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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

**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

IMMIGRATION HABEAS CASE

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 Guillermo Medina Reyes (“Mr. Medina Reyes” or “Petitioner”) unless and until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether clear and convincing evidence demonstrates that there has been a material change in circumstances and that he is a danger or a flight risk such that his re-incarceration would be justified.

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 Victoria Sun with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order.

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-detention absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

Respondents plan to re-detain Petitioner on Tuesday, July 1, 2025 at 8 AM. Re-detention will result in immediate, irreparable injury, not only to Petitioner, whose mental health would deteriorate significantly, but also to his disabled, lawful permanent resident mother who depends on him.

Absent immediate relief from this Court, Petitioner’s re-arrest and re-incarceration without notice and a hearing on whether such re-detention is justified would violate Petitioner’s right to Due Process.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from re-arresting him unless and until he is afforded a hearing before a neutral decisionmaker on the question of whether his

1 re-detention would be lawful.

2 Dated: June 29, 2025

Respectfully Submitted,

3 /s/ Victoria Sun

4 Victoria Sun

PANGEA LEGAL SERVICES

5 *Pro Bono* Attorney for Mr. Medina Reyes

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1 **I. INTRODUCTION**

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

9 The DHS previously incarcerated Mr. Medina Reyes for fifteen months pending
10 resolution of his immigration case. He was incarcerated in McFarland, California at Golden State
11 Annex, an immigration jail operated by private prison contractor GEO Group. On March 14,
12 2023, at a bond hearing held pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal.
13 2018) , *aff’d*, 955 F.3d 762 (9th Cir. 2020), *rev’d*, 596 U.S. 543 (2022), an Immigration Judge
14 (“IJ”) determined Mr. Medina Reyes was neither a flight risk nor a danger and ordered his release
15 from custody on a \$5,000 bond. The only additional condition of release the IJ set was for Mr.
16 Medina Reyes to participate in and complete the Specialized Treatment for Optimized
17 Programming (“STOP”) reentry program, which he has since completed. Upon Mr. Medina
18 Reyes’s release, ICE installed an electronic ankle monitor and enrolled him in the Intensive
19 Supervision Appearance Program (“ISAP”). Since his release in March 2023, Petitioner has
20 remained out of custody and complied with ISAP requirements. Because of his compliance, ICE
21 removed his ankle monitor in September 2023.

22 Over the last two years in which he has lived at liberty, Mr. Medina Reyes has become a
23 powerful community organizer and civil rights activist in the Bay Area and statewide. He is
24 described as a “tireless advocate for immigrant rights” who shows “tremendous leadership” in his
25 efforts to improve the conditions for detainees in ICE-operated facilities. *See* Declaration of
26 Victoria Sun (“Sun Decl.”) at Ex. V (Letter from Rev. Deborah Lee), Ex. Z (Letter from Edwin
27 Carmona-Cruz). He also works as a cabinetmaker and a tattoo artist, in addition to completing
28 fellowships with two nonprofit organizations. He has lived with his lawful permanent resident

1 mother and brother in San Jose, and supported his mother through two surgeries over the past
 2 year. He has also continued to diligently litigate his withholding-only proceedings. Mr. Medina
 3 Reyes currently has an Individual Hearing scheduled for January 31, 2028 before the San
 4 Francisco Immigration Court.

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

13 In recent months, ICE has engaged in highly publicized arrests of individuals who
 14 presented no flight risk or danger, often with no prior notice that anything regarding their status
 15 was amiss or problematic, whisking them away to faraway detention centers without warning.¹

16 ICE plans to unilaterally strip Mr. Medina Reyes of his liberty on July 1, 2025, tearing
 17 him away from his family and community, and keeping him detained under mandatory detention
 18 with no opportunity for a neutral adjudicator to review his case. *See id.* ¶ 32. He also faces the
 19 very real possibility of being transferred outside of Northern California with little or no notice,
 20 far away from his family and community, or even being unlawfully deported to Mexico, a country
 21 where he fears torture and death. *See id.* ¶ 33.

22 By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
 23 has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a
 24

25 ¹ *See, e.g.,* McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
 26 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
 27 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University
 28 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).

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

That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where Mr. Medina Reyes's detention was *already* found to be unnecessary to serve its purpose. An IJ previously found that he need not be incarcerated to prevent flight or to protect the community, and circumstances have not materially changed that would justify re-arrest.

