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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Guillermo MEDINA REYES,

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. 5:25-cv-05436

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

IMMIGRATION HABEAS
CASE

INTRODUCTION

1. Petitioner-Plaintiff Guillermo Medina Reyes¹ (“Mr. Medina Reyes” or “Petitioner”), by and through his undersigned counsel (“Counsel”), hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief, and accompanying ex parte motion for a temporary restraining order, to prevent Respondents-Defendants, the Department of Homeland Security (“DHS” or “the Department”) and Immigration and Customs Enforcement (“ICE”), from unlawfully re-detaining him at a last-minute scheduled check-in with immigration authorities on July 1, 2025, in violation of the Fifth Amendment to the U.S. Constitution.

2. The DHS previously incarcerated Mr. Medina Reyes for fifteen months—between December 9, 2021 and March 20, 2023—pending resolution of his immigration case. He was incarcerated in McFarland, California at Golden State Annex, an immigration jail operated by private prison contractor GEO Group. At a bond hearing held pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018), *aff’d*, 955 F.3d 762 (9th Cir. 2020), *rev’d*, 596 U.S. 543 (2022), an Immigration Judge (“IJ”) determined Mr. Medina Reyes was neither a flight risk nor a danger and ordered his release from custody on a \$5,000 bond. The only additional condition of release the IJ set was for Mr. Medina Reyes to participate in and complete the Specialized Treatment for Optimized Programming (“STOP”) reentry program, which he has since completed. Upon Mr. Medina Reyes’s release, ICE installed an electronic ankle monitor and enrolled him in the Intensive Supervision Appearance Program (“ISAP”). Since his release in March 2023, Petitioner has remained out of custody and complied with ISAP requirements. Because of his compliance, ICE removed his ankle monitor in September 2023.

3. Over the last two years in which he has lived at liberty, Mr. Medina Reyes has become a powerful community organizer and advocate for justice in the Bay Area and statewide. He is described as a “tireless advocate for immigrant rights” who shows “tremendous leadership” in his efforts to improve the conditions for detainees in ICE-operated facilities. *See* Declaration of

¹ Given the sensitive nature of much of the content of this petition and accompanying exhibits, including substantial personal and medical information, and because of the physical risk to him if his location and facts related to his claims for protection under the Convention Against Torture were known to his persecutors, we request that this Court use only Petitioner’s first name and last initial in any opinions. *See* Privacy Concern Regarding Social Security and Immigration Opinions Memorandum, Comm. On Court Admin. And Case Mgmt. of the Judicial Conf. of the U.S. (May 1, 2018), https://www.uscourts.gov/sites/default/files/18-cv-l-suggestion_cacm_0.pdf.

Victoria Sun (“Sun Decl.”) at Ex. V (Letter from Rev. Deborah Lee), Ex. Z (Letter from Edwin Carmona-Cruz). He also works as a cabinetmaker and a tattoo artist, in addition to completing fellowships with two nonprofit organizations. He has lived with his lawful permanent resident mother and brother in San Jose, and supported his mother through two surgeries over the past year. He has also continued to diligently litigate his withholding-only proceedings. Mr. Medina Reyes currently has an Individual Hearing scheduled for January 31, 2028 before the San Francisco Immigration Court.

4. On Monday June 23, 2025, Mr. Medina Reyes appeared at the San Jose ISAP Office for a regularly-scheduled check-in. There, he was told that his case was being recommended for de-escalated supervision requirements. Then, just three days later, an ISAP Officer told him that he needed to appear again at the San Jose ISAP Office on Tuesday, July 1, 2025 at 8 AM. Undersigned Counsel called Douglas A. Plummer, Supervisory Detention and Deportation Officer (“SDDO Plummer”) of the ICE Enforcement and Removal Operations (“ERO”) San Jose Sub-Office of the San Francisco Field Office. SDDO Plummer informed undersigned Counsel that ICE will detain Mr. Medina Reyes at the appointment.

5. Mr. Medina Reyes now faces the prospect of ICE unilaterally stripping him of his liberty, tearing him away from his family and community, and keeping him detained under mandatory detention without a bond hearing for the foreseeable future. He also faces the very real possibility of being transferred outside of Northern California with little or no notice, far away from his family and community.

6. As a result of trauma suffered in childhood and adolescence, Mr. Medina Reyes lives with a number of mental health conditions. *See* Sun Decl. at Ex. K (Letter from Dr. Luis A. Pérez Ramírez, Psy.D., MCSP). A return to immigration detention would have a profoundly destabilizing effect on his mental health, and may lead to decompensation and the emergence of psychotic features, dissociative episodes, and cognitive impairment. *Id.* It would place him at high risk of psychological harm and compromise his capacity to function in daily life. *Id.* The stakes of this case could not be higher for Mr. Medina Reyes.

7. It is well established that Mr. Medina Reyes has a vested liberty interest in his freedom,

1 and the Fifth Amendment's Due Process Clause requires certain procedural protections be
2 afforded to him prior to any re-detention. At a minimum, due process requires that he receive
3 notice and a hearing before a neutral adjudicator *prior* to the deprivation of his liberty.

