedom from physical restraint for over five years and (2) mandatory detention statutes are still constrained by the demands of the constitution. In short, all of Respondents' arguments are meritless and Mr. Doe must be granted a TRO.

ADDITIONAL FACTUAL BACKGROUND

Respondents assert facts which only confirm that Mr. Doe's re-incarceration without any notice or process on January 28, 2025, violated his constitutional right to freedom from restraint. As an initial matter, Respondents acknowledge that Mr. Doe passed his credible fear screening, was granted bond by an IJ who found him not to be a danger or a flight risk, and has diligently pursued his application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). ECF No. 8 at 2. That he moved on several occasions throughout the past five years is of no moment. *Id.* at 2; *see also* ECF No. 9 at 3. By updating his address and filing motions to change venue with the IJ, Mr. Doe complied with his obligations under the Immigration and Nationality Act (INA) and its implementing regulations. *See* 8 C.F.R. § 265.1

(reporting change of address); *see also* 8 C.F.R. § 1003.20(b) (change of venue). In doing so, ICE had the opportunity to oppose the motions he filed, but on information and belief, it did not.

From February 3, 2022, until January 31, 2025, Mr. Doe's proceedings were pending before the Sacramento Immigration Court. ECF No. 9-1 at Exs. 11-19. Respondents appear to suggest that Mr. Doe purposefully missed a hearing on March 15, 2024. ECF No. 8 at 3. Not so. On that date and on several occasions in the three preceding weeks, Mr. Doe, who suffers from numerous documented chronic health conditions, was hospitalized after fainting and suffering heart palpitations. *See* Sinodis Declaration at Ex. I. He has already provided records of his hospitalization to the IJ and ICE. *Id.* Recognizing the gravity of his medical situation, the IJ did not penalize Mr. Doe for this absence and reset his hearing for a future date, which Mr. Doe attended. *See* Sinodis Declaration; *see also* ECF No. 9 at 4.

Notwithstanding the above-referenced insinuation, Respondents do not go so far as to contend that Mr. Doe is a flight risk. Nor could they. He has complied with all the reporting obligations set by ICE, a fact that Respondents do not dispute. ECF No. 8 at 2. Respondents instead aver that an INTERPOL Red Notice[1] and politically motivated criminal allegations in [redacted] which Respondents have been aware of since [redacted], suddenly supported a revised dangerousness determination *two years later* and allowed them to detain Mr. Doe with no notice or process whatsoever. ECF No. 8 at 3.

At a minimum, because ICE repeatedly released Mr. Doe following his check-ins on May 17, 2023, January 27, 2024, and December 17, 2024, he reasonably believed that he would not be re-incarcerated so long as he continued to abide by ICE's requirements. Yet, on January 28, 2025—one week after Donald J. Trump became President and three days after senior ICE

[1] "It is the sense of Congress that some INTERPOL member countries have repeatedly misused INTERPOL's databases and processes, including Notice and Diffusion mechanisms, to conduct activities of an overtly political or other unlawful character and in violation of international human rights standards, including by making requests to harass or persecute political opponents, human rights defenders, or journalist." 22 U.S.C. § 263b(a); *see also Gonzalez-Castillo v. Garland*, 47 F.4th 971, 978 (9th Cir. 2022); *see also Barahona v. Garland*, 993 F.3d 1024, 1028 (8th Cir. 2021) ("[t]he parties did not cite, and we could not find, a case in which a court has found a Red Notice, alone, is sufficient to meet this [probable cause] standard.").

officials were directed to make at least seventy-five arrests per day[2]—ICE saw fit to re-incarcerate Mr. Doe, purportedly due to a change in circumstances that it had known about for years. ECF No. 8 at 3; ECF No. 8-1 at 4. That cannot be.

Intervention from this Court is therefore required to ensure that Mr. Doe does not continue to suffer a violation of his constitutional rights and irreparable harm.