Therefore, at a minimum, in order to lawfully re-arrest Mr. Medina Reyes, the Government must first establish, by clear and convincing evidence and before a neutral adjudicator, that there has been a material change in circumstances and that he is a danger or a flight risk, such that his re-incarceration is necessary.

Mr. Medina Reyes meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court enjoining the government from arresting him at his ISAP check-in on Tuesday, July 1, 2025 at 8 AM, unless and until he first receives a hearing before a neutral adjudicator, as demanded by the Constitution. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Mr. Medina Reyes's favor.



II. STATEMENT OF FACTS AND CASE

Mr. Medina Reyes is thirty-one years old and lives in San Jose, California. Sun Decl. ¶ 5. He is citizen and national of Mexico who entered the U.S. in approximately 2000 or 2001 at

1 approximately six years old. *Id.* He and his family fled Mexico as a result of severe domestic
2 violence by his stepfather. *Id.* Later, his stepfather found them in the United States and continued
3 to perpetrate domestic violence against Mr. Medina Reyes, his mother, and his siblings. *Id.*
4 Suffering child abuse and witnessing domestic violence against his mother has had a lasting,
5 traumatic impact on Mr. Medina Reyes. *Id.* He developed mental health conditions including

6  See Sun Decl ¶
7 25; Ex. K (Dr. Perez Ramirez Letter).

8 Unfortunately, the neighborhoods Mr. Medina Reyes grew up in in San Jose were also
9 filled with violence. When he was around 11 or 12 years old, he began hanging out with the wrong
10 crowd and associating with a gang. Sun Decl. ¶ 6. When he was 16 years old, he was arrested for
11 the stabbing of a rival gang member. *Id.* He was charged as an adult, convicted of attempted
12 murder, and sentenced to thirteen years in prison. *Id.*

13 Since that time, Mr. Medina Reyes has dedicated himself to rehabilitation. While still in
14 juvenile pretrial detention, he earned his high school diploma with a 3.5 GPA. *Id.* ¶ 7. 
15  and used his time while incarcerated to participate in rehabilitation
16 groups relating to victim's impact, group therapy, anger management, trauma recovery, Bible
17 studies, and more. *Id.*

18 On December 9, 2021, Mr. Medina Reyes was arrested by ICE upon his release from
19 prison. *Id.* ¶ 8. ICE incarcerated him in McFarland, California at Golden State Annex, an
20 immigration jail operated by private prison contractor GEO Group. *Id.* On December 28, 2021,
21 ICE issued a Final Administrative Removal Order pursuant to 8 U.S.C. § 1231(a)(6), finding that
22 he was deportable due to an aggravated felony conviction. *Id.*

23 Mr. Medina Reyes was incarcerated by ICE for a total of fifteen months at Golden State
24 Annex in McFarland, California, where he was subjected to unlawful, unhealthy, and unsafe
25 conditions. While detained, he became an organizer and activist, exercising his First Amendment
26 rights to peacefully protest by organizing labor and hunger strikes, for which he suffered
27 retaliation from detention officials. See Second Amended Complaint at 26-28, *Hernandez Gomez*

1 v. *GEO Group*, No. 1:22-cv-00868-KES-CDB (E.D. Cal. Dec. 23, 2022); First Amended
 2 Complaint, *Mendez v. ICE*, No. 3:23-cv-00829-TLT (N.D. Cal. Mar. 10, 2023)..

3 On March 30, 2022, Mr. Medina Reyes filed with the immigration court his Form I-589,
 4 Application for Asylum and Withholding of Removal, seeking protection under the Convention
 5 Against Torture (“CAT”). Sun Decl. ¶ 10. The Immigration Judge (“IJ”) later denied his
 6 application, and Mr. Medina Reyes filed an appeal with the Board of Immigration Appeals
 7 (“BIA”). *Id.* ¶ 12. On January 20, 2023, the BIA affirmed the IJ’s decision, and Mr. Medina Reyes
 8 filed a Petition for Review of the decision with the Ninth Circuit. *Id.*; Petition for Review, *Medina-*
 9 *Reyes v. Garland*, No. 23-108 (9th Cir. Apr. 6, 2023).