4 CUSTODY

5 8. Mr. Medina Reyes was released from immigration custody on a \$5,000 bond set by an IJ.
6 Due to additional conditions of release set by ICE, he is also participating in ISAP, an
7 "alternatives to detention" monitoring program for immigrants in removal proceedings. The
8 program is operated by a private contractor, BI Incorporated. Pursuant to his contract with ISAP,
9 among other restrictions, Mr. Medina Reyes is subject to in-person check-ins like the
10 appointments scheduled for June 23, 2025 and July 1, 2025 at the San Jose ISAP office, as well
11 as weekly requirements to share his location and photo and virtual check-ins where he is required
12 to be at home all day. Such stringent requirements "impose[] conditions which significantly
13 confine and restrain his freedom; this is enough to keep him in the 'custody' of [the DHS] within
14 the meaning of the habeas corpus statute." *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See*
15 *also Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (9th Cir. 2010) (holding that comparable
16 supervision requirements constitute "custody" sufficient to support habeas jurisdiction).

17 JURISDICTION

18 9. This action arises under the Constitution of the United States, the INA, 8 USC Section
19 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 USC Section 500 *et seq.*

20 10. Jurisdiction is proper under 28 U.S.C. Section 1331 (federal question), 28 U.S.C. Section
21 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus), 28 U.S.C.
22 Sections 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of Article 1 of the
23 U.S. Constitution. The United States has waived its sovereign immunity pursuant to 5 U.S.C.
24 Section 702.

25 11. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. Sections
26 2241, 1651, 2201-02, and 5 U.S.C. Section 702. This Court also has broad equitable powers to
27 grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir.
28 2020).

1 **REQUIREMENTS OF 28 U.S.C. § 2243**

2 12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
3 (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
4 If an OSC is issued, the Court must require Respondents to file a return “within *three days* unless
5 for good cause additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis added).

6 13. Courts have long recognized the significance of the habeas statute in protecting
7 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
8 important writ known to the constitutional law of England, affording as it does a *swift* and
9 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
10 400 (1963) (emphasis added).

11 14. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs courts
12 to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
13 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
14 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
15 more concerned with efficient trial management than with the vindication of constitutional
16 rights.” *Id.*

17 **VENUE**

18 15. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
19 Respondents are employees or officers of the United States, acting in their official capacity;
20 because a substantial part of the events or omissions giving rise to the claim occurred in the
21 Northern District of California; because Mr. Medina Reyes is under the jurisdiction of the San
22 Jose Sub-Office of the San Francisco ICE Field Office, which is in the jurisdiction of the Northern
23 District of California; and because there is no real property involved in this action.

24 **INTRADISTRICT ASSIGNMENT**

25 16. The decision to re-arrest and re-incarcerate Mr. Medina Reyes is being made by the San
26 Jose Sub-Office of the San Francisco Field Office of ICE. Moreover, he is subject to an ISAP
27 program operated out of San Jose, California, which is under the jurisdiction of the San Francisco
28 Field Office. Therefore, the assignment to the San Jose Division of this Court is proper under

1 N.D. Local Rule 3-2(d).

2 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

3 17. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
4 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
5 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
6 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
7 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
8 quotation marks omitted)). Mr. Medina Reyes asserts that exhaustion should be waived because
9 administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

10 18. No statutory exhaustion requirements apply to Mr. Medina Reyes’s claim of unlawful
11 custody in violation of his due process rights, and there are no administrative remedies that he
12 needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th
13 Cir. 1995) (finding exhaustion to be a “futile exercise because the agency does not have
14 jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098,
15 1099 (C.D. Cal. 2000) (same).

16 **PARTIES**

17 19. Petitioner Guillermo MEDINA REYES was born in Mexico and has lived in the United
18 States since 2000 or 2001, when he was approximately six years old.

19 20. Respondent Polly KAISER is the Acting Field Office Director of ICE, in San Francisco,
20 California and is named in her official capacity. ICE is the component of the DHS that is
21 responsible for detaining and removing noncitizens according to immigration law and oversees
22 custody determinations. In her official capacity, she is the legal custodian of Mr. Medina Reyes.

23 21. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
24 capacity. Among other things, ICE is responsible for the administration and enforcement of the
25 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
26 he is the legal custodian of Mr. Medina Reyes.

27 22. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.
28 DHS is the federal agency encompassing ICE, which is responsible for the administration and

1 groups relating to victim's impact, group therapy, anger management, trauma recovery, Bible
2 studies, and more. *Id.*

3 **Mr. Medina Reyes's Detention, Bond Hearing, and Release**

4 27. On December 9, 2021, Mr. Medina Reyes was arrested by ICE upon his release from
5 prison. *Id.* ¶ 8. ICE incarcerated him in McFarland, California at Golden State Annex, an
6 immigration jail operated by private prison contractor GEO Group. *Id.* On December 9, 2021,
7 ICE determined that he would remain detained as a "threat to public safety." *Id.* On December
8 28, 2021, ICE issued a Final Administrative Removal Order pursuant to 8 U.S.C. § 1231(a)(6),
9 finding that he was deportable due to an aggravated felony conviction. *Id.*

10 28. On January 24, 2022, the Asylum Office conducted a reasonable fear interview ("RFI")
11 of Mr. Medina Reyes. *Id.* ¶ 9. The Asylum Office found that he had not established reasonable
12 fear. *Id.* On February 10, 2022, after taking testimony from Mr. Medina Reyes regarding his fears
13 of return to Mexico, an Immigration Judge ("IJ") vacated the negative reasonable fear finding and
14 placed Mr. Medina Reyes in withholding-only proceedings. *Id.*

