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Application for admission forthcoming

Attorneys for Petitioner-Plaintiff
Aroldo RODRIGUEZ DIAZ

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Aroldo RODRIGUEZ DIAZ,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. LYONS, 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;

Respondents-Defendants.

Case No. 25-5071

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

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 65-1 of the Local rules of this Court, Petitioner hereby moves this Court for an order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, from re-arresting Petitioner-Plaintiff Aroldo Rodriguez Diaz until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his 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 preventing his unlawful re-incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from re-incarcerating him unless and until he is afforded a hearing before a neutral decisionmaker on the question of whether his re-incarceration would be lawful. Petitioner is currently scheduled to appear before the Intensive Supervision Appearance Program (ISAP), as required by Respondents, on Saturday June 14 or Sunday June 15, 2025, when Respondents likely intend to re-arrest and re-incarcerate him throughout the remaining course of his removal proceedings.

Dated: June 14, 2025

Respectfully Submitted

/s/Johnny Sinodis
Johnny Sinodis
Attorney for Mr. Rodriguez

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I. INTRODUCTION

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

DHS had previously incarcerated Mr. Rodriguez for seventeen months pending resolution of his immigration case. Mr. Rodriguez was initially denied bond, but DHS subsequently released him on May 13, 2020, after an Immigration Judge (IJ)—acting pursuant to a district court order from the Hon. Yvonne Gonzalez Rogers following Mr. Rodriguez's successful habeas petition—determined he was neither a flight risk nor a danger and set bond in the amount of $10,000. *Rodriguez Diaz v. Barr*, 4:20-cv-01806-YGR (N.D. Cal. Apr. 27, 2020). Upon posting the $10,000 bond, ICE installed an electronic ankle monitor and enrolled Mr. Rodriguez in the Intensive Supervision Appearance Program (ISAP). Mr. Rodriguez complied with all conditions of release, leading DHS to remove his ankle monitor in April 2022. Although the government appealed Judge Gonzalez Rogers' opinion successfully at the Ninth Circuit, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193 (9th Cir. 2022), DHS did not move to re-detain Mr. Rodriguez. DHS's appeal was on the basis that the constitution did not require Mr. Rodriguez to receive a second bond hearing, and not on whether Mr. Rodriguez was a flight risk or a danger.

Over the last five years during which he has lived at liberty, Mr. Rodriguez has been the sole caretaker for his minor U.S. citizen son, and recently became the father of a newborn U.S. citizen daughter. He has also continued to diligently litigate his removal proceedings, including by prevailing on two consolidated Petitions for Review (PFR) at the Ninth Circuit Court of Appeals. *See Rodriguez Diaz v. Garland* (19-72634 & 21-70497) (9th Cir. June 27, 2024). Mr. Rodriguez currently has a Master Calendar Hearing scheduled for August 19, 2026, before the San Francisco Immigration Court.

On May 31, 2024, Mr. Rodriguez attended his last check-in appointment with ICE. At that time, ICE scheduled him to appear again on June 30, 2025.

Notwithstanding the above, on June 13, 2025, Mr. Rodriguez received a message from ISAP on his telephone stating: "Please report to the San Francisco ISAP Office at 478 Tehama St., San Francisco, CA 94103, between the hours of 8:00 a.m. – 4:00 p.m. on Saturday, June 14, 2025, or Sunday, June 15, 2025. Failure to report as instructed will be considered a violation." *See* Declaration of Johnny Sinodis (Sinodis Decl.) at Ex. E (Message from ISAP). Mr. Rodriguez informed undersigned Counsel, who quickly called ISAP three times. Each time, undersigned Counsel was placed on hold for several seconds before the line disconnected. Sinodis Decl. Undersigned Counsel then called and emailed ICE San Francisco to seek clarification as to the purpose of the ISAP appointment and to confirm that ICE had no intention to re-incarcerate Mr. Rodriguez. Sinodis Decl at Ex. F (Email to ICE San Francisco). As of the time of filing, ICE has not returned undersigned Counsel's calls or emails. Sinodis Decl.

On information and belief, numerous other noncitizens in the San Francisco Bay Area received the same or similar text message on June 13, 2025. *Id.*

On information and belief, on June 6, 2025, ISAP in Los Angeles sent the same or similar text message to dozens of noncitizens, instructing them to appear at ISAP in Los Angeles on either June 7, 2025, or June 8, 2025. *Id.* On information and belief, many of those individuals who appeared as instructed at ISAP in Los Angeles were incarcerated or re-incarcerated by ICE.[1]

Numerous credible reports demonstrate that across the country, including in San Francisco and other Bay Area cities, individuals are being called in for ISAP check-ins or other check-ins with ICE and then arrested by ICE.[2]

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[1] "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/; "They followed the government's rules. ICE held them anyway," LAist (June 11, 2025), https://laist.com/news/politics/ice-raids-los-angeles-family-detained.