10 Because he has a final administrative removal order pursuant to 8 U.S.C. § 1228(b), Mr.
 11 Medina Reyes was subject to mandatory detention and was not entitled to a custody
 12 redetermination hearing before an IJ. *See* 8 U.S.C. § 1231(a)(6). However, in June 2022, the
 13 immigration court scheduled Mr. Medina Reyes for a custody redetermination hearing pursuant
 14 to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018), *aff’d*, 955 F.3d 762 (9th Cir.
 15 2020), *rev’d*, 596 U.S. 543 (2022) (holding that all individuals detained pursuant to 8 U.S.C. §
 16 1231(a)(6) are entitled to a bond hearing after six months of detention.) The IJ denied Mr. Medina
 17 Reyes’s release on bond. Sun Decl. ¶ 11.

18 However, on February 28, 2023, Mr. Medina Reyes filed a motion for custody
 19 redetermination with the IJ, arguing that a material change in circumstances, his admission into
 20 an intensive re-entry program, Successful Treatment for Optimized Programming (“STOP”),
 21 rendered him eligible for a new hearing. *Id.* ¶ 14. The IJ granted the motion and scheduled a
 22 hearing for March 14, 2023. *Id.*

23 On March 14, 2023, an IJ granted Mr. Medina Reyes’s release from custody on bond in
 24 the amount of \$5,000 after determining that he was neither a flight risk nor a danger to the
 25 community. Sun Decl. at Ex. A (IJ Bond Order). Aside from bond, the only condition the IJ
 26 imposed on Mr. Medina Reyes’s release was that he participate in and complete the STOP
 27 program. *See id.* During the hearing, the IJ specifically discussed the possibility of ordering
 28 “alternatives to detention” conditions of release (typically GPS monitoring and check-in reporting

requirements), and declined to do so. Sun Decl. ¶ 17. On March 20, 2023, Mr. Medina Reyes posted bond, but before being released, ICE nonetheless installed an ankle monitor on him and enrolled him into ISAP. *Id.* ¶ 18. In September 2023, because Mr. Medina Reyes complied with all conditions of release, ICE removed his ankle monitor. *Id.*

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).

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. In September 2023, because Mr. Medina Reyes complied with all conditions of release, ICE removed his ankle monitor. Mr. Medina Reyes also completed the STOP program, the only condition apart from bond that the IJ imposed on his release from custody. *See* Sun Decl. ¶ 24; Sun Decl. at Ex. G (Proof of Participation in STOP).

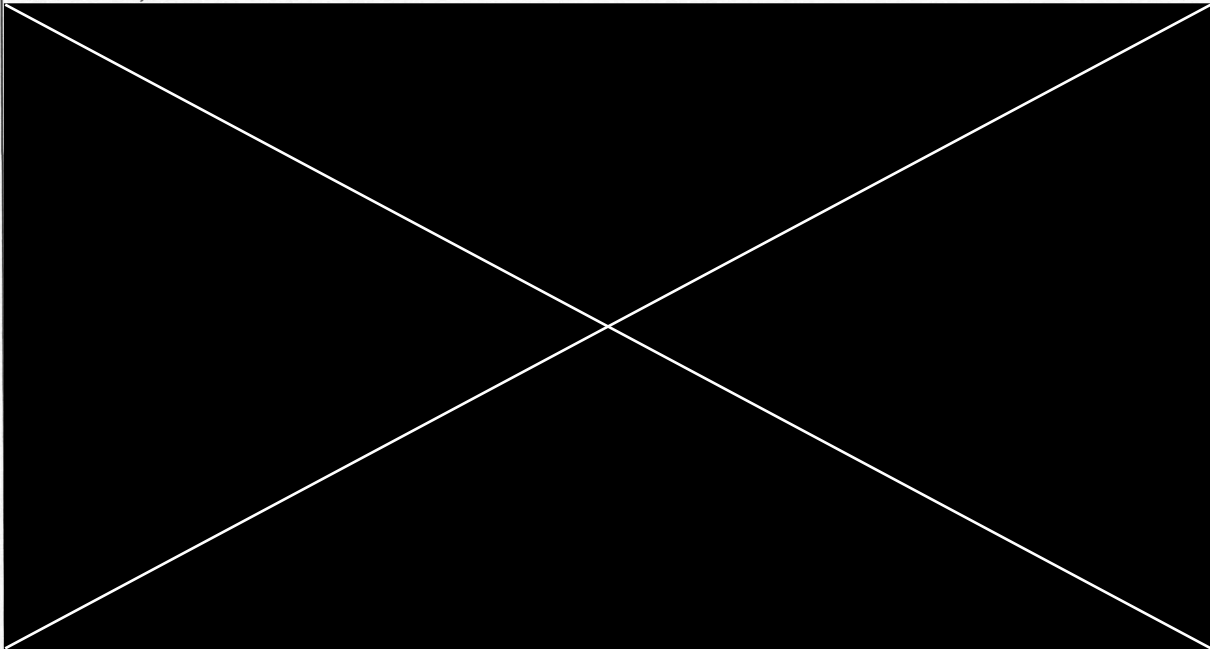
Furthermore, Mr. Medina Reyes successfully completed and was discharged from parole in December 2023 without any violations. Sun Decl. ¶ 24; Sun Decl. at Ex. H (Parole Discharge Certificate). He has lived in San Jose with his mother and brother, who are lawful permanent residents. [REDACTED]

