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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. 2:25-cv-02351-PHX- DWL-MTM

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 based on her imminent removal to Mexico when Mexico has in fact no longer agreed to accept her, (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) enjoin 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. This Motion is substantively different from the prior motion for a temporary restraining order filed in this case (Dkt. 2) because the relief sought herein is distinct.

As set forth in the Points and Authorities in support of this Motion, Petitioner raises that she warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying her unlawful re-detention, where that detention appears indefinite and which was imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant her request for a

temporary restraining order requiring ICE to immediately release her from custody (to enjoin the unlawful ongoing detention), enjoining Respondents from re-detaining her before providing him a hearing before an Immigration Judge prior to any re-detention, and enjoining Respondents from removing her to any third country without first providing him with constitutionally-compliant procedures. The only mechanism to ensure that he is not continuously unlawfully detained in violation of his due process rights is an ex-parte temporary restraining order from this Court.

Dated: July 23, 2025

Respectfully Submitted

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

I. INTRODUCTION

Petitioner-Plaintiff Ms. Sanchez, by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") from her ongoing immigration detention in its custody and immediately release her. Ms. Sanchez also seeks an order enjoining Respondents from re-detaining her unless and until she is afforded notice and a hearing before an Immigration Judge prior to any future re-detention where DHS bears the burden of demonstrating that her removal is reasonably foreseeable and otherwise whether circumstances have changed such that her re-detention would be justified (i.e. whether she poses a danger or a flight risk), and where the Immigration Judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that DHS may establish, as well as an order enjoining Respondents from removing her to any third country without first providing her with constitutionally-compliant procedures.

Respondents unlawfully detained Petitioner-Plaintiff Ms. Sanchez-Hernandez 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 checkins. Ms. Sanchez complied with all conditions of release, and never missed a checkin with ICE.

Ms. Sanchez's detention is both unconstitutional because it is indefinite, and illegal because it does not comport with the regulations, and hse was otherwise not provided any pre-deprivation hearing before her recent detention by ICE. Based on these circumstances, she raises three ways in which her ongoing detention is unlawful and must be enjoined, and as well requests an injunction against removal to a third country in case that is in the offing:

First, once a noncitizen is so released, their re-detention is limited by regulation, statute and the constitution. By statute and regulation, only in specific circumstances (that do not apply here) does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability of ICE to simply re-arrest someone following their release from detention, however, is further limited by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. In turn, due process requires that she be released from unlawful re-detention because she was not provided notice and a hearing before an Immigration Judge (as a neutral adjudicator).

Second, following her release, the same principles must apply, such that in the future she be provided with notice and a hearing, prior to any re-detention, at which DHS bears the burden of justifying her re-detention (to a neutral adjudicator such as an Immigration Judge who is not part of ICE or DHS) and at which Ms. Sanchez will be afforded the opportunity to advance her arguments as to why she should not be re-detained.

Third, the Supreme Court has limited the potentially indefinite post-removal order detention to a maximum of six months, because removal is not reasonably foreseeable.

Zadvydas v. Davis, 533 U.S. 678, 701 (2001). Because the Petitioner's removal to Honduras has been deferred under the Convention Against Torture, and because Mexico has indicated it will not accept third country removals, removal is not reasonably foreseeable in this case, and the government has not provided her with notice, evidence, or an opportunity to be heard on this issue before arbitrarily and unilaterally re-detaining her. Her continued detention is indefinite and thus unconstitutionally prolonged, and the only remedy is her immediate release.