[2] "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025),

In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.[3]

In light of credible reports of ICE re-incarcerating individuals at their ISAP check-ins, it is highly likely Mr. Rodriguez will be arrested and incarcerated at this appointment, despite the fact that Mr. Rodriguez is neither a flight risk nor a danger to the community. If he is arrested, he may be transferred outside of Northern California with little or no notice, far away from his two minor U.S. citizen children.

By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Mr. Rodriguez's case, due process requires notice and a hearing, *prior to any revocation of his conditional release on bond*, at which he is afforded the opportunity to advance his arguments as to why his bond should not be revoked.

That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where Mr. Rodriguez's detention was

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https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php; "Cincinnati high school graduate faces deportation after routine ICE check-in," ABC News (June 9, 2025), https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262.

[3] *See, e.g.*, McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), *available at* https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754 (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

already found to be unnecessary to serve its purpose. An IJ previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify re-arrest.

Therefore, at a minimum, in order to lawfully re-arrest Mr. Rodriguez, the government must first establish, by clear and convincing evidence and before a neutral adjudicator, that he is a danger to the community or a flight risk, such that his re-incarceration is necessary.

Mr. Rodriguez meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court enjoining the government from arresting him at his ISAP check-in on Saturday June 14, 2025, or Sunday, June 15, 2025, unless and until he first receives a hearing before a neutral adjudicator, as demanded by the Constitution. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Mr. Rodriguez's favor.

II. STATEMENT OF FACTS AND CASE

Mr. Rodriguez is citizen and national of El Salvador who entered the U.S. in 2006 at the age of nine. As a young child, he lived with his grandparents in El Salvador, where he was repeatedly threatened by MS-13 gang members. Fortunately, his grandmother sent him to the U.S. before the threats and harassment turned into physical violence.

Once in the U.S., Mr. Rodriguez struggled to adjust to his new surroundings. At the age of fifteen, following an arrest, U.S. immigration officials transferred him to the custody of the Office of Refugee Resettlement (ORR) and registered him as an "Unaccompanied Alien Child" (UAC). While in ORR custody, DHS initiated removal proceedings against him and provided him a copy of a Notice to Appear (NTA). On January 19, 2012, ORR released Mr. Rodriguez from custody. DHS failed to serve a copy of the NTA on the adult to whom he was released, as required by law. *See B.R. v. Garland*, 26 F.4th 827 (9th Cir. 2022); *see also Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir. 2004).

During removal proceedings in immigration court, Mr. Rodriguez suffered several instances of ineffective assistance of counsel by two attorneys, which prevented him from fully presenting his claims for relief from removal.

On March 13, 2018, Mr. Rodriguez timely filed his Form I-589, Application for Asylum and for Withholding of Removal, with the U.S. Citizenship and Immigration Services (USCIS), as provided for in DHS's 2013 Kim Memorandum and the Trafficking Victims Protection Reauthorization Act, Public Law 110-457 (TVPRA).

On August 3, 2018, Mr. Rodriguez was arrested by law enforcement due to a relationship dispute with the mother of his U.S. citizen son. He ultimate pleaded guilty to California Penal Code (PC) § 243(e)(1) and § 136.1(b)(1) and was sentenced to two-hundred-seventy-six days in jail, with credit for one-hundred-thirty-eight days served and eighteen months of probation. Upon completion of his sentence, ICE took him into custody on December 18, 2018, and transferred him to an immigration jail.

On February 27, 2019, Mr. Rodriguez received a custody redetermination hearing where the IJ denied him bond.

On May 13, 2019, a new attorney appeared on behalf of Mr. Rodriguez in Immigration Court at his Individual Calendar Hearing. That attorney failed to provide him with effective assistance of counsel, committing three prejudicial errors: improperly waiving Mr. Rodriguez's eligibility for withholding of removal; failing to raise that USCIS had initial jurisdiction over his pending asylum application; and failing to seek to terminate removal proceedings on the basis that DHS failed to effect proper service of the NTA.