[REDACTED] 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"). [REDACTED]

[REDACTED] Ex. CCC (APSC Certificate). He is also a tattoo artist who has built his own business. *See e.g.* Sun Decl. at Ex. R.

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

1 facilities. *Id.* at Ex. V (Rev. Lee Letter); Ex. Z (Letter from Edwin Carmona-Cruz). He has
2 volunteered as a community advocate with Pangea Legal Services, Interfaith Movement for
3 Human Integrity (IM4HI), Silicon Valley DeBug, Asian Prisoner Support Committee, SIREN
4 (Services, Immigrant Rights and Education Network), Amigos de Guadalupe, and the California
5 Collaborative for Immigrant Justice. *Id.* at Exs. V-CC (Letters of Support). He has delivered
6 speeches across the state, including in Sacramento to advocate for the California Mandela Act,
7 which would limit the use of solitary confinement across the state. *Id.* at Ex. WW (Letter from
8 Lisa Knox).




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

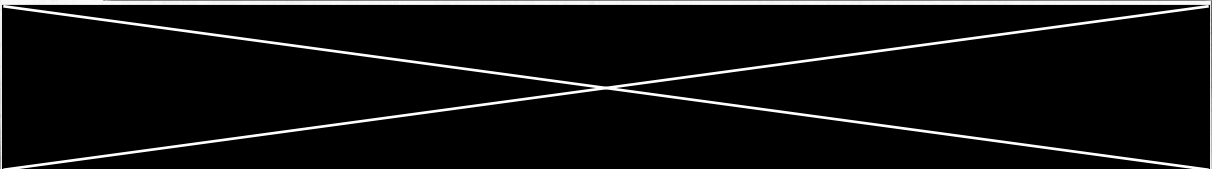
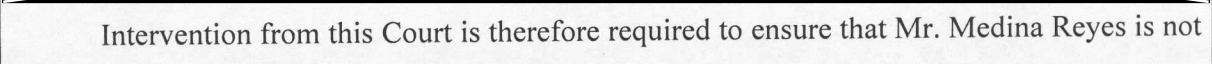
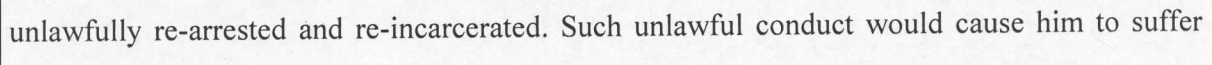
25 On Monday, June 23, 2025, Mr. Medina Reyes attended an in-person check-in with ISAP
26 in San Jose, California, accompanied by Counsel. *Id.* ¶ 29. Mr. Rubio asked whether Mr. Medina
27 Reyes had a copy of the police report from the May 14, 2025 arrest. *Id.* Counsel stated that she
28 had been unable to obtain a copy of the police report, but that no charges had been filed against

1 Mr. Medina Reyes. *Id.* Mr. Rubio said that because Mr. Medina Reyes’s Individual Hearing had
 2 been postponed to 2028, he would request de-escalation of supervision for Mr. Medina Reyes. *Id.*

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

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

17 Re-detention will likely have a “profoundly destabilizing effect” on Mr. Medina Reyes’s
 18 mental health and cause significant psychological harm. Sun Decl. at Ex. K (Dr. Perez Ramirez
 19 Letter). 

