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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

T.P.S.,

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. 3:25-cv-05428

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 T.P.S. 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 for an ICE check-in before the ICE Sacramento sub-office, which is under the jurisdiction of the ICE San Francisco Field Office, as required by Respondents, on July 2, 2025, where Respondents likely intend to re-arrest and re-incarcerate him throughout the remaining course of his removal proceedings even though he is not a flight risk or danger to the community.

Dated: June 28, 2025

Respectfully Submitted

/s/Johnny Sinodis
Johnny Sinodis
Attorney for Petitioner

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I. INTRODUCTION

Petitioner-Plaintiff T.P.S. (Petitioner), 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 release 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.

Petitioner is a citizen and national of India who fled to the United States to seek asylum in April 2023. DHS previously incarcerated Petitioner when he first arrived in the United States to seek asylum but released him on an order of recognizance subject to reporting requirements on April 20, 2023. Since then, Petitioner has lived at liberty for over two years while complying with all reporting requirements and diligently litigating his meritorious asylum application, which remains pending before the Immigration Court. Petitioner works as a truck driver to provide for his wife and two minor children, who are also applying for asylum in the United States. Petitioner's family depends on him for financial and emotional care and support.

Petitioner is scheduled to attend a check-in at the ICE Sacramento sub-office on July 2, 2025, which is under the jurisdiction of the ICE San Francisco Field Office. In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins[1]—including undersigned Counsel's own recent experience with a similarly situated client who was re-arrested and re-incarcerated at the Sacramento ICE sub-office without any notice or process—undersigned counsel has contacted ICE Sacramento's sub-office to request to reschedule the appointment to a date when counsel, who is unavailable on July 2, could attend the appointment with Petitioner. To date, ICE has not responded to or acknowledged these emails. On information and belief, multiple other attorneys who represent clients with ICE check-ins at the ICE Sacramento sub-

[1] *See, e.g.*, "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. See also

office have received responses and been able to reschedule check-ins in recent weeks.

Given that ICE has declined to respond to Counsel's emails, diverging from their typical practice, in conjunction with the numerous credible reports of similarly situated noncitizens being arrested at ICE check-in appointments—as well as undersigned Counsel's own recent experience with a similarly situated client who was re-arrested and re-incarcerated without any notice or process at a routine check-in at ICE's Sacramento sub-office—it is highly likely Petitioner will be arrested and incarcerated at his July 2 appointment, despite the fact that Petitioner is neither a flight risk nor a danger to the community. This is particularly true given that ICE has received multiple directives to meet untenable daily arrest quotas that leave the agency no other option but to arrest noncitizens whose incarceration is not necessary.[2] If Petitioner is arrested, he faces the very real possibility of being transferred outside of California with little or no notice, far away from his family and community.

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 or parole, 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 Petitioner's case, due process requires notice and a hearing, *prior to any revocation of his conditional release on his own recognizance*, at which he is afforded the opportunity to advance his arguments as to

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[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/.; "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.").

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 Petitioner's detention was *already* found to be unnecessary to serve its purpose. DHS previously found that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify his re-arrest.

Therefore, at a minimum, in order to lawfully re-arrest Petitioner, 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.

Petitioner 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 ICE check-in on July 2, 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 Petitioner's favor.

II. STATEMENT OF FACTS AND CASE

Petitioner is citizen and national of India who entered the U.S. in April 2023 to seek asylum after enduring horrific persecution and torture at the hands of the Indian government. Petitioner, who is Sikh and a supporter of the Sikh separatist movement called Khalistan, was persecuted by the Indian government because of his political and religious beliefs, as well as his family relationships. Declaration of Johnny Sinodis (Sinodis Decl.).