The IJ proceeded to adjudicate and deny Mr. Rodriguez's claim for protection under the Convention Against Torture (CAT). On October 17, 2019, the BIA affirmed. Mr. Rodriguez filed a timely PFR with the Ninth Circuit. *See* Case No. 19-72634.

On January 13, 2020, Mr. Rodriguez filed a Motion to Reopen Removal Proceedings with the BIA, arguing proceedings should be reopened due to: (1) the ineffective assistance of his prior attorneys in Immigration Court; (2) his new eligibility for relief from removal; and (3) changed country conditions in El Salvador. While the Motion to Reopen was pending, yet another attorney took over his case.

On February 5, 2020, Mr. Rodriguez filed a motion for custody redetermination with the IJ, arguing that a material change in circumstances rendered him eligible for a new hearing. The

IJ denied that motion on February 24, 2020.

On March 16, 2020, Mr. Rodriguez filed a petition for writ of habeas corpus before the Northern District of California. The case was assigned to the Honorable Judge Yvonne Gonzalez Rogers. *Rodriguez Diaz v. Barr*, 4:20-cv-01806-YGR. On April 27, 2020, Judge Rogers granted Mr. Rodriguez's petition and ordered the government to provide him a bond hearing before an IJ within twenty-one days where the government bore the burden to establish flight risk or danger by clear and convincing evidence. *Rodriguez Diaz v. Barr*, 4:20-cv-01806-YGR (N.D. Cal. Apr. 27, 2020).

On May 13, 2020, an IJ granted Mr. Rodriguez bond in the amount of $10,000 after determining that he was neither a flight risk nor a danger to the community. *Rodriguez Diaz v. Barr*, 4:20-cv-01806-YGR (N.D. Cal. Apr. 27, 2020). He posted bond, but before being released, DHS installed an ankle monitor and enrolled him into ISAP as added conditions of release. Although the government appealed Judge Gonzalez Rogers' opinion successfully at the Ninth Circuit, *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1193 (9th Cir. 2022), DHS did not move to re-detain Mr. Rodriguez.

On June 16, 2020, the BIA denied Mr. Rodriguez's Motion to Reopen. Mr. Rodriguez's counsel erroneously believed she had sixty days to file his PFR, and therefore failed to meet the thirty-day statutory deadline for filing a PFR. Upon discovering her mistake, Mr. Rodriguez's attorney filed an Emergency Motion to Rescind and Reissue, requesting that the BIA reissue its June 16, 2020 Order so that Mr. Rodriguez could exercise his right to seek judicial review. On February 1, 2021, the BIA denied Mr. Rodriguez's former counsel's Emergency Motion, asserting that she had failed to comply with *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), and *Matter of Melgar*, 28 I&N Dec. 169 (BIA 2020). Mr. Rodriguez filed a timely PFR, which was then consolidated with his previously filed PFR.

In April 2022, because Mr. Rodriguez complied with all conditions of release, DHS removed his ankle monitor.

On July 1, 2024, the Ninth Circuit granted Mr. Rodriguez's consolidated PFRs and remanded proceedings to the BIA for a new decision.

Then, on September 25, 2024, the Asylum Office finally provided Mr. Rodriguez an interview regarding his application for asylum, ultimately referring his application to the Immigration Court. As stated above, he has a Master Calendar Hearing scheduled before the San Francisco Immigration Court on August 19, 2026.

On May 31, 2024, Mr. Rodriguez attended his last check-in appointment with ICE. At that time, ICE scheduled him to appear again on June 30, 2025.

On April 21, 2025, Mr. Rodriguez became the father of a newborn U.S. citizen daughter. Sinodis Decl. at Ex. D (Proof of Newborn Daughter).

Notwithstanding the above, on June 13, 2025, Mr. Rodriguez received a message from ISAP stating: "Please report to the San Francisco ISAP Office at 478 Tehama St., San Francisco, CA 94103, between the hours of 8:00 a.m. – 4:00 p.m. on Saturday, June 14, 2025, or Sunday, June 15, 2025. Failure to report as instructed will be considered a violation." Sinodis Decl. at Ex. E (Message from ISAP). Mr. Rodriguez informed undersigned Counsel, who quickly called ISAP three times. Each time, undersigned Counsel was placed on hold for several seconds before the line disconnected. Sinodis Decl. Undersigned Counsel then called and emailed ICE San Francisco to seek clarification as to the purpose of the ISAP appointment and to confirm that ICE had no intention to re-incarcerate Mr. Rodriguez. Sinodis Decl at Ex. F (Email to ICE San Francisco). As of the time of filing, ICE has not returned undersigned Counsel's calls or emails. Sinodis Decl.