20 
 21 
 22 
 23 Intervention from this Court is therefore required to ensure that Mr. Medina Reyes is not
 24 unlawfully re-arrested and re-incarcerated. Such unlawful conduct would cause him to suffer
 25 irreparable harm.

26 **III. LEGAL STANDARD**

27 Mr. Medina Reyes is entitled to a temporary restraining order if he establishes that he is
 28 “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary

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

IV. ARGUMENT

A. MR. MEDINA REYES 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). Without intervention from this Court, Respondents will re-arrest Mr. Medina Reyes on Tuesday July 1, 2025, absent any material change in circumstances and prior to receiving a hearing before a neutral adjudicator, in violation of his due process rights. Mr. Medina Reyes will continue suffer irreparable injury if he is arrested and detained without due process, separated from his family and community, in conditions that will likely lead to dramatic deterioration in his mental health.

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

Mr. Medina Reyes 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

1 demonstrates by clear and convincing evidence that there has been a material change in
2 circumstances such that he is now a danger or a flight risk.

3 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
4 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
5 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
6 revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec.
7 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest
8 noncitizens. There, the BIA held that "where a previous bond determination has been made by an
9 immigration judge, no change should be made by [the DHS] absent a change of circumstance."
10 *Id.* The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-
11 detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787,
12 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot redetain Panosyan.").

13 ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests
14 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F.
15 Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
16 (9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under
17 BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released
18 on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176;
19 *Matter of Sugay*, 17 I&N Dec. at 640.

20 There has been no material change in circumstances in Mr. Medina Reyes' case. Although
21 he was arrested, he was quickly released and no charges have been filed. *See* Sun Decl. at Ex. I
22 (Public Defender Letter). An arrest, without more, does not undermine the IJ's finding that Mr.
23 Medina Reyes is not a danger to society—after all, even the criminal authorities chose to release
24 him.

25 Furthermore, ICE's power to re-arrest a noncitizen who is at liberty following a release
26 on bond is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d
27 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always
28 constrained by the requirements of due process"). In this case, the guidance provided by *Matter*

1 of *Sugay*—that ICE should not re-arrest a noncitizen absent materially changed circumstances—
 2 is insufficient to protect Mr. Medina Reyes’s weighty interest in his freedom from detention.

3 Federal district courts in California have repeatedly recognized that the demands of due
 4 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole require a
 5 pre-deprivation hearing for a noncitizen on bond, like Mr. Medina Reyes, *before* ICE re-detains
 6 him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No.
 7 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (granting a preliminary
 8 injunction for Petitioner to be provided with a pre-deprivation hearing prior to re-arrest by
 9 Respondents, even though he was facing a new criminal charge after release); *Jorge M. F. v.*
 10 *Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *); Romero*
 11 *v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner
 12 would suffer irreparable harm if re-detained, and required notice and a hearing before any re-
 13 detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal.
 14 May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff’s ICE interview
 15 when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070-JSC,
 16 2025 U.S. Dist. LEXIS 113570, at *6 (N.D. Cal. Jun. 14, 2025) (granting temporary restraining
 17 order enjoining Respondents from re-detaining Petitioner without notice and a hearing); *Diaz v.*
 18 *Kaiser*, 3:25-cv-05071, 2025 U.S. Dist. LEXIS 113566, at *10 (N.D. Cal. Jun. 14, 2025) (granting
 19 temporary restraining order and finding that a pre-detention hearing would prevent against the
 20 risk of erroneous deprivation). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL
 21 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-
 22 arrest).

23 Courts analyze procedural due process claims such as this one in two steps: the first asks
 24 whether there exists a protected liberty interest under the Due Process Clause, and the second
 25 examines the procedures necessary to ensure any deprivation of that protected liberty interest
 26 accords with the Constitution. *See Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454,
 27 460 (1989).