ARGUMENT

I. PETITIONER IS LIKELY TO SUCCEED ON HIS CLAIM.

A. Ordering Mr. Doe's release from custody would maintain the status quo in this matter, as he had been exercising his liberty interest for over five years before ICE re-arrested him without any notice or process.

Respondents' contention that Mr. Doe seeks to alter the status quo through his Motion for a TRO, ECF No. 8 at 4, is squarely at odds with Ninth Circuit law. In the Ninth Circuit, "[t]he status quo ante litem refers not simply to any situation before the filing of a lawsuit, but instead to the *last uncontested status* which preceded the pending controversy." *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (emphasis added); *see also Al Otro Lado v. Wolf*, 497 F. Supp. 3d 914, 925 (S.D. Cal. 2020) (holding same, collecting cases in immigration context). In Mr. Doe's case, the status quo—the last uncontested status preceding the current controversy—was him living at liberty, exercising his right to freedom from unlawful restraint. This status quo existed for more than five years.

According to Respondents, however, the moment they unlawfully re-detained Mr. Doe without any notice or process on January 28, that status quo was fundamentally altered. *See* ECF No. 8 at 4. Under Respondents' bizarre interpretation of the law, even if Mr. Doe clearly establishes that he is likely to succeed on his claim that his re-arrest was unconstitutional and that his unlawful detention imposes irreparable harm each day, the Court should deny expedited relief simply because the arrest already happened. As the Ninth Circuit explained in *GoTo.com, Inc.*, accepting Respondents' position "would lead to absurd situations, in which plaintiffs could never

[2] *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/.

bring suit once [unlawful] conduct had begun." 202 F.3d at 1210.

This Court therefore can, and should, restore the status quo by ordering Mr. Doe's immediate release from custody on the conditions of his pre-existing bond, unless and until he is afforded a pre-deprivation due process hearing where ICE bears the burden to establish, by clear and convincing evidence, that his re-incarceration is justified.

B. Precedent in this Circuit and others establishes that outright release is the most appropriate remedy in Mr. Doe's circumstances

"Once invoked, the scope of a district court's equitable powers . . . is broad, for breadth and flexibility are inherent in equitable remedies." *Brown v. Plata*, 563 U.S. 493, 538 (2011) (quotations omitted). District courts may order "relief that the Constitution would not of its own force initially require if such relief is necessary to remedy a constitutional violation." *Toussaint v. McCarthy*, 801 F.2d 1080, 1087 (9th Cir.1986); *see also Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000) (noting district courts' "broad powers to fashion a remedy" in affirming prison medical care injunction). The provisional remedies Mr. Doe proposes are comfortably within the range endorsed by courts in this Circuit and around the country.

Courts have long exercised their authority to remedy constitutional violations by ordering people released from unconstitutional conditions. *See Brown*, 563 U.S. at 499 (affirming remedial order in § 1983 action that "required [the State] to release some number of prisoners before their full sentences have been served"); *Brenneman v. Madigan*, 343 F. Supp. 128, 139 (N.D. Cal. 1972) ("If the state cannot obtain the resources to detain persons . . . in accordance with minimum constitutional standards, then the state simply will not be permitted to detain such persons."). Courts regularly order the immediate release of individuals who have been unlawfully detained in violation of due process.[3] In analogous circumstances to those of Mr. Doe, the Ninth Circuit in *Johnson v. Williford* affirmed the district court's order of immediate

[3] Respondents do not respond to the ample authority establishing Mr. Doe had a protected liberty interest in his conditional release and that due process entitled him to a pre-deprivation hearing *before* any re-arrest. *See, e.g.*, ECF No. 2 at 12 (citing *Meza v. Bonnar*, 2018 WL 2151877 (N.D. Cal. May 10, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021)).

release pending action on an individual's habeas petition when the petitioner was erroneously released on parole, lived at liberty for fifteen months, and then was rearrested in violation of due process. 682 F.2d 868, 869 (9th Cir. 1982). Applying the *Johnson* court's reasoning to Mr. Doe—whose interest in remaining free from unlawful physical confinement grew for *five years* before his bond was revoked without notice and hearing—leads to the inarguable conclusion that he must be immediately released from custody.