On information and belief, many of those individuals who appeared as instructed at ISAP in Los Angeles were incarcerated or re-incarcerated by ICE.[4] Numerous credible reports demonstrate that across the country, including in San Francisco and other Bay Area cities, individuals are being called in for ISAP check-ins or other check-ins with ICE and then arrested by ICE.[5] In light of credible reports of ICE re-incarcerating individuals at their ISAP check-ins,

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[4] "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/; "They followed the government's rules. ICE held them anyway," LAist (June 11, 2025), https://laist.com/news/politics/ice-raids-los-angeles-family-detained.

[5] "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and

it is highly likely Mr. Rodriguez will be arrested and incarcerated at this appointment, despite the fact that Mr. Rodriguez is neither a flight risk nor a danger to the community.

Intervention from this Court is therefore required to ensure that Mr. Rodriguez is not unlawfully re-arrested and re-incarcerated. Such unlawful conduct would cause him to suffer irreparable harm.

III. LEGAL STANDARD

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

IV. ARGUMENT

A. MR. RODRIGUEZ WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Rodriguez is

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apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025), https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php; "Cincinnati high school graduate faces deportation after routine ICE check-in," ABC News (June 9, 2025), https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262.

likely to be re-arrested absent any material change in circumstances and prior to receiving a hearing before a neutral adjudicator, in violation of his due process rights, without intervention by this Court. Mr. Rodriguez will continue suffer irreparable injury if he is arrested and detained without due process and separated from his two minor U.S. citizen children.

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

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

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

ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137

(9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously 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.

ICE's power to re-arrest a noncitizen who is at liberty following a release on bond is also constrained by the demands of due process. *See 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"). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Mr. Rodriguez's weighty interest in his freedom from detention.

Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Mr. Rodriguez, *before* ICE re-detains him. *See, e.g.*, *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);); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

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

a. Mr. Rodriguez Has a Protected Liberty Interest in His Conditional Release

Mr. Rodriguez's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Since May 2020, Mr. Rodriguez exercised that freedom under the IJ's May 13, 2020, order granting him release on a $10,000 bond. Sinodis Decl. at Ex. A (IJ Bond Order). Although he was released on bond (and thus under government custody), he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the

First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also*, *e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

Here, when this Court "'compar[es] the specific conditional release in [Mr. Rodriguez's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Rodriguez's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, care for his child, for whom he is the sole caretaker, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

Mr. Rodriguez is the sole caretaker for his minor U.S. citizen son and he just welcomed a new born U.S. citizen daughter. He has complied with all conditions of release for over five years, as he litigates his removal proceedings. He has a meritorious asylum claim pending before the immigration court with an upcoming hearing in August 2026, and a pending motion to reopen his

proceedings at the BIA due to numerous instances of ineffective assistance of counsel that occurred during his prior proceedings. Sinodis Decl.

b. Mr. Rodriguez's Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Bond

Mr. Rodriguez asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for five years, during which time he has complied with all conditions of release and served as the sole caretaker for his minor U.S. citizen son, (3) where he has a substantial application for asylum pending before the Immigration Court, with an upcoming hearing on August 19, 2026, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of a bond.

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

The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127

(1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Rodriguez with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Mr. Rodriguez's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

i. Mr. Rodriguez's Private Interest in His Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Rodriguez, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g.*, *U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the

parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Rodriguez retains a truly weighty liberty interest even though he is under conditional release.

What is at stake in this case for Mr. Rodriguez is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond decision and 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 omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

ii. The Government's Interest in Re-Incarcerating Mr. Rodriguez Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing is Minimal

The government's interest in detaining Mr. Rodriguez without a due process hearing is low, and when weighed against Mr. Rodriguez's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting Mr. Rodriguez unless and until the government demonstrates to a neutral adjudicator by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr. Rodriguez when the Court considers that the process he seeks—notice and a hearing regarding whether his bond should be revoked and, if so, whether a new bond amount should be

set—is a standard course of action for the government. Providing Mr. Rodriguez with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Mr. Rodriguez is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like Mr. Rodriguez.

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the 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 has any basis for detaining Mr. Rodriguez in June 2025 when he has lived at liberty complying with the circumstances of his release since May 2020 while acting as the sole caretaker for his minor U.S. citizen son and a loving father to his newborn U.S. citizen daughter.