28 **a. Mr. Medina Reyes Has a Protected Liberty Interest in His Conditional Release**

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

5 Since March 2023, Mr. Medina Reyes exercised that freedom under the IJ's March 14,
6 2023, order granting him release on a \$5,000 bond. Sun Decl. at Ex. A (IJ Bond Order). He has
7 exercised his freedom by becoming a beloved civil rights activist in the Bay Area and statewide,
8 participating and speaking at countless rallies and marches, completing two fellowships at
9 nonprofit organizations, studying at De Anza College, working as a cabinetmaker and tattoo artist,
10 and caring for his lawful permanent resident disabled mother. He has also sought and received
11 community-based mental health treatment. Although he was released on bond (and thus under
12 government custody), he retains a weighty liberty interest under the Due Process Clause of the
13 Fifth Amendment in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47
14 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
15 482-483 (1972).

16 In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has
17 in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of
18 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
19 form the other enduring attachments of normal life." *Id.* at 482. The Court explained that "the
20 liberty of a parolee, although indeterminate, includes many of the core values of unqualified
21 liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn,
22 "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth]
23 Amendment." *Morrissey*, 408 U.S. at 482.

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

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

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

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

Furthermore, in this case, a return to detention would have a profoundly destabilizing effect on the Petitioner’s mental health. *See Sun Decl. at Ex. K (Dr. Pérez Ramírez Letter)*. Re-

1 detention will deprive him of the community-based mental health treatment he has accessed since
 2 his release. *See id.* [REDACTED]

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

7 **b. Mr. Medina Reyes's Liberty Interest Mandates a**
 8 **Hearing Before any Re-Arrest and Revocation of Bond**

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

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

25 The Supreme Court “usually has held that the Constitution requires some kind of a hearing
 26 *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
 27 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
 28 only remedies the State could be expected to provide” can post-deprivation process satisfy the

1 requirements of due process. *Zinerman*, 494 U.S. at 985.

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

11 **i. Mr. Medina Reyes’s Private Interest in His**
12 **Liberty is Profound**

13 Under *Morrissey* and its progeny, individuals conditionally released from serving a
14 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
15 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
16 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
17 constitutional due process before he is re-incarcerated—apply with even greater force to
18 individuals like Mr. Medina Reyes, who have been released pending civil removal proceedings,
19 because “his liberty interest is arguably greater than the interest of the parolees in *Morrissey*.”
20 *See Ortega v. Bonnar*, 415 F.Supp.3d at 970. Nonetheless, even in the criminal parolee context,
21 the courts have held that the parolee cannot be re-arrested without a due process hearing in which
22 they can raise any claims they may have regarding why their re-incarceration would be unlawful.
23 *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Medina Reyes
24 retains a truly weighty liberty interest even though he is under conditional release.

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

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

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

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

The government’s interest in detaining Mr. Medina Reyes without a due process hearing is low, and when weighed against Mr. Medina Reyes’s significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting Mr. Medina Reyes 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 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.

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

1 and conditions of his release. *Id.* ¶ 18. Mr. Medina Reyes’s 2025 arrest does not undermine the
 2 IJ’s finding, given that he was promptly released and no charges have been filed.

3 As to flight risk, an IJ determined that a bond of \$5,000 was sufficient to guard against
 4 any possible flight risk, to “assure [his] presence at the moment of removal.” *Zadvydas*, 533 U.S.
 5 at 699. Furthermore, Mr. Medina Reyes has a meritorious application for relief from removal and
 6 eagerly awaits the opportunity to present his case before the Immigration Court. It is difficult to
 7 see how the government’s interest in ensuring his presence at the moment of removal has
 8 materially changed since he was released in March 2023, as he has appeared at all scheduled court
 9 dates and check-ins. The government’s interest in detaining Mr. Medina Reyes at this time is
 10 therefore low. That ICE has a new policy to make a minimum number of arrests each day under
 11 the new administration does not constitute a material change in circumstances or increase the
 12 government’s interest in detaining him.²

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

17 In the alternative, providing Mr. Medina Reyes with a hearing before this Court (or a
 18 neutral decisionmaker) regarding bond is a routine procedure that the government provides to
 19 those in immigration jails on a daily basis. At that hearing, the Court would have the opportunity
 20 to determine whether circumstances have materially changed to require a different amount of
 21 bond—or if bond should be revoked. But there is no justifiable reason to re-incarcerate Mr.
 22 Medina Reyes prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*,
 23 even where the State has an “overwhelming interest in being able to return [a parolee] to
 24

25 ² See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
 26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
 27 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
 28 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
 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 imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide
 2 by the conditions of his parole . . . the State has no interest in revoking parole without some
 3 informal procedural guarantees.” 408 U.S. at 483.