15 29. On March 30, 2022, Mr. Medina Reyes filed with the immigration court his Form I-589,
16 Application for Asylum and Withholding of Removal, seeking protection under the Convention
17 Against Torture ("CAT"). *Id.* ¶ 10. At Individual Hearings on May 25, 2022 and July 6, 2022, the
18 IJ took testimony from Mr. Medina Reyes and his witnesses. *Id.*

19 30. Because he has a final administrative removal order, Mr. Medina Reyes was subject to
20 mandatory detention and was not entitled to a custody redetermination hearing before an IJ. *See*
21 8 U.S.C. § 1231(a)(6). However, in June 2022, the immigration court scheduled Mr. Medina
22 Reyes for a custody redetermination hearing pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D.
23 616 (N.D. Cal. 2018), *aff'd*, 955 F.3d 762 (9th Cir. 2020), *rev'd*, 596 U.S. 543 (2022) (holding
24 that all individuals detained pursuant to 8 U.S.C. § 1231(a)(6) are entitled to a bond hearing after
25 six months of detention.) The IJ denied Mr. Medina Reyes's release on bond. Sun Decl. ¶ 11.

26 31. On September 2, 2022, the IJ issued a written decision in Respondent's case denying
27 protection under the CAT. *Id.* ¶ 12. On September 26, 2022, Mr. Medina Reyes filed his appeal
28 with the Board of Immigration Appeals ("BIA"). *Id.* On January 20, 2023, the BIA affirmed the

1 IJ's decision. *Id.* On January 20, 2023, Mr. Medina Reyes filed a timely Petition for Review with
2 the Ninth Circuit. *See* Petition for Review, *Medina-Reyes v. Garland*, No. 23-108 (9th Cir. Apr.
3 6, 2023).

4 32. On October 13, 2022, ICE issued Mr. Medina Reyes a decision to continue his detention.
5 Sun Decl. ¶ 13.

6 33. On February 28, 2023, Mr. Medina Reyes filed a custody redetermination motion with the
7 IJ, arguing a material change in circumstances, his admission into an intensive re-entry program,
8 Successful Treatment for Optimized Programming ("STOP"), rendered him eligible for a new
9 hearing. *Id.* ¶ 14. The IJ granted the motion and scheduled a hearing for March 14, 2023. *Id.*

10 34. On March 1, 2023, Mr. Medina Reyes filed a release request with ICE based on his status
11 as a witness and plaintiff in two civil rights lawsuits. *Id.* ¶ 15. ICE later denied release. *Id.*

12 35. On March 3, 2023, ICE and Mr. Medina Reyes filed a Joint Motion to Reopen and Remand
13 at the BIA based on ICE's disclosure of Mr. Medina Reyes's personally identifiable information
14 on ICE's public website. *Id.* ¶ 16.

15 36. On March 14, 2023, an IJ granted Mr. Medina Reyes's release from custody on bond in
16 the amount of \$5,000 after determining that he was neither a flight risk nor a danger to the
17 community. Sun Decl. at Ex. A (IJ Bond Order). Aside from bond, the only condition the IJ
18 imposed on Mr. Medina Reyes's release was that he participate in and complete the STOP
19 program. *See id.* During the hearing, the IJ specifically discussed the possibility of ordering
20 "alternatives to detention" conditions of release (typically GPS monitoring and check-in reporting
21 requirements), and declined to do so. Sun Decl. ¶ 17. On March 20, 2023, Mr. Medina Reyes
22 posted bond, but before being released, ICE nonetheless installed an ankle monitor on him and
23 enrolled him into ISAP. *Id.* ¶ 18. In September 2023, because Mr. Medina Reyes complied with
24 all conditions of release, ICE removed his ankle monitor. *Id.*

25 **Mr. Medina Reyes's Community Organizing and Civil Rights Lawsuits While Detained**

26 37. While incarcerated by ICE at Golden State Annex ("GSA"), Mr. Medina Reyes became
27 an organizer and activist, exercising his First Amendment rights to peacefully protest, for which
28 he suffered retaliation from detention officials.

38. In 2022, in response to unsafe and unhealthy working conditions at GSA, he co-organized a labor strike. *Id.* ¶ 19. The labor strike, which lasted for approximately 11 months, protested unsanitary and unsafe working conditions at GSA and Mesa Verde ICE Processing Center (“Mesa Verde”), and wages of only \$1 a day as part of the “Voluntary Work Program.” *Id.* In July 2022, Mr. Medina Reyes, along with other incarcerated individuals at GSA and Mesa Verde, filed a civil rights lawsuit against GEO Group, suing to stop labor violations, including minimum wage violations and forced labor. *See* Second Amended Complaint at 26-28, *Hernandez Gomez v. GEO Group*, No. 1:22-cv-00868-KES-CDB (E.D. Cal. Dec. 23, 2022).

