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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Juan Sanchez-Hernandez Petitioner, v. Fred Figueroa, Warden, Eloy Detention Center; John E. Cantu, Field Office Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; Kristi Noem, Secretary of U.S. Department of Homeland Security; and Pam Bondi, Attorney General of the United States, in their official capacities. Respondents.	No. **MOTION FOR TEMPORARY RESTRAINING ORDER** **POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION** Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Petitioner Juan Sanchez-Hernandez, a.k.a. Angel Sanchez Hernandez, ("Ms. Sanchez" or "Petitioner") applies to this honorable Court for a temporary restraining 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, (1) from continuing to detain her pursuant to an unlawful action by ICE, (2) ordering her immediate release from immigration detention; (3) from re-arresting Petitioner-Plaintiff Sanchez until she is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that her re-incarceration would be justified because there is clear and convincing evidence establishing that she is a danger to the community or a flight risk; and (4) enjoinomg Respondents from taking Petitioner outside of the United States, which would violate the December 15, 2022 grant of deferral of removal under the Convention Against Torture.

Dated: July 7, 2025

Respectfully Submitted

/s/ Gregory Fay
Gregory Fay
Attorney for Ms. Sanchez

I. INTRODUCTION

Respondents unlawfully detained Petitioner-Plaintiff Ms. Sanchez on June 19, 2025, when she responded to her probation officer's order to report to her probation office in Phoenix, Arizona. Plaintiff had previously been detained by ICE for over five months from August 15, 2022 to January 18, 2023. On January 18, 2023, ICE released Petitioner, pursuant to an Order of Release on Supervision, after determining that she presented no danger to the community nor flight risk. Upon her release, ICE conducted regular check-ins. Ms. Sanchez complied with all conditions of release, and never missed a check-in with ICE.

Over the last two years and six months during which she has lived at liberty, Ms. Sanchez has found work, a boyfriend, completed parole and complied with probation, and maintained positive connections to her friends and family in the Phoenix area. Ms. Sanchez has not committed any crimes and has duly and promptly reported to all ICE check-ins.

Ms. Sanchez reported to the ICE office in Phoenix and did so regularly for two and a half years. Ms. Sanchez's A number is [redacted]

On June 19, 2025, Ms. Sanchez was asked by her probation officer to come to the probation office. Upon arrival, ICE agents informed Ms. Sanchez that she was being detained in immigration custody. They did not tell her why. The ICE officer never articulated a reason as to why Ms. Sanchez was a flight risk, was a danger to her community, or had violated any condition of his release.

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

there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, to protect that interest, on the particular facts of Ms. Sanchez's case, due process requires that the government release Ms. Sanchez from his unlawful detention. Moreover, the government must provide a notice and a hearing, *prior to any revocation of her order of supervision* in which she is afforded the opportunity to advance her arguments as to why her 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 Ms. Sanchez's detention was ***already*** found to be unnecessary to serve its purpose. An ICE officer previously found that she need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify re-arrest.

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

Ms. Sanchez meets the standard for a temporary restraining order. She will suffer immediate and irreparable harm absent an order from this Court enjoining the government

from (1) continuing her unlawful custody, (2) prohibiting the government to re-arrest her at any future time, unless and until she first receives a hearing before a neutral adjudicator, as demanded by the Constitution; and (3) prohibiting Respondents from causing Ms. Sanchez to be removed or taken out of the United States, in violation of the December 15, 2022 Immigration Judge's order granting deferral of removal under the Convention Against Torture. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Ms. Sanchez's favor.

II. STATEMENT OF FACTS AND CASE

Ms. Sanchez is a citizen and national of Honduras who was granted deferral of removal in the Florence Immigration Court on December 15, 2022.

On January 18, 2023, ICE released Petitioner, pursuant to an Order of Release on Supervision, after determining that she presented no danger to the community nor flight risk.

On June 19, 2025, Petitioner's probation officer ordered her to report to her probation office in Phoenix, Arizona.

Plaintiff had previously been detained by ICE for over five months from August 15, 2022 to January 18, 2023.

Upon her release, ICE conducted regular check-ins. Ms. Sanchez complied with all conditions of release, and never missed a check-in with ICE.

III. LEGAL STANDARD

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

ARGUMENT

A. MS. SANCHEZ 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). Ms. Sanchez is likely to remain in unlawful custody in violation of her due process rights and is likely to be subject to an illegal removal from the United States, without intervention

by this Court. Ms. Sanchez will continue suffer irreparable injury if she continues to be detained without due process and is sent outside of the country, likely to a dangerous place or to Honduras, the country where she fears torture.

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

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

The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia*

for A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

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

ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect Ms. Sanchez weighty interest in her freedom from unlawful detention.

Federal district courts in the Ninth Circuit 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 Ms. Sanchez, *before* ICE re-detains him. *See, e.g.*, *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

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

a. Ms. Sanchez Has a Protected Liberty Interest in Her Conditional Release

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

Since January 2023, Ms. Sanchez exercised that freedom under the ICE's January 28, 2023, order granting her release from custody. **Exbibit C**. Although she was released under the condition that she is under supervision and reports to ICE regularly (and thus under government custody), she retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

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

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

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

Here, when this Court "'compar[es] the specific conditional release in [Ms. Sanchez'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*, Ms. Sanchez's release "enables [her] 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 her child, for whom she is the sole caretaker, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

Ms. Sanchez has complied with all conditions of release for over two and a half years, after winning her case before the Immigration Judge based on the risk of torture she would face if returned to Honduras.

b. Ms. Sanchez's Liberty Interest Mandates His Release from Unlawful Custody And A Hearing Before any Re-Arrest

Ms. Sanchez asserts that, here, (1) where her detention would be civil; (2) where she has been at liberty for over thirty months, during which time she has complied with all conditions of release; (3) where no change in circumstances exist that would justify her lawful detention; and (4) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that she be released from unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of her custody release.