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

11 **iii. Without a Due Process Hearing Prior to Any**
 12 **Re-Arrest, the Risk of an Erroneous**
 13 **Deprivation of Liberty is High, and Process in**
 14 **the Form of a Constitutionally Compliant**
Hearing Where ICE Carries the Burden
Would Decrease That Risk

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

21 Under ICE’s process for custody determination—which affords Mr. Medina Reyes no
 22 process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so.
 23 The risk that Mr. Medina Reyes will be erroneously deprived of his liberty is high if ICE is
 24 permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8
 25 C.F.R. § 236.1(c)(9), an arrest of Mr. Medina Reyes automatically revokes his bond. Thus, the
 26 regulations permit ICE to unilaterally nullify a bond order without oversight of any kind. After
 27 re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency
 28 wants to hold Mr. Medina Reyes without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9).

1 However, ICE repeatedly denied Mr. Medina Reyes release on bond when he was previously
2 incarcerated. *See* Sun Decl. ¶¶ 8, 13, 15.

3 Mr. Medina Reyes's detention will be governed by 8 U.S.C. § 1231(a)(6) because he has
4 a final administrative order of removal pursuant to 8 U.S.C. § 1228(b). Noncitizens detained under
5 8 U.S.C. § 1231(a)(6) are subject to mandatory detention and are not be eligible for an
6 individualized bond hearing before an IJ.³ Therefore, revocation of Mr. Medina Reyes's bond
7 would evade *any* review by an IJ or any other neutral arbiter.

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

21 Due process also requires consideration of alternatives to detention at any custody
22 redetermination hearing that may occur. The primary purpose of immigration detention is to
23 ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
24 Detention is not reasonably related to this purpose if there are alternatives to detention that could

25 ³ Noncitizens detained in the Ninth Circuit under 8 U.S.C. § 1231(a)(6) are currently eligible for prolonged
26 detention bond hearings after six months of detention *See Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal.
27 2018)³, *aff'd*, 955 F.3d 762 (9th Cir. 2020), *rev'd*, 596 U.S. 543 (2022). However, the preliminary injunction was
28 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).

mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Mr. Medina Reyes's re-incarceration is warranted.

* * *

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

2. Mr. Medina Reyes will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Medina Reyes 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. Mr. Medina Reyes himself has been the plaintiff in two civil rights lawsuits concerning conditions of his prior ICE detention. *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); First Amended Complaint, *Mendez v. ICE*, No. 3:23-cv-00829-TLT (N.D. Cal. Mar. 10, 2023).

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).⁴

Mr. Medina Reyes has been out of ICE custody for over two years. During that time, Mr. Medina Reyes has become a powerful community organizer and advocate for justice in the Bay Area and statewide. He also works as a cabinetmaker and a tattoo artist, in addition to completing fellowships with two nonprofit organizations. He supports his lawful permanent resident mother in her recovery from surgery. He has been able to receive community-based mental healthcare. If he were incarcerated, he would lose his job, as he could not work from detention. He would no longer be able to speak at rallies, volunteer with local organizations, or continue his education. His mental health would likely dramatically deteriorate. Detention would irreparably harm not only Mr. Medina Reyes, but also his mother, as well as many community organizations who rely on Mr. Medina Reyes for his leadership.

Finally, as detailed *supra*, Mr. Medina Reyes contends that his re-arrest absent a hearing before a neutral adjudicator would violate his due process rights under the Constitution. It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Medina Reyes 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 Mr. Medina Reyes. The government cannot

⁴ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed Feb. 6, 2024).

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

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

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

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

27 **V. CONCLUSION**

28 For all the above reasons, this Court should find that Mr. Medina Reyes warrants a

1 temporary restraining order and a preliminary injunction ordering that Respondents refrain from
2 re-arresting him unless and until he is provided notice and a hearing before a neutral
3 decisionmaker to determine first whether there has been a material change in circumstances, and
4 second, assuming there is a material change, whether the government can show by clear and
5 convincing evidence that detention would now be warranted on the basis that he is a danger or a
6 flight risk.

7 Dated: June 29, 2025

Respectfully submitted,

8 /s/ Victoria Sun

9 Victoria Sun

PANGAEA LEGAL SERVICES

10 *Pro Bono* Attorney for Mr. Medina Reyes
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