39. Mr. Medina Reyes faced retaliation from GEO Group officers due to his participation in the labor strike. Sun Decl. ¶ 21. Officers placed him in solitary confinement without access to a phone or tablet to communicate with his attorney simply because he refused to provide cleaning labor. *Id.* Officers made retaliatory comments and singled him out for searches of his belongings and left his belongings in disarray afterwards. *Id.*

40. In February 2023, Mr. Medina Reyes co-organized a hunger strike involving more than 80 individuals incarcerated at GSA and at Mesa Verde, demanding the immediate release of all individuals incarcerated at the jails and the shutdown of both jails. *Id.* ¶ 22. The hunger strike lasted for approximately 35 days. *Id.* Mr. Medina Reyes suffered retaliation as a result of his participation in the hunger strike. *Id.* On February 23, 2023, Mr. Medina Reyes, along with other plaintiffs, filed a civil rights class action lawsuit against ICE and GEO Group, arguing that retaliation against the strikers violated their right to peacefully speak out against mistreatment and violated their right to petition the government for redress of their grievances. *See* First Amended Complaint, *Mendez v. ICE*, No. 3:23-cv-00829-TLT (N.D. Cal. Mar. 10, 2023).

Mr. Medina Reyes’s Life After Release from Custody

41. On March 29, 2023, the BIA granted the Joint Motion to Reopen, reopened proceedings, and remanded to the IJ for further proceedings. Sun Decl. ¶ 23. On May 9, 2023, the IJ granted Mr. Medina Reyes’s Motion to Change Venue to the San Francisco Immigration Court. *Id.* Mr. Medina Reyes is currently scheduled for an Individual Hearing before the San Francisco Immigration Court on January 31, 2028. Sun Decl. at Ex. C (Hearing Notice).

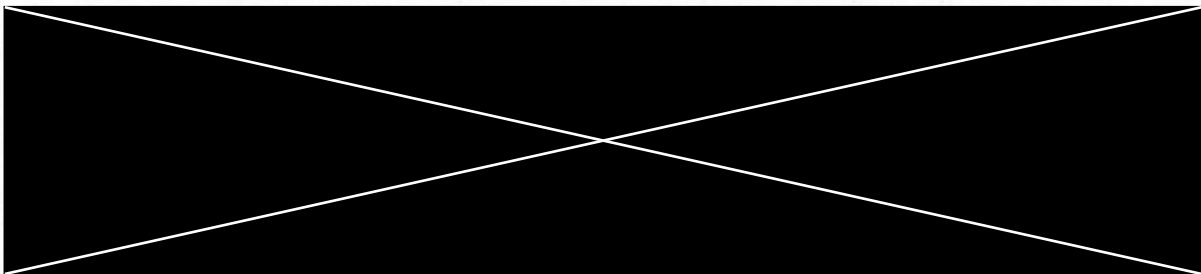
42. Since his release from ICE detention in March 2023, Mr. Medina Reyes has continued to focus on his rehabilitation and giving back to his community. He completed the STOP program, the only condition of release the IJ ordered apart from bond. *See* Sun Decl. ¶ 24; Sun Decl. at Ex. G (Proof of Participation in STOP). He also completed and was discharged from parole in December 2023 without any violations. Sun Decl. ¶ 24; Sun Decl. at Ex. H (Parole Discharge Certificate). He has lived in San Jose with his mother and brother, who are lawful permanent residents. Sun Decl. at Ex. R (Letter from Bertha Reyes de Dios); Ex. S (Letter from Pablo Ramirez Reyes). He has supported his mother through multiple surgeries over the past year. Sun Decl. at Ex. R. He has maintained steady employment as a cabinetmaker with Jones Custom Cabinets, in addition to fellowships at Pangea Legal Services and the Asian Prisoner Support Committee (“APSC”). Sun Decl. at Ex. T (Letter from Elaine McGovern Jones); Ex. U (Letter from Rick Jones); Ex. AA (Letter from Esperanza Cuatle Velasquez); Ex. CCC (APSC Certificate). He is also a tattoo artist who has built his own business. *See e.g.* Sun Decl. at Ex. R.

43. Mr. Medina Reyes has also become a well-recognized leader in the immigrants’ rights movement in California. He is described as a “tireless advocate for immigrant rights” who shows “tremendous leadership” in his efforts to improve the conditions for detainees in ICE-operated facilities. *Id.* at Ex. V (Rev. Lee Letter); Ex. Z (Letter from Edwin Carmona-Cruz). He has volunteered as a community advocate with Pangea Legal Services, Interfaith Movement for Human Integrity (IM4HI), Silicon Valley DeBug, Asian Prisoner Support Committee, SIREN (Services, Immigrant Rights and Education Network), Amigos de Guadalupe, and the California Collaborative for Immigrant Justice. *Id.* at Exs. V-CC (Letters of Support). He has delivered speeches across the state, including in Sacramento to advocate for the California Mandela Act, which would limit the use of solitary confinement across the state. *Id.* at Ex. WW (Letter from Lisa Knox).

44. On May 13, 2023, Mr. Medina Reyes was a panelist for the national conference of the Labor and Community for an Independent Party (LCIP). *Id.* at Ex. CCC. In 2023 and 2024, he participated in pilgrimages to end immigration detention with IM4HI. *Id.* In 2023 and 2024, he participated in a 40-mile walk, over three days, from San Jose, CA to San Francisco City Hall to