Similarly, in *Nak Kim Chhoeun v. Marin*, the court ordered the immediate release of individuals with final orders of removal who had been unlawfully detained without notice and process after living in the United States for years in compliance with ICE conditions. *See* No. SACV1701898CJCGJSX, 2018 WL 1941756, at *6 (C.D. Cal. Mar. 26, 2018). Mr. Doe's situation is even more egregious— rather than being subject to a final order, he is an asylum seeker who is still in the process of seeking relief from the country where he suffered persecution and torture. *See also Mahmood v. Nielsen*, 312 F. Supp. 3d 417, 425 (S.D.N.Y. 2018) (ordering immediate release for noncitizen detained without notice and process); *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017) (granted immediate release of noncitizen who was rearrested without violating conditions of release). District courts throughout the country applied similar reasoning during the COVID-19 pandemic to order outright release from custody. *See, e.g., Singh v. Barr*, 2020 WL 2512410, at *10 (N.D. Cal. May 15, 2020).

A decision to order Mr. Doe's outright release, rather than subject him to continued detention that could drag on for months in immigration detention, is well within the norm.

C. Alternatively, this Court should conduct a bond hearing where Respondents bear the burden of proving that his continued incarceration is justified.

Alternatively, this Court also has the power to conduct a bond hearing. District courts have authority to conduct the fact-finding necessary to consider whether further detention is warranted, *see* 28 U.S.C. § 2243 (instructing courts to "summarily hear and determine the facts"), and have exercised this authority in cases involving immigration detention. *See, e.g., Leslie v. Holder*, 865 F. Supp. 2d 627 (M.D. Penn. 2012) ("[W]e are empowered to conduct bail proceedings in habeas corpus proceedings brought by immigration detainees. Indeed, the

authority to conduct such hearing has long been recognized as an essential ancillary aspect of our federal habeas corpus jurisdiction. ... [T]here is nothing extraordinary or novel about this practice of conducting bail hearings in connection with federal immigration habeas corpus proceedings.") (collecting cases); *Madrane v. Hogan*, 520 F. Supp. 2d 654 (M.D. Pa. 2007) (holding evidentiary hearing and ordering conditional release from unconstitutional detention).

Although previous petitioners bringing procedural due process challenges to their detention in this district have explicitly sought (and received) bond hearings in immigration court, if Mr. Doe's outright released is not ordered here, he alternatively requests that this Court hold the evidentiary hearing itself, rather than ordering an immigration court to undertake the same inquiry. Requiring him to prevail in this Court and then litigate *another* administrative proceeding in his effort to remedy his unconstitutional re-incarceration would undermine the "demand for speed, flexibility, and simplicity" that the federal habeas statute embodies. *Hensley v. Mun. Ct., San Jose Milpitas Jud. Dist., Santa Clara Cnty., California*, 411 U.S. 345, 350 (1973). The Supreme Court has instructed district courts addressing habeas claims "'to cut through barriers of form and procedural mazes'" and has "consistently rejected interpretations of the habeas corpus statute that would suffocate the writ in stifling formalisms or hobble its effectiveness with the manacles of arcane and scholastic procedural requirements." *Id.* (*quoting Harris v. Nelson*, 394 U.S. 286, 291 (1969)). Referring the procedural safeguards that Mr. Doe seeks to an administrative immigration adjudicator as a separate litigation matter with its own separate appellate process would *erect* "barriers of form and procedural mazes," rather than following the Supreme Court's instruction to eliminate them.