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v.*

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

The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government avoid providing pre-deprivation process. *Id.*

Because, in this case, the provision of a pre-deprivation hearing is both possible and

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

i. Ms. Sanchez's Private Interest in Her Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles them to constitutional due process before they are re-incarcerated—apply with even greater force to individuals like Ms. Sanchez, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without

a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Ms. Sanchez retains a truly weighty liberty interest even though she is under conditional release.

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

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

ii. The Government's Interest in Re-Incarcerating Ms. Sanchez Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Her Unless and Until She is Provided a Hearing is Minimal

The government's interest in maintaining an unlawful detention without a due process hearing is low, and when weighed against Ms. Sanchez's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping her in unlawful custody; (2) re-arresting Ms. Sanchez unless and until the government demonstrates to a neutral adjudicator by clear and convincing evidence that he is a flight risk or danger to the community; and (3) removing her from the United States in violation of an agency order and district court injunction. It becomes abundantly clear that the *Mathews* test favors Ms. Sanchez when the Court considers that the process she seeks—notice and a hearing regarding whether release from custody should be revoked—is a standard course of action for the government. Providing Ms. Sanchez with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Ms. Sanchez 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 Ms. Sanchez.

As immigration detention is civil, it can have no punitive purpose. The ICE officer's lack of explanation for re-arresting Ms. Sanchez indicates no purpose at all. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Ms. Sanchez in June 2025 when she has lived at liberty complying with the conditions of her release for several years after her release, thriving and contributing to her local community.

On January 18, 2023, an ICE officer determined that Ms. Sanchez was not a danger to the community and has done nothing to undermine that determination. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

As to flight risk, since her release from custody in January 2023, ICE has required regular check-ins. Those conditions have proven sufficient to guard against any possible flight risk, to "assure [her] presence at the moment of removal." *Zadvydas*, 533 U.S. at 699. It is difficult to see how the government's interest in ensuring his presence at the moment of removal has materially changed since she was released in January 2023, when she has complied with all conditions of release. The government's interest in detaining Ms. Sanchez 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 her.[1]

Moreover, the "fiscal and administrative burdens" that her immediate release and a lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Ms. Sanchez does not seek a unique or expensive form of process, but

[1] *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.").

rather a routine hearing regarding whether her bond should be revoked and whether she should be re-incarcerated.

As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. Ms. Sanchez has an order of deferral of removal under the Convention Against Torture, which the government has made no effort to reopen. ICE's unlawful action of placing her in custody is more of a financial burden than releasing her and providing any pre-custody hearing before any future re-arrest occurs.

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

Releasing Ms. Sanchez from unlawful custody and enjoining Ms. Sanchez's re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Ms. Sanchez is a flight risk or danger to the

community is far *less* costly and burdensome for the government than keeping her detained,a total daily cost of $6.5 million. *Hernandez*, 872 F.3d at 996.

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

Releasing Ms. Sanchez from unlawful custody and providing Ms. Sanchez a pre-deprivation hearing would decrease the risk of her being erroneously deprived of her liberty. Before Ms. Sanchez can be lawfully detained, she must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that ICE's January 2023 release from custody determination should be altered or revoked because clear and convincing evidence exists to establish that Ms. Sanchez is a danger to the community or a flight risk.

On June 19, 2025, Ms. Sanchez did not receive this protection. Instead, she was ordered to report, and when Ms. Sanchez complied with the conditions of her release, ICE took her into custody without even providing a reason.

By contrast, the procedure Ms. Sanchez seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the

"risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

As the above-cited authorities show, Ms. Sanchez is likely to succeed on her claim that the current arrest and detention that ICE effectuated on June 19, 2025 is illegal. The Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration by ICE. And, at the very minimum, she clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

2. Ms. Sanchez Will Suffer Irreparable Harm Absent Injunctive Relief

Ms. Sanchez will suffer irreparable harm were she to remain detained after being deprived of her liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. 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).[2]

Lastly, while being held in immigration detention, Ms. Sanchez is at risk of being illegally returned to Honduras where she fears torture because she is a transgender woman.

Ms. Sanchez has been out of ICE custody for over two and a half years. During that time, she has worked hard to establish a stable life for herself. She has worked, found a boyfriend, supported her community, and spent time with her family. Detention would irreparably harm not only Ms. Sanchez, but also irreparably harm her family and friends.

As detailed *supra*, Ms. Sanchez contends that her re-arrest absent a hearing before a neutral adjudicator would violate her 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 Ms. Sanchez 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 Ms. Sanchez. The government cannot

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

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

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

Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Ms. Sanchez in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention

because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

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

IV. CONCLUSION

For all the above reasons, this Court should find that Ms. Sanchez warrants a temporary restraining order and a preliminary injunction ordering that Respondents (1) release her from her unlawful custody; (2) refrain from re-arresting her unless and until she is afforded a hearing before a neutral adjudicator on whether a change in custody is justified by clear and convincing evidence that she is a danger to the community or a flight risk; and (3) refrain from sending her to any place outside of the United States.

Dated: July 7, 2025

Respectfully submitted,

/s/ Gregory Fay

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