1 call on members of Congress to update the Registry Bill. *Id.* at Ex. O (Letter from Councilmember
2 Peter Ortiz). From January 2024 to approximately June 2024, Mr. Medina Reyes was a
3 Community Impact Fellow at the Asian Prisoner Support Committee in Oakland, California. *Id.*
4 at Ex. Y (Letter from Ber-Mar San Diego), Ex. CCC (APSC Certificate). In October 2024, he was
5 a speaker on the “Challenging Immigration Detention” panel at the biennial Prison Law and
6 Advocacy Conference. *Id.* at Ex. CCC. During the 2024-2025 academic year, Mr. Medina Reyes
7 participated in the year-long California Youth Leadership Corps (CYLC) program at the
8 Vasconcellos Institute for Democracy in Action at De Anza College in Cupertino, California. *Id.*
9 at Ex. EE (Letter from Cynthia Kaufman), Ex. CCC (Certificates). As part of this program, he has
10 taken courses and been a community organizing fellow at Pangea Legal Services. *Id.* In January
11 2025, Mr. Medina Reyes was a featured tattoo artist who donated his skills and time for a
12 community of formerly incarcerated women who received matching freedom tattoos to signify
13 their commitment to end mass incarceration in women’s prisons. *Id.* at Ex. II (Letter from
14 Elizabeth Nomura). In February 2025, Mr. Medina Reyes was a speaker at a fundraiser for IM4HI,
15 describing how participating in the pilgrimages has supported his ongoing transformation. Sun
16 Decl. ¶ 25. In March 2025, Mr. Medina Reyes was invited as a featured artist at the Freedom
17 Braiders Conference. *Id.* In April 2025, Mr. Medina Reyes was a featured artist at the IM4HI
18 Sanctuary Art Exhibit. Sun Decl. at Ex. M (Photos), Ex. CCC (IM4HI Instagram Post).

19 45. Though he is able to help and advocate for others, Mr. Medina Reyes continues to manage
20 his own mental health issues. Mr. Medina Reyes received mental health treatment for the first
21 time in late 2022. Sun Decl. ¶ 26. Since his release on bond, he received mental health treatment
22 including counseling and psychiatric medication at Healing Grove Health Center in San Jose. *Id.*;
23 Sun Decl. at Ex. L (Letter from Dr. Angela Bymaster).



1 He is currently seeking evaluation and placement in more intensive mental health treatment at
2 Narvaez Behavior Health Clinic in San Jose. *Id.* ¶ 27.

3 46. On May 14, 2025, he was arrested in Morgan Hill, California, and booked for alleged
4 robbery and vandalism. *Id.* ¶ 28. He was released the next day and no charges have been filed.
5 *Id.*; Sun Decl. at Ex. I (Public Defender Letter and No Complaints Found Notice). On or around
6 May 29, 2025, ISAP Officer Christopher Rubio (“Mr. Rubio”) called Mr. Medina Reyes and
7 questioned him about the May 14, 2025 arrest. *Id.* ¶ 28.

8 47. On Monday, June 23, 2025, Mr. Medina Reyes attended an in-person check-in with ISAP
9 in San Jose, California, accompanied by Counsel. *Id.* ¶ 29. Mr. Rubio asked whether Mr. Medina
10 Reyes had a copy of the police report from the May 14, 2025 arrest. *Id.* Counsel stated that she
11 had been unable to obtain a copy of the police report, but that no charges had been filed against
12 Mr. Medina Reyes. *Id.* Mr. Rubio said that because Mr. Medina Reyes’s Individual Hearing had
13 been postponed to 2028, he would request de-escalation of supervision for Mr. Medina Reyes. *Id.*

14 **ICE’s Plans to Re-Arrest Mr. Medina Reyes on July 1, 2025**

15 48. However, only three days later, on Thursday, June 26, 2025, around 12:45 p.m., Mr. Rubio
16 called Mr. Medina Reyes and told him that he needed to appear at the San Jose ISAP Office on
17 Tuesday, July 1, 2025 at 8 AM for a “case review.” *Id.* ¶ 30; *see also* Sun Decl. at Ex. D (ISAP
18 Appointment Screenshot). Mr. Medina Reyes promptly informed Counsel, who called the San
19 Jose ICE Sub-Office to seek clarification as to the purpose of the ISAP appointment. *Id.* ¶ 30.
20 Counsel faxed in her Form G-28, Notice of Entry of Appearance. *Id.* The office told Counsel that
21 someone would call back. *Id.* At 3:44 p.m., Douglas A. Plummer, Supervisory Detention and
22 Deportation Officer (“SDDO Plummer”) of the ICE Enforcement and Removal Operations
23 (“ERO”) San Jose Sub-Office of the San Francisco Field Office emailed Counsel that he had
24 called Counsel, who did not answer, and that Counsel could call him to discuss the case. *Id.*

25 49. Around 3:52 p.m., Counsel called SDDO Plummer. *Id.* ¶ 31. At first he told Counsel that
26 the purpose of the appointment was to discuss Mr. Medina Reyes’s release conditions. *Id.*
27 However, when Counsel asked SDDO Plummer directly whether his office was planning on
28 detaining Mr. Medina Reyes, SDDO Plummer responded yes. *Id.*

1 50. ICE plans to arrest and incarcerate Mr. Medina Reyes at this appointment on July 1, 2025,
 2 despite the fact that an IJ ordered his release. Mr. Medina Reyes now faces the prospect of ICE
 3 unilaterally stripping him of his liberty, tearing him away from his family and community, and
 4 keeping him detained under mandatory detention with no opportunity for a neutral adjudicator to
 5 review his case. *See id.* ¶ 32. He also faces the very real possibility of being transferred outside
 6 of Northern California with little or no notice, far away from his family and community, or even
 7 being unlawfully deported to Mexico, a country where he fears torture and death. *See id.* ¶ 33.