Furthermore, district courts are at no disadvantage in considering evidence relevant to a custody proceeding. In fact, district courts in this Circuit have regularly considered whether the government can justify further detention. *See, e.g., Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 1082648, *4 (N.D. Cal. Mar. 6, 2020) (granting petitioner's release on a motion to enforce a habeas order after an IJ denied bond at a prolonged detention hearing); *Ramos v. Sessions*, 293 F.Supp.3d 1021, 1036-38 (N.D. Cal. 2018) (same), *vacated and remanded on other grounds*, *Ramos v. Garland*, No. 18-15884, 2024 WL 933654 (9th Cir. Mar. 1, 2024); *Sales v. Johnson*,

No. 16-cv-01745-EDL, 2017 WL 6855827, *7 (N.D. Cal. Sept. 20, 2017) (same); *Judulang v. Chertoff*, 562 F.Supp.2d 1119, 1126-27 (S.D. Cal. 2008) (same); *Mau v. Chertoff*, 562 F.Supp.2d 1107, 1118-19 (S.D. Cal. 2008) (same).

In this matter, the Immigration Court already demonstrated that it does not take seriously the violation of Mr. Doe's constitutional rights and his interest in being freed from unlawful re-incarceration. Indeed, although Mr. Doe filed a Motion for Immediate Release with the Sacramento Immigration Court on January 30, 2025, and stated that he intended to exercise his regulatory right to fully respond to ICE's motion to change venue, *see* Sinodis Decl. at Exs. L, M, on January 31, 2025, the Immigration Court, without ruling on the Motion for Immediate Release, transferred proceedings from Sacramento to Adelanto, *see id.* at Ex. N. Four days later, on February 4, 2025, the Immigration Court rejected Mr. Doe's Motion for Immediate Release on the ground that he filed the motion with the "Wrong Immigration Court." *Id.* at O.

D. Moving for a regular bond hearing before the IJ would be futile and inadequate because (1) absent an order from this Court, an IJ could not review the constitutionality of ICE's decision to re-arrest Mr. Doe and (2) Mr. Doe would be forced to carry the burden that he deserves to be released.

The framework for bond set forward in the INA is inadequate to address Mr. Doe's claim, which can only be effectively remedied with an order from this Court. Respondents contend this Court would overreach by ordering a bond hearing when Mr. Doe could just request a bond hearing in front of an IJ, while in the same breath also arguing that *Matter of M-S-* and 8 U.S.C. § 1225(b)(1)(B)(ii) subject him to mandatory detention. If Mr. Doe is statutorily subject to mandatory detention, then requesting bond from an IJ would lead the IJ to deny bond on statutory grounds, bringing Mr. Doe back to this Court to challenge whether that mandatory detention is constitutional. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims). Courts in this district do not require a petitioner to seek a bond hearing before an IJ if it would be futile because they are subject to mandatory detention by statute. *See e.g.*, *Bermudez v. Gonzalez,* No. CV F 07-00807 LJO DLB HC, 2007 WL 2913938 (E.D. Cal. Oct. 4, 2007); *Tam v. I.N.S.*, 14 F.Supp.2d 1184, 1189 (E.D.

Cal. 1998) (waiving exhaustion because "petitioner's constitutional interests weigh heavily against requiring him to exhaust administrative remedies.").[4] Respondents merely seek to frustrate the process and keep Mr. Doe in detention by doing so.

Equally important is that, even if ICE's new custody determination were subject to review by the IJ, the actual *revocation* of Mr. Doe's bond would evade any review by the IJ or any other neutral arbiter. Under the current procedures, by the time Mr. Doe appears in front of an IJ seeking redetermination of his custody status, the IJ would only be considering whether he has carried the burden to show that a new bond must be granted. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). The IJ would not be considering whether ICE's re-arrest was, in fact, lawful, because the prior IJ's bond was unilaterally revoked and he has already have been deprived of his liberty interest. *See* 8 C.F.R. § 236.1(c)(9). If, on the other hand, Mr. Doe's pre-existing bond were reinstated until he received a *pre-deprivation* hearing, the existing bond order would be re-opened and reconsidered, allowing the IJ to either simply affirm or augment the existing bond, without any revocation or cancellation of the original bond.