Upon arrival to the United States on April 17, 2023, Petitioner presented himself to DHS agents, who took him into custody. *Id.* at Ex. A (Notice to Appear). Two days later, on April 19, 2023, DHS issued Petitioner a Notice to Appear (NTA), placed him in removal proceedings, and directed him to appear before the Sacramento Immigration Court on September 19, 2023. *Id.* On April 20, 2023, DHS released Petitioner from custody on an order of recognizance. *Id.* at Ex. B (Order of Release on Recognizance). As part of his order of release, DHS required Petitioner to attend periodic check in appointments with the Sacramento ICE sub-office, which he has done

without issue. *Id.*

Since his release from immigration custody in April 2023, Petitioner has complied with all conditions of release while litigating his removal proceedings. Petitioner's asylum application is currently pending before the Sacramento Immigration Court. *Id.* at Ex. C (Evidence of Pending I-589); Ex. D (Evidence of Petitioner's Ongoing Removal Proceedings). Petitioner works as a truck driver pursuant to valid work authorization. *Id.* at Ex. E (Petitioner's Employment Authorization Card). Petitioner's wife and two minor children are also seeking asylum in the United States and depend on him for financial and emotional care and support. Sinodis Decl.

In March 2024, Petitioner attended his last check-in appointment with ICE. At that time, ICE scheduled him to appear again on July 2, 2025. *See id.* at Ex. F (ICE Check-In Notice for July 2, 2025).

In a recent check-in appointment for one of undersigned Counsel's similarly situated clients, ICE unlawfully re-arrested and re-incarcerated him without any notice or process at the Sacramento sub-office. Sinodis Decl. Additionally, multiple credible reports demonstrate that, in recent weeks, numerous noncitizens in the Sacramento Area, San Francisco Bay Area, Los Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[3]

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.[4]

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[3] *See supra* n.2; "ICE arrests at Sacramento immigration courts raises fear among immigrant community," KCRA (June 3, 2025), https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405; "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), 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.

[4] *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

Given the recent credible reports of arrests at ICE check-ins, as well as undersigned Counsel's own experience with a similarly situated client who was re-arrested without any notice or process, undersigned Counsel emailed ICE's Sacramento sub-office on June 23, 2025, to request that Petitioner's July 2, 2025, check-in appointment be rescheduled by two weeks. Undersigned counsel requested this brief reset because counsel will be out of the office on July 2, 2025, and would not be able to appear with Petitioner, who fears he will be arrested at the check-in. *Id.* On June 25, 2025, undersigned Counsel sent a second follow-up email to ICE. *Id.* As of the time of filing, ICE has not returned undersigned Counsel's emails. *Id.*

On information and belief, other attorneys representing clients with check-ins before the Sacramento ICE sub-office have made the same request and have received timely responses rescheduling their client's appointments. *Id.*

In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins and the fact that ICE has not responded to repeated emails from undersigned counsel, it is highly likely Petitioner will be arrested and incarcerated at this appointment. This is true despite the fact that Petitioner is neither a flight risk nor a danger to the community. He faces the very real possibility of being re-incarcerated and transferred out of California, far away from his family and community.

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

III. LEGAL STANDARD

Petitioner 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.*

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).

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 Petitioner 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, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

A. PETITIONER 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). Petitioner is 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. Petitioner 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. Petitioner 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

Petitioner 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 or conditional parole 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 or conditional parole "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, 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*, 280 F. Supp. 3d at 1197 (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, *aff'd sub nom. Saravia for A.H.*, 905 F.3d 1137 (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 or conditional parole 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 or conditional parole 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 Petitioner'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 Petitioner, *before* ICE re-detains him. *See, e.g.*, *Meza v. Bonnar*, 2018 WL 2554572

(N.D. Cal. June 4, 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); *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

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 [Petitioner'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*, Petitioner'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, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

Petitioner has complied with all conditions of release for over two years, as he litigates his removal proceedings. He has a meritorious application for relief from removal in the form of a substantial asylum claim pending before the immigration court in Sacramento. Sinodis Decl. Ex. C (Evidence of Petitioner's Asylum Application); *id.* at Ex. D (Evidence of Petitioner's Pending Immigration Court Proceedings).