8 51. Re-detention will likely have a “profoundly destabilizing effect” on Mr. Medina Reyes’s
 9 mental health and cause significant psychological harm. Sun Decl. at Ex. K (Dr. Perez Ramirez
 10 Letter). [REDACTED]

11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 52. Intervention from this Court is therefore required to ensure that Mr. Medina Reyes is not
 15 unlawfully re-arrested and re-incarcerated and subjected to irreparable harm without the process
 16 due to him.

17 LEGAL BACKGROUND

18 **Mr. Medina Reyes Has a Constitutional Right to a Pre-Deprivation Hearing**

19 53. In Mr. Medina Reyes’s particular circumstances, the Due Process Clause of the
 20 Constitution makes it unlawful for Respondents to re-arrest him without first providing a pre-
 21 deprivation hearing before a neutral decisionmaker to determine, first, whether there has been a
 22 material change in circumstances since his release on bond in March 2023, and second, assuming
 23 there is a material change, whether the government can show by clear and convincing evidence
 24 that detention would now be warranted on the basis that he is a danger or a flight risk.

25 54. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s
 26 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
 27 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
 28 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.* 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.”).

55. 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 only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

56. There has been no material change in circumstances in Mr. Medina Reyes’ case. Although he was arrested, he was released the next day and no charges have been filed. Sun Decl. ¶ 28; Ex. I (Public Defender Letter). An arrest, without more, does not undermine the IJ’s finding that Mr. Medina Reyes is not a danger to society—after all, even the criminal authorities chose to release him.

57. Furthermore, 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 materially changed circumstances—is insufficient to protect Mr. Medina Reyes’s weighty interest in his freedom from detention.

58. 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. Medina Reyes, *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);

1 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020)
 2 (granting a preliminary injunction for Petitioner to be provided with a pre-deprivation hearing
 3 prior to re-arrest by Respondents, even though he was facing a new criminal charge after release);
 4 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1,
 5 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6,
 6 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing
 7 before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
 8 *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's
 9 ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-
 10 cv-05070-JSC, 2025 U.S. Dist. LEXIS 113570, at *6 (N.D. Cal. Jun. 14, 2025) (granting
 11 temporary restraining order enjoining Respondents from re-detaining Petitioner without notice
 12 and a hearing); *Diaz v. Kaiser*, 3:25-cv-05071, 2025 U.S. Dist. LEXIS 113566, at *10 (N.D. Cal.
 13 Jun. 14, 2025) (granting temporary restraining order and finding that a pre-detention hearing
 14 would prevent against the risk of erroneous deprivation). *See also Doe v. Becerra*, No. 2:25-cv-
 15 00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution
 16 requires a hearing before any re-arrest).

17 **Mr. Medina Reyes's Protected Liberty Interest in His Conditional Release**

18 59. "Freedom from imprisonment—from government custody, detention, or other forms of
 19 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."
 20 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Since March 2023, Mr. Medina Reyes exercised
 21 that freedom under the IJ's March 14, 2023 order granting him release on a \$5,000 bond. Sun
 22 Decl. at Ex. A (IJ Bond Order). Although he was released on bond (and thus under government
 23 custody, as further demonstrated by his enrollment in ISAP), he retains a weighty liberty interest
 24 under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v.*
 25 *Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973);
 26 *Morrissey v. Brewer*, 408 U.S. 471, 482-83 (1972); *see also Ortega v. Bonnar*, 415 F.Supp.3d
 27 963, 969-70 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in
 28 remaining out of custody following an IJ's bond determination).

60. 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 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.

61. 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).

62. 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

1 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
2 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
3 (internal quotation marks and citation omitted).

4 63. Here, when this Court “compar[es] the specific conditional release in [Mr. Medina
5 Reyes’s case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear that
6 they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr.
7 Medina Reyes’s release “enables him to do a wide range of things open to persons” who have
8 never been in custody or convicted of any crime, including to live at home, work, care for his
9 ailing mother, continue his involvement in community organizing, speak at rallies and panels,
10 receive community-based mental health treatment, and “be with family and friends and to form
11 the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

12 64. Furthermore, in this case, a return to detention would have a profoundly destabilizing
13 effect on the Petitioner’s mental health. *See Sun Decl. at Ex. K (Dr. Pérez Ramírez Letter)*. Re-
14 detention will deprive him of the community-based mental health treatment he has accessed since
15 his release. *See id.* [REDACTED]

16 [REDACTED] It would
17 place Mr. Medina Reyes at high risk of psychological harm and compromise his capacity to
18 function in daily life. *Id.* He thus has a particularly strong interest in his continued liberty, and is
19 entitled to constitutional due process before he is re-incarcerated.

20 **Mr. Medina Reyes’s Liberty Interest Mandates a Hearing *Before* any Re-Arrest and**
21 **Revocation of Bond**

22 65. Mr. Medina Reyes asserts that due process mandates that he receive notice and a hearing
23 before a neutral adjudicator *prior* to any re-arrest or revocation of a bond.