If an IJ did find that detention was mandatory under 8 U.S.C. § 1225(b)(1)(B)(ii), as Respondents contend is the case, ECF No. 8 at 3 (citing *Jennings v. Rodriguez* ("*Rodriguez IV*"), 138 S. Ct. 830 (2018)), Mr. Doe would present a constitutional challenge to that finding, which only this Court could address, *see Am.-Arab Anti-Discrimination Comm.*, 70 F.3d at 1058 ("agency does not have jurisdiction to review" constitutional claims). Despite Respondents' citation to *Rodriguez IV*, the Court there did not grapple with whether someone released on bond could be re-detained absent a pre-deprivation hearing. Moreover, in other decisions, the Supreme Court has expressly stated that noncitizens can bring as-applied constitutional challenges to mandatory immigration detention. *See, e.g., Nielsen v. Preap*, 586 U.S. 392, 972 (2019) ("Our decision today on the meaning of [Section 1226(c)] does not foreclose as-applied challenges—

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[4] As noted above and in his Motion for a TRO, Mr. Doe did in fact seek immediate release and a custody redetermination hearing in Sacramento. *See* Sinodis Decl. at Ex L. Only when the IJ transferred venue to Adelanto, without permitting Mr. Doe an opportunity to oppose that transfer, and then rejected his Motion for Immediate Release on the basis of improper venue, did Mr. Doe file the present habeas petition and TRO to prevent further administrative delay prolonging his unlawful detention. *Id.* at Exs. N-O.

that is, constitutional challenges to applications of the statute as we have now read it."). Unable to receive a resolution on that constitutional issue in front of an IJ who has no power to decide it, Mr. Doe would end up back in front of this Court adjudicating the propriety of his detention, after languishing for weeks and possibly months in an immigration jail.

Accordingly, if the Court declines to order Mr. Doe's outright and to conduct an evidentiary hearing to determine the legality of his continued incarceration, it must issue an order directing a neutral adjudicator to provide him with a bond hearing at which ICE bears the burden to establish, by clear and convincing evidence, that he is danger or a flight risk, such that he must remain detained. ECF No. 2 at 26-27. At any administrative bond hearing, the neutral adjudicator must also consider alternatives to detention and Mr. Doe's ability to pay. *Id.*

E. There was no material change in circumstances on January 28, 2025, justifying ICE's decision to re-arrest Mr. Doe.

Respondents admit they have known about Mr. Doe's Red Notice and the cases against him in [redacted] for two years, ECF No. 8 at 2, and that during that time he complied with all of ICE's reporting requirements.[5] As a result, no material change in circumstance existed to permit ICE to re-incarcerate Mr. Doe on January 28, 2025, especially without any notice or process.

Respondents nevertheless allege that two material changes in circumstances justified their actions: (1) ICE becoming aware of an INTERPOL Red Notice [redacted]; and (2) a Supreme Court order from 2021 holding some asylum seekers are subject to mandatory detention upon arrival in the United States. ECF 8 at n.3, 3. Neither passes muster.

In the intervening two years since ICE became aware of the Red Notice, Mr. Doe attended three check-ins with ICE—on May 17, 2023, January 27, 2024, and December 17, 2024. *See* Sinodis Declaration ¶ 8. When Mr. Doe presented himself at the ICE office for his check-ins, he was not free to leave until ICE released him. At each check-in, with full knowledge of the Red Notice and allegations against Mr. Doe made by the [redacted] government, ICE made a new decision that he did not pose a danger to the community or a flight risk. These three

[5] *See also* ECF No. 2 at 23 (quoting *Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (internal quotation omitted)).

additional decisions not to take him into custody underscore that the only circumstance that changed in January 2025 was ICE's mandate to meet an arrest quota.[6]