Ms. Sanchez meets the standard for a temporary restraining order. She will continue to suffer immediate and irreparable harm stemming from her unlawful re-detention absent an order from this Court enjoining the government from further unlawful detention by ordering her release from detention, and enjoining future re-detention unless and until he receives a hearing before an Immigration Judge. She would also suffer immediate and irreparable harm if removed to a third country where her life could be in danger. For that reason, she also seeks an order enjoining Defendants from removing him to any third country without first being provided with constitutionally-compliant procedures providing her adequate notice and an opportunity to demonstrate if his life is in danger or he stands a high risk of torture—all of which are demanded by the Constitution. Since 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. THIS MOTION FOR TEMPORARY RESTRAINING ORDER IS NOT DUPLICATIVE

Second, the relief sought that prior to any future re-detention, that Ms. Sanchez be provided a hearing specifically before an Immigration Judge is substantively different from the relief sought in the prior motion for temporary restraining order because the hearing venue (Immigration Court) and neutral adjudicator (Immigration Judge) requested for any future pre-deprivation hearing were not identified in the prior motion. A pre-deprivation hearing before an Immigration Judge would not interfere with the authority of the Executive Branch, as Immigration Judges are part of the Executive Branch and are appointed by the Attorney General. 8 C.F.R. § 1003.10(a). Moreover, a pre-deprivation hearing before an Immigration Judge would satisfy Ms. Sanchez's due process rights by ensuring that ICE does not have the unilateral authority to re-detain her in the future, as Immigration Judges operate separately from ICE, and thus constitute neutral adjudicators.

Third, the relief sought that Respondents be enjoined from removing Ms. Sanchez to any third country without first providing her with constitutionally-compliant procedures is substantively different because her initial request was to enjoin removal to any country outright, rather than to explicitly require notice and an opportunity to respond. This Court has the authority to grant the relief sought in this Motion in full or in part.

III. 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 checkins. Ms. Sanchez complied with all conditions of release, and never missed a checkin with ICE.

After detaining Petitioner on June 19, 2025, ICE did not provide any reason until June 29, 2025, when she was told she would be sent to Mexico. She expressed a fear and was told she would be provided a reasonable fear interview by an asylum officer. To date, no such interview has occurred.

On July 11, 2025, she was served a Notice of Revocation of Release that stated, "pursuant to 8 C.F.R. 241.4 / 8 C.F.R. 241.13, you are to remain in ICE custody at this time. You will promptly be given an informal interview at which you will be given an opportunity to respond to the reasons for revocation." At the time, she was told that the primary change in circumstances was the possibility of removal to Mexico.

On July 15, 2025, the government filed briefing stating that on July 11, "Mexico had indicated it would no longer agree to third country removals, despite its prior agreement to do so." Furthermore, "Mexico is still generally declining to accept third country removals."

Ony July 16, 2025, the Petitioner participated in an informal interview with ICE in which Officer Berghouse indicated Mexico is constantly "changing its mind" and the

Petitioner's detention was therefore premised on the possibility of Mexico altering its stated policy not to accept third country removals

IV. 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 he 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.

V. 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 be 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 ICE has Failed to Follow Its Regulations in Detaining Her

Ms. Sanchez is likely to succeed on her claim that, in her particular circumstances, her current detention is unlawful because ICE has failed to follow the regulations that govern revocation of supervised release.

a. No Authority to Revoke

The regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration order, however, they also describe a process that has not been filed in Petitioner's case. Although ICE has authority to revoke an individual's parole under this process, it does not have the authority, as it has done here, to disregard the regulations and unlawfully detain any individual at any time without regard to that persons' rights.

Under 8 C.F.R. 241.4, "Continued detention of inadmissible, criminal, and other aliens beyond the removal period," there are two provisions for revoking release. 8 CFR 241.4(l)(1) describes a process for release after an individual violates their release conditions, calling for immediate notification of the reasons for revocation. 8 CFR 241.4(l)(2) describes a process for revocation when the Executive Associate Commissioner of the Service determines to revoke release in the exercise of discretion

when it is appropriate to enforce a removal order. 8 CFR 241.4(l)(2)(iii). And when circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner, a "district director" AND revocation is in the "public interest," a district director may also make the discretionary decision. 8 CFR 241.4(l)(2)

Clearly, in the Respondent's case, neither the Executive Associate Commissioner of the Service nor a district director made the determination to revoke her supervision. The notice of revocation she received was signed by Assistant Field Office Director Brian Ortega, who is not one of the individuals described in this process.