24 66. “Adequate, or due, process depends upon the nature of the interest affected. The more
25 important the interest and the greater the effect of its impairment, the greater the procedural
26 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
27 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
28 “balance [Mr. Medina Reyes’s] liberty interest against the [government’s] interest in the efficient

1 administration of” its immigration laws in order to determine what process he is owed to ensure
2 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
3 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
4 “first, the private interest that will be affected by the official action; second, the risk of an
5 erroneous deprivation of such interest through the procedures used, and the probative value, if
6 any, of additional or substitute procedural safeguards; and finally the government’s interest,
7 including the function involved and the fiscal and administrative burdens that the additional or
8 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
9 *Eldridge*, 424 U.S. 319, 335 (1976)).

10 67. The Supreme Court “usually has held that the Constitution requires some kind of a hearing
11 before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
12 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
13 only remedies the State could be expected to provide” can post-deprivation process satisfy the
14 requirements of due process. *Zinerman*, 494 U.S. at 985.

15 68. Because, in this case, the provision of a pre-deprivation hearing is both possible and
16 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Medina
17 Reyes with notice and a hearing prior to any re-incarceration and revocation of his bond. *See*
18 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*,
19 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
20 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
21 proceedings may not constitutionally be held in jail pending the determination as to whether they
22 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Mr.
23 Medina Reyes’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

24 **Mr. Medina Reyes’s Private Interest in His Liberty is Profound**

25 69. Under *Morrissey* and its progeny, individuals conditionally released from serving a
26 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
27 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
28 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to

1 constitutional due process before he is re-incarcerated—apply with even greater force to
2 individuals like Mr. Medina Reyes, who have been released pending civil removal proceedings,
3 because “his liberty interest is arguably greater than the interest of the parolees in Morrissey.”
4 *See Ortega v. Bonnar*, 415 F.Supp.3d at 970. Nonetheless, even in the criminal parolee context,
5 the courts have held that the parolee cannot be re-arrested without a due process hearing in which
6 they can raise any claims they may have regarding why their re-incarceration would be unlawful.
7 *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Medina Reyes
8 retains a truly weighty liberty interest even though he is under conditional release.

9 70. What is at stake in this case for Mr. Medina Reyes is one of the most profound individual
10 interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond
11 decision and be able to take away his physical freedom, i.e., his “constitutionally protected interest
12 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal
13 quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty
14 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also*
15 *Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention,
16 or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
17 protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

21 **The Government’s Interest in Re-Incarcerating Mr. Medina Reyes Without a Hearing is**
22 **Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and**
23 **Until He is Provided a Hearing That Comports with Due Process is Minimal**

24 72. The government’s interest in detaining Mr. Medina Reyes without a due process hearing
25 is low, and when weighed against Mr. Medina Reyes’s significant private interest in his liberty,
26 the scale tips sharply in favor of enjoining Respondents from re-arresting Mr. Medina Reyes
27 unless and until the government demonstrates by clear and convincing evidence that he is a flight
28 risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr.
Medina Reyes when the Court considers that the process he seeks—notice and a hearing regarding

whether his bond should be revoked—is a standard course of action for the government. Providing Mr. Medina Reyes with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Mr. Medina Reyes 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. Medina Reyes.

73. In March 2023, an IJ found that Mr. Medina Reyes was not a danger to the community nor a flight risk. Sun Decl. at Ex. A (IJ Bond Order). That determination still stands. In fact, ICE decided to remove his ankle monitor in September 2023, given his full compliance with the terms and conditions of his release. *Id.* ¶ 18. Mr. Medina Reyes’s 2025 arrest does not undermine the IJ’s finding, given that he was promptly released and no charges have been filed.

74. As to flight risk, an IJ determined that a bond of \$5,000 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. Medina Reyes has a meritorious application for relief from removal and eagerly awaits the opportunity to present his case before the Immigration Court. Sun Decl. ¶¶ 10, 23. 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 March 2023, as he has appeared at all scheduled court dates and check-ins. *Id.* ¶ 18; *see also* Sun Decl. at Ex. E (ISAP Compliance Letter); Ex. F (ICE Compliance Letter). The government’s interest in detaining Mr. Medina Reyes 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.²

75. 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. Medina Reyes

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.”).

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

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

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

20 **Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous**
21 **Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant**
22 **Hearing Where ICE Carries the Burden Would Decrease That Risk**

23 78. Providing Mr. Medina Reyes a pre-deprivation hearing would decrease the risk of him
24 being erroneously deprived of his liberty. Before Mr. Medina Reyes can be lawfully detained, he
25 must be provided with a hearing before a neutral adjudicator at which the government is held to
26 show that there has been materially changed circumstances such that the IJ’s March 2023 bond
27 determination should be altered or revoked because clear and convincing evidence exists to
28 establish that Mr. Medina Reyes is a danger to the community or a flight risk.

79. Under ICE’s process for custody determination—which affords Mr. Medina Reyes no

process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Medina Reyes 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), an arrest of Mr. Medina Reyes 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. Medina Reyes without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9). However, ICE repeatedly denied Mr. Medina Reyes release on bond when he was previously incarcerated. *See* Sun Decl. ¶¶ 8, 13, 15.

80. Mr. Medina Reyes’s detention will be governed by 8 U.S.C. § 1231(a)(6) because he has a final administrative order of removal pursuant to 8 U.S.C. § 1228(b). Noncitizens detained under 8 U.S.C. § 1231(a)(6) are subject to mandatory detention and are not be eligible for an individualized bond hearing before an IJ.³ Therefore, revocation of Mr. Medina Reyes’s bond would evade *any* review by an IJ or any other neutral arbiter.