Further, under Ninth Circuit law and ICE's own policy, an INTERPOL Red Notice on its own could not possibly constitute material changed circumstances justifying an arrest. *See* ECF No. 1 at 16-18. "[A] Red Notice alone is not enough to establish probable cause" that a crime has occurred. *Gonzalez-Castillo*, 47 F.4th at 978. This conclusion was underscored by Congress's enactment of the Transnational Repression Accountability and Prevention (TRAP) Act, 22 U.S.C. § 263b(a) to curb the recognized practice of INTERPOL abuse by authoritarian regimes to harm political dissidents' chances of obtaining asylum abroad. ICE Directive 15006.1 explained that a Red Notice "conveys no legal authority to arrest, detain, or remove a person. Therefore, ICE personnel will not rely exclusively on Red Notices or Wanted Person Diffusions to justify enforcement actions or during immigration proceedings."[7]

The other "material change in circumstances" Respondents cite is the Supreme Court's decision in *ICE, et al. v. Padilla*, 141 S. Ct. 1041 (2021). ECF No. 8 at n.3. In the *Padilla* litigation, the Ninth Circuit had previously affirmed a district court injunction requiring the government to provide asylum seekers who passed their credible fear interviews with a bond hearing within seven days. *Padilla v. ICE*, 953 F.3d 1134 (9th Cir. 2020). At the time of Mr. Doe's rearrest on January 28, 2025, ICE had been aware of the vacatur of *Padilla's* nationwide injunction for approximately four years. Moreover, the idea that individuals released from imprisonment—even erroneously—are entitled to hearings prior to their re-incarceration is basic to our law. *See* ECF No. 2 at 14. It applies to prisoners released on parole, probation, and even due to judicial error. *Id.* It rests on the simple principle that people given freedom should not have it taken away without a pre-deprivation hearing where they can raise any legal objection to re-imprisonment, because "a person who is in fact free of physical confinement—even if that

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[6] *See supra* at n. 1.

[7] *See* ICE Directive 15006.1: INTERPOL Red Notices and Wanted Person Diffusions, (Aug. 15, 2023) available at: https://www.ice.gov/doclib/foia/dro_policy_memos/15006.1_InterpolRedNoticesWpDiffusions.pdf.

freedom is lawfully revocable—has a liberty interest that entitles him to constitutional process before he is re-incarcerated." *Id.* at 13-14, 18 (citing *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017); *Young v. Harper*, 520 U.S. 143, 152 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey* v. Brewer, 408 U.S. 471, 482 (1972)).

Finally, even if there had been a material change in circumstances justifying Mr. Doe's re-detention, due process required that Respondents provide him with notice and a hearing where he could have presented arguments as to why he was neither a danger nor a flight risk *before* he was taken into custody. *See* ECF No. 2 at 12; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process").

F. ICE's parole review process was one-sided and not individualized.

Typically, after an arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold the noncitizen without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9). Respondents state that after Mr. Doe was detained on January 28, 2025, and again on February 13, 2025, ICE "reviewed Petitioner's custody status and declined to release him on parole." ECF No. 8 at 3. Both "reviews" were meaningless because they did not afford Mr. Doe the opportunity to present any evidence establishing that he should be released from custody. As referenced above, Respondents take the position that he is subject to mandatory detention irrespective of his constitutional rights. ECF No. 8 at 2.

Moreover, on information and belief, since Mr. Doe was arrested, ICE has adopted a practice that individuals will only be released on bond if the Acting ICE Director personally signs off on their release.[8] ICE is currently denying parole to everyone who is detained as a matter of course. In denying Mr. Doe's parole after his arrest, ICE did not review his circumstances anew and make a determination that he was dangerous. The "process" that Mr.

[8] *See, e.g.*, "Trump's ICE limits illegal immigrant releases amid moves to shake off Biden 'hangover'," *Fox News*, Feb 6. 2025, available at: https://www.foxnews.com/politics/trumps-ice-limits-illegal-immigrant-releases-amid-moves-shake-off-biden-hangover.amp ("Fox News Digital is told that, as of this week, officials are being instructed that any release of an illegal immigrant in ICE custody must be personally signed off on by acting ICE director Caleb Vitello.")