Mr. Rodriguez was determined by an IJ not to be a danger to the community in May 2020 and has done nothing to undermine that determination. In fact, ICE decided to remove his ankle monitor in April 2022, given his full compliance with the terms and conditions of his release. *See 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'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

As to flight risk, an IJ determined that a bond of $10,000 was sufficient to guard against any possible flight risk, to "assure [his] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Furthermore, Mr. Rodriguez has a meritorious pending asylum application and eagerly awaits the opportunity to present his case for relief. It is difficult to see how the government's interest in ensuring his presence at the moment of removal has materially changed since he was released in May 2020, when he has complied with all conditions of release, his removal proceedings are pending before the Immigration Court, and he is the sole caretaker for his minor U.S. citizen son and the loving father of a newborn U.S. citizen daughter. The government's interest in detaining Mr. Rodriguez at this time is therefore low. That ICE has a new policy to

make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[6]

Moreover, the "fiscal and administrative burdens" that a pre-deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Rodriguez does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated.

Providing Mr. Rodriguez with a hearing before this Court (or a neutral decisionmaker) regarding bond is also a routine procedure that the government provides to those in immigration jails on a daily basis. At that hearing, the Court would have the opportunity to determine whether circumstances have changed sufficiently to require a different amount of bond—or if bond should be revoked. But there is no justifiable reason to re-incarcerate Mr. Rodriguez prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

Enjoining Mr. Rodriguez's re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Rodriguez is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

iii. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous

[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/.; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/ ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

Providing Mr. Rodriguez a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Rodriguez can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that the IJ's May 2020 bond determination should be altered or revoked because clear and convincing evidence exists to establish that Mr. Rodriguez is a danger to the community or a flight risk.

Under ICE's process for custody determination—which affords Mr. Rodriguez no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Rodriguez will be erroneously deprived of his liberty is high if ICE is permitted to keep him detained after making a unilateral decision to re-detain him. Pursuant to 8 C.F.R. § 236.1(c)(9), an arrest of Mr. Rodriguez automatically revokes his bond. Thus, the regulations permit ICE to unilaterally nullify a bond 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 Mr. Rodriguez without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9). ICE's new custody determination will be subject to review by the IJ. 8 U.S.C. § 1226(a). However, as a result, the actual *revocation* of Mr. Rodriguez's bond would evade any review by the IJ or any other neutral arbiter. Under the current procedures, by the time Mr. Rodriguez ends up in front of an IJ seeking redetermination of his custody status, the IJ would only be considering whether Mr. Rodriguez has carried the burden to show that a new bond must be granted. The IJ will not be considering whether ICE's re-arrest was, in fact, lawful, because the bond has been revoked and Mr. Rodriguez has already have been deprived of his liberty interest. *See* 8 C.F.R. § 236.1(c)(9).

By contrast, the procedure Mr. Rodriguez seeks—a hearing in front of a neutral adjudicator at which the government proves by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence

constitutes a "changed 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* 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).

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

* * *

As the above-cited authorities show, Mr. Rodriguez is likely to succeed on his claim that the Due Process Clause require notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

2. Mr. Rodriguez will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Rodriguez will suffer irreparable harm were he to be deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial

has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the 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, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[7]

Mr. Rodriguez has been out of ICE custody for over five years. During that time, he has worked hard to establish a stable life for himself and his U.S. citizen children. Mr. Rodriguez works in construction to provide for his family. He is also the sole caretaker of his two U.S. citizen children, one of whom is only two-and-a-half months old. If he were incarcerated, he would likely lose his job, as he could not work from detention. Detention would irreparably harm not only Mr. Rodriguez, but also his two U.S. citizen children, who rely on Mr. Rodriguez for financial support, full-time care, and emotional and psychological support.

Finally, as detailed *supra*, Mr. Rodriguez contends that his re-arrest absent a hearing before a neutral adjudicator would violate his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Rodriguez from

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

suffering irreparable harm by being subject to unlawful and unjust detention.

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

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

First, the balance of hardships strongly favors Mr. Rodriguez. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring the DHS to refrain from arresting Mr. Rodriguez unless and until he is provided a hearing before a neutral is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Finally, a temporary restraining order is in the public interest. First and most importantly, "it 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 temporary restraining order is not entered, the government would effectively be granted permission to detain Mr. Rodriguez 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 (quoting *Melendres*, 695 F.3d at 1002); *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.").

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

V. CONCLUSION

For all the above reasons, this Court should find that Mr. Rodriguez warrants a temporary restraining order and a preliminary injunction ordering that Respondents refrain from re-arresting him unless and until he is afforded 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 to the community or a flight risk.

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Respectfully submitted,

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