A similar issue faced the district court in New York in *Ceesay v. Kurzdorfer*, in which the government asserted that an internal delegation order indicated the Assistant Field Office Directors are delegated with the proper authority by the "district director" indicated in the regulations. *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *17 (W.D.N.Y. May 2, 2025). The Court held that not only did was this delegation suspect, but that no findings were made by the district director to support the determination. The Court writes, of Assistant field Director Robinson:

> In sum, there is no delegation order clearly giving Robinson the authority to revoke release, and even if there were, there is no caselaw supporting the validity of such a delegation order. The government has not argued that Robinson had that authority because an assistant field office director is the equivalent of a district director, *see* Docket Item 29 at 6-7, and even if it had, there is no evidence that Robinson made the findings that a district director is required to make before revoking Ceesay's release. As a result, this Court cannot conclude that Robinson had the authority to revoke release, finds that Ceesay's release was not lawfully revoked, and holds that he is entitled to release on that basis alone. *See Rombot*, 296 F. Supp. 3d at 386-89.

Similarly, here, Brian Ortega is not a district director, nor did he nor any district director make the required by the regulation before revoking an order of supervision.

In ordering release, the *Ceesay* court finds that violating these regulations, both by failing to properly obtain the authorization for revocation of parole and failing to provide the internal interview, was supported by other courts:

> In *Rombat*, 296 F. Supp. 3d at 384, which involved a set of facts similar to those here, the petitioner "reported to the Manchester, New Hampshire[,] ICE office, as required by his Order of Supervision" when "[w]ithout advance notice, he was detained, placed in shackles, and later given a 'Notice of Revocation of Release.'" *Id.* at 385. After conducting a hearing, Judge Patti B. Saris found that there was no evidence that the detainee had been afforded the informal interview required by ICE's regulations or that the decision to revoke release was made by an official who was authorized to make it. *See id.* at 385-86. Because ICE had failed to follow its own regulations in detaining the petitioner, the court held that his detention was unlawful and ordered his release. *See id.* at 389 ("While ICE does have significant discretion to detain, release, or revoke aliens, the agency still must follow its own regulations, procedures, and prior written commitments.")

Similarly, in the Petitioner's case, the regulations have been disregarded and ICE has failed to follow the procedures owed the Petitioner.

b. **No Change in Circumstances**

In *Phan v. Beccerra*, a court in the Eastern District of California facing a similar habeas claim alleging that ICE had failed to properly determine changed circumstances prior to revoking release on supervision, the Court found that release was warranted because "Petitioner has also shown it is likely that there is no change in circumstances such that Petitioner will be removed to Vietnam in the reasonably foreseeable future as required by 241.14(i)(2). *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *5 (E.D. Cal. July 16, 2025) The Court concluded detention was unlawful "because ICE had not complied with the controlling regulations" for redetention. *Id.* Because the pre-

deprivation *status quo,* was for the Petitioner to be out of custody, the Court ordered the Petitioner's release. *Id.* at *6.

Similarly, in *Hoac v. Beccerra,* the District Court first denied a TRO requesting that the Court make an "initial finding of a changed circumstance before Petitioner could be re-detained." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP (HC), 2025 WL 1808697, at *4 (E.D. Cal. June 30, 2025). After Petitioners refiled the TRO asserting that the government had failed to follow the procedures for re-detention laid out in 8 C.F.R. 241.13(i)(3), and the Court granted the TRO, finding that the government had failed to demonstrate a material change in circumstances. *Hoac v. Beccerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025). Specifically, vague assertions regarding Vietnam's future likelihood to accept the Petitioner were insufficient to show that removal was reasonably foreseeable. *Id.* Similarly, here, the possibility that Mexico could "change its mind" is insufficient to justify the Petitioner's detention.