81. The procedure Mr. Medina Reyes 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

³ Noncitizens detained in the Ninth Circuit under 8 U.S.C. § 1231(a)(6) are currently eligible for prolonged detention bond hearings after six months of detention *See Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018)³, *aff’d*, 955 F.3d 762 (9th Cir. 2020), *rev’d*, 596 U.S. 543 (2022). However, the preliminary injunction was reversed and remanded by the U.S. Supreme Court, and then remanded by the Ninth Circuit to the District Court. *Tejada v. Godfrey*, No. 18-35460, 2023 U.S. App. LEXIS 10790 (9th Cir. Apr. 25, 2023). This injunction is currently still in place but is expected to be lifted in the near future. *See Aleman Gonzalez v. Whitaker*, No. 3:18-cv-01869 (N.D. Cal. May 27, 2025) (order continuing case management conference to August 20, 2025).

1 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
2 a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
3 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

10 **FIRST CAUSE OF ACTION**

11 **Procedural Due Process**

12 **U.S. Const. amend. V**

13 83. Mr. Medina Reyes re-alleges and incorporates herein by reference, as is set forth fully
14 herein, the allegations in all the preceding paragraphs.

15 84. The Due Process Clause of the Fifth Amendment forbids the government from depriving
16 any “person” of liberty “without due process of law.” U.S. Const. amend. V.

17 85. Mr. Medina Reyes has a vested liberty interest in his current conditional release. Due
18 Process does not permit the government to strip him of that liberty without a hearing before this
19 Court. *See Morrissey*, 408 U.S. at 487-488.

20 86. The Court must therefore order that, prior to any re-arrest, the government must provide
21 Mr. Medina Reyes with a hearing before a neutral adjudicator, who will decide first whether the
22 government has shown by clear and convincing evidence that there has been a material change in
23 circumstances since Mr. Medina Reyes release, and second, assuming there is a material change,
24 whether the government can show by clear and convincing evidence that Mr. Medina is a danger
25 or a flight risk to warrant an alteration of his current custody status. *See Sugay*, 17 I&N Dec. at
26 640; *Ortega*, 415 F.Supp.3d at 969-70. During any custody redetermination hearing that occurs,
27 this Court or, in the alternative, a neutral adjudicator, must consider alternatives to detention when
28 determining whether Mr. Medina Reyes’s re-incarceration is warranted.

SECOND CAUSE OF ACTION

Substantive Due Process

U.S. Const. amend. V

87. Mr. Medina Reyes re-alleges and incorporates herein by reference, as is set forth fully herein, the allegations in all the preceding paragraphs.

88. The Due Process Clause of the Fifth Amendment forbids the government from depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend. V.

89. Mr. Medina Reyes has a vested liberty interest in his conditional release. Due Process does not permit the government to strip him of that liberty without it being tethered to one of the two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the community from danger.

90. Since March 2023, Mr. Medina Reyes has fully complied with his release conditions ordered by the IJ and the additional conditions of release imposed on him by ICE, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting him now—while he is a beloved civil rights activist in the Bay Area and statewide, as well as a loving son of his lawful permanent resident, disabled mother—would be punitive and violate his constitutional right to be free from the unjustified deprivation of his liberty.

91. For these reasons, Mr. Medina Reyes's re-arrest without first being provided a hearing would violate the Constitution.

PRAYER FOR RELIEF

WHEREFORE, the Mr. Medina Reyes prays that this Court grant the following relief:

- (1) Exercise jurisdiction over this matter;
- (2) Enjoin Respondents from re-arresting Mr. Medina Reyes, unless and until a hearing can be held before a neutral adjudicator to determine whether his re-detention would be lawful because the government has shown, by clear and convincing evidence, that there has been a material change in circumstances and that he is a danger or a flight risk;

- 1 (3) Declare that Mr. Medina Reyes cannot be re-arrested unless and until he is afforded a
2 hearing before a neutral adjudicator on the question of whether his re-detention would be
3 lawful—i.e., whether the government has shown, by clear and convincing evidence, that
4 there has been a material change in circumstances and that he is a danger or a flight risk;
5 (4) Enjoin Respondents from re-detaining Mr. Medina Reyes because any re-detention would
6 violate his substantive due process rights under the Fifth Amendment;
7 (5) Declare that Respondents may not re-detain Mr. Medina Reyes because any re-detention
8 would violate his substantive due process rights under the Fifth Amendment;
9 (6) Award reasonable costs and attorney fees; and
10 (7) Grant such further relief as the Court deems just and proper.
11

12 Dated: June 29, 2025

Respectfully submitted,

13 /s/ Victoria Sun

14 Victoria Sun

PANGEA LEGAL SERVICES

15 *Pro Bono* Attorney for Mr. Medina Reyes
16

17 **VERIFICATION PURSUANT TO 28 U.S.C. 2242**

18 I am submitting this verification on behalf of the Petitioner because I am the Petitioner's
19 attorney. I have discussed with the Petitioner the events described in the Petition. Based on those
20 discussions, I hereby verify that the factual statements made in the attached Petition for Writ of
21 Habeas Corpus are true and correct to the best of my knowledge.

22 Executed on this June 29, 2025, in Oakland, California.

23 /s/ Victoria Sun

24 Victoria Sun

25 *Pro Bono* Attorney for Petitioner
26
27
28