Doe received, which would be deficient even under normal circumstances, was apparently non-existent at the time he was denied parole.

By contrast, the procedure Mr. Doe seeks—immediate release unless and until he is provided an adversarial hearing before a neutral adjudicator *prior* to the revocation of bond—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "material change in circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews v. Eldridge*, 424 U.S. 319 (1976), can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). The Court should find the same here.

II. MR. DOE IS SUFFERING IRREPARABLE INJURY AND THE BALANCE OF EQUITIES AND PUBLIC INTEREST TIP SHARPLY IN HIS FAVOR.

Given that Mr. Doe is likely to succeed on the merits of his claim, and that his claim is constitutional in nature, he has sufficiently demonstrated that he will suffer harm absent immediate injunctive relief. The factors under the balancing test established in *Mathews v. Eldridge* weigh heavily in his favor. 424 U.S. at 335; ECF No. 1 at 17. Respondents do not contest the well-settled principle that a violation of constitutional rights constitutes irreparable injury. *Hernandez,* 872 F.3d at 995-96 ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'") (quoting *Melendres v. Apraio*, 695 F.3d 990, 1002 (9th Cir. 2012)); *Baird v. Bonta*, 81 F.4th 1036 1040 (9th Cir. 2023) (It is well established that the first [*Mathews*] factor is especially important when a plaintiff alleges a constitutional violation and injury. If a plaintiff in such a case shows he is likely to prevail on the merits, that showing usually demonstrates he is suffering irreparable harm no

matter how brief the violation."); 11A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2948.1 (3d ed. 1998) ("When an alleged deprivation of a constitutional right is involved, . . . most courts hold that no further showing of irreparable injury is necessary.").

In this case, Respondents wholly ignore the concrete harms immigration detention visits on individuals, and the specific harms Mr. Doe would suffer if he remains detained. It is clear that, absent a TRO, he will continue to suffer irreparable harm. *See also Hernandez*, 872 F.3d at 995 ("noting irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention[.]"). As explained in his Motion for TRO and documented in the attached exhibits, Mr. Doe suffers from numerous psychological and medical conditions that render detention uniquely dangerous and harmful for him. ECF No. 2 at 27-29; Sinodis Decl. at Exs. F-I, P. It is thus clear and the first and second *Mathews* factors clearly weigh in his favor. *See also* ECF No. 2 at 17-27 (Mr. Doe has a significant interest in his liberty and the relief he seeks would mitigate the risk of an erroneous deprivation).

As to the remaining factors under *Mathews*, "[a] plaintiff's likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors decisively in his favor." *Baird*, 81 F.4th 1036, 2023 WL 5763345, at *4. "[I]t would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a TRO is not entered, Respondents would effectively be granted permission to detain Mr. Doe in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069; *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."); *cf. 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.").

Mr. Doe has amply demonstrated that he faces enormous hardship. *See* ECF No. 2 at 27-29. Respondents do not challenge his argument that the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from [statutory and] constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983); *see* ECF No. 2 at 30. Nor will Respondents be injured by an order requiring them to release Mr. Doe from custody unless and until he is provided a bond hearing where the parties can fully litigate the legality of his re-arrest. Such a hearing is constitutionally mandated, and the government is not injured by being held to the Constitution. ECF No. 2 at 30; *Zepeda*, 753 F.2d at 727. As such, the balance of equities and public interest weigh heavily in favor of granting Mr. Doe injunctive relief.