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

Petitioner asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for two years, during which time he has complied with all conditions of release, (3) where he has a substantial application for asylum pending before the Immigration Court, (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.

"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 [Petitioner'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 Petitioner with notice and a hearing *prior* to any re-incarceration and revocation of his release. *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 [Petitioner's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

i. Petitioner'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 Petitioner, 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, Petitioner retains a truly weighty liberty interest even though he is under conditional release.

What is at stake in this case for Petitioner is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release order 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 Petitioner 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 Petitioner without a due process hearing is low, and when weighed against Petitioner's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting Petitioner unless and until the government demonstrates 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 Petitioner when the Court considers that the process he seeks—notice and a hearing regarding whether his order of release should be revoked and, if so, whether a bond amount should be set that is sufficient to mitigate any risk of flight—is a standard course of action for the government. Providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner 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 Petitioner.

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 Petitioner in July 2025 when he has lived at liberty complying with the conditions of his release since April 2023, has a pending asylum application, and has no criminal history.

Petitioner was determined by DHS not to be a danger to the community in April 2023 and has done nothing to undermine that determination, 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, DHS determined that reporting requirements were sufficient to guard against any possible flight risk, to "assure [Petitioner's] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. Furthermore, Petitioner has a meritorious application for relief from removal and eagerly awaits the opportunity to present his case before the Immigration Court. 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 April 2023, when he has complied with all conditions of release and works hard as a truck driver to provide for his wife and minor children, who are also seeking asylum in the United States. The government's interest in detaining Petitioner 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.[5]

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. Petitioner does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his release should be revoked and whether he should be re-incarcerated.

In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) regarding bond is 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 some amount of bond—or if his release should be revoked. But there is no justifiable reason to re-incarcerate Petitioner 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

[5] *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.").

parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

Enjoining Petitioner's re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Petitioner 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 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 Petitioner a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner 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 Petitioner should be detained because clear and convincing evidence exists to establish that Petitioner is a danger to the community or a flight risk.

Under ICE's process for custody determination—which affords Petitioner no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Petitioner will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 236.1(c)(9), a noncitizen's release from immigration custody "may be revoked at any time in the discretion of the district director." Thus, the regulations permit ICE to unilaterally revoke a release determination without oversight of any kind—even if, as here, the individual has been living at liberty for years and no circumstances justify their arrest. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold Petitioner without a bond, or grant him release again. 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 Petitioner's release would evade any review by the IJ or any other neutral arbiter. Under the current procedures, by the time Petitioner ends up in front of an IJ seeking redetermination of his custody status, the IJ would only be considering whether Petitioner has carried the burden to show that he can and should be released on bond. The IJ will not be considering whether ICE's re-arrest was, in fact, lawful, because the release has been revoked and Petitioner has already have been deprived of his liberty interest. *See* 8 C.F.R. § 236.1(c)(9).

By contrast, the procedure Petitioner seeks—a hearing in front of a neutral adjudicator at which the government must prove 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 Petitioner's re-incarceration is warranted.

* * *

As the above-cited authorities show, Petitioner is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to any* re-arresty and 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. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief

Petitioner 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).[6]

Petitioner has been out of ICE custody for over two years. During that time, he has worked

[6] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed June 27, 2025).

hard to establish a stable life for himself, his wife, and his minor children, all of whom are seeking asylum in the United States. Sinodis Decl. Petitioner works as a truck driver to provide for his family. *Id.* at Ex. E. If he were incarcerated, he would likely lose his job, as he could not work from detention. Detention would irreparably harm not only Petitioner, but also his wife and minor children, who rely on Petitioner for financial support, care, and emotional and psychological support. *Id.*

Finally, as detailed *supra*, Petitioner 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 Petitioner from 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 Petitioner. 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 DHS to refrain from re-arresting Petitioner 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 Petitioner 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 Petitioner 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 revocation of his release is justified by clear and convincing evidence that he is a danger to the community or a flight risk.

Dated: June 28, 2025

Respectfully submitted,

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