III. THE COURT MUST GRANT MR. DOE A TRO.

Respondents claim that Mr. Doe's request for a TRO is "substantially similar" to that in *Keo*, Slip Op., 2024 WL 3970514. ECF. No. 8 at 5. That is incorrect. In *Keo*, the court highlighted that the petitioner's motion for a TRO contained "no argument or facts" beyond stating the length of his detention, *id.* at *1, and that the motion was procedurally deficient on at least four counts, *id.* at *2. As such, the court wrote that "[b]ased on the procedural infirmities alone the Court may deny the Motion." *Id.* (citation omitted). Unlike in *Keo*, Mr. Doe has explained in great detail why he will suffer immediate and irreparable injury, loss, or damage if a TRO is not issued, certified in writing his efforts to provide notice to Respondents, and complied with both federal and local rules for seeking a TRO. ECF No. 2. *Keo* is therefore inapposite.

Respondents also rely on *Doe*, 2024 WL 2861675, asserting that its facts are "even closer" to Mr. Singh's case than those in *Keo*. ECF. No. 8 at 6. Yet, *Doe* does not stand for the proposition that TROs of the sort sought here are "inappropriate." *Id.* To be sure, in *Doe*, the petitioner objected to a report and recommendation finding that, because the motion for TRO sought relief that was mandatory, rather than prohibitory, it was subject to a higher standard of proof than likelihood of success on the merits. *Doe*, 2024 WL 3861675 at *1. Although the court overruled that objection and held the petitioner to a higher standard, the court *did not* categorically preclude the petitioner from obtaining a TRO because her motion for a TRO

requested the ultimate relief sought in her petition, contrary to Respondents' contention. *Compare* ECF 8 at 6 (stating that the court "explained that Doe's motion was inappropriate because she had 'explicitly request[ed]…the ultimate relief she seeks in this action.'") *with Doe,* 2024 WL 3861675 at *1-2. Instead, the *Doe* court weighed the various factors for determining whether a TRO should be issued and ultimately determined, based on the facts of that case, that the petitioner did not merit a TRO.

Furthermore, as acknowledged by the courts in *Keo* and *Doe,* TROs are appropriate where, as here, there is a clear showing that the plaintiff is entitled to such relief. *Keo,* Slip Op., 2024 WL 3970514 at *2. In this instance, the law clearly counsels granting a TRO to Mr. Doe given the illegality of his rearrest absent any semblance of due process, the irreparable harm that he has suffered and will continue to suffer absent the Court's intervention, and the balance of equities and public interest which tip sharply in his favor.

Courts in this district regularly issue TROs when a noncitizen is held in unconstitutional detention. *See, e.g.*, *Singh v. Garland*, No. 1:23-cv-01043-EPG-HC, 2023 WL 5836048 (E.D. Cal. Sep. 8, 2023); *Vi Kiet Diep v. Wofford*, No. 1:24-cv-01238-SKO (HC), 2025 WL 604744 (E.D. Cal. Feb. 25, 2025).[9] Other district courts in California have issued TROs enjoining ICE from re-arresting a noncitizen who was released on bond without affording them notice and a hearing. *See, e.g.*, *Meza*, 2018 WL 2151877; *Ortega*, 415 F. Supp. 3d at 967; *Jorge M. F.*, No. 21-CV-01434-JST, 2021 WL 783561. The relief ordered in each of these cases is exactly what Mr. Doe seeks: constitutionally mandated notice and process before he is deprived of liberty.

CONCLUSION

This Court should order Mr. Doe's outright release unless and until he receives a hearing before a neutral adjudicator on whether a change in bond amount or revocation of his bond is justified by clear and convincing evidence that he is a danger or a flight risk. Alternatively, this Court should order that he be provided a constitutionally compliant bond hearing.

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[9] In *Singh* and *Vi Kiet Diep*, the Petitioners were subject to unconstitutional prolonged detention without a bond hearing, which shaped the relief ordered by the Court (in those cases, a bond hearing). Petitioners in those cases, unlike Mr. Doe, did not assert that the underlying arrest that led to them being detained was unlawful, and so did not establish entitlement to outright release.

Dated: February 28, 2025

Respectfully submitted,

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