2. Ms. Sanchez is Likely to Succeed on the Merits of Her Claim That, in Violation of Clear Supreme Court Precedent, her Re-Detention is Unconstitutional Because it is Indefinite.

Second, Ms. Sanchez is likely to succeed on her claim that, in her particular circumstances, the Due Process Clause of the Constitution prevents Respondents from re-detaining Ms. Sanchez because she cannot be deported to any country and therefore her indefinite detention is unconstitutional because there is no end in sight.

Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90)

day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

ICE did in fact detain Ms. Sanchez during part of that removal period, following her administratively final order of removal on Decembre 15, 2022. Due to the Petitioner's relief under the Convention Against Torture, ICE was unable to remove her to Honduras and no other country has accepted her.

If ICE fails to remove an individual during the ninety (90) day removal period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) ("If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision."). Limited exceptions to this rule exist. Specifically, ICE "may" detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE's authority to detain an individual beyond the removal period under such circumstances is not boundless. Rather, it is constrained by the constitutional requirement that detention "bear a reasonable relationship to the purpose for which the individual [was] committed." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Because the principal purpose of the post-final-order detention statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to its purpose if removal cannot be effectuated. Id. at 697.

The Supreme Court has addressed the fact that the statute is silent regarding the limits on post-final order detention, and as definitively held that such detention has the potential to be indefinite and such indefinite detention would be unconstitutional. Thus,

there must be constitutional limits on post-final order detention. Specifically, the Supreme Court held that post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. Id. at 699-701. After this six month period, if a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." Id. at 701. If the government cannot do so, the individual must be released.

In light of the Supreme Court limitations imposed on the statutory scheme, the government updated the regulations to be consistent with those constitutionally required limitations on indefinite detention. Under those regulations, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. See 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable). Moreover, under the Supreme Court's constitutional limitations on indefinite detention, as the period of post-final-order detention grows, what counts as "reasonably foreseeable" must conversely shrink. *Zadvydas* at 701.

In this case. Ms. Sanchez was released from ICE detention during the removal period, specifically because his removal was not foreseeable at all. And nothing has changed. If ICE is permitted re-detain her now, under the possibility he might be removed some day simply because she has a removal order, then she very likely will be detained in ICE custody essentially forever.

Here, Ms. Sanchez's detention is unconstitutional because it is indefinite. Ms. Sanchez has been granted deferral of removal under the Convention Against Torture and

ICE has made no effort to reopen her case in order to deport her to Honduras, her only country of citizenship. Although DHS apparently had an indication Mexico might have accepted her before its July 11, 2025 change in policy not to accept third country removals, today removal is not reasonably foreseeable in this case, and the government has not provided Ms. Sanchez with notice, evidence, or an opportunity to be heard on this issue either before arbitrarily re-detaining her. Her continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Id.* Moreover, Ms. Sanchez already served approximately five months in ICE detention before she was released in 2022, and therefore she may—and under this circumstances, must—be released. 8 C.F.R. § 241.13(b)(1); *see also* Tadros v. Noem, No. 2:25-cv-04108-EP (D.N.J. June 17, 2025).

3. Ms. Sanchez is Likely to Succeed on the Merits of Her Claim That Due Process Requires That She Should Have Been Afforded a Hearing Before an Immigration Judge Prior to Any Re-Detention by ICE, and She is Entitled to Such a Hearing Prior to Any Future Re-Detention

Ms. Sanchez is also likely to succeed on her claim that fundamental principles of due process require that she cannot be re-detained by ICE without first being provided a pre-deprivation hearing before an Immigration Judge where the government shows that her removal is reasonably foreseeable and that circumstances have changed since his release in 2022, including that Ms. Sanchez is now a danger or a flight risk.

ICE's regulatory authority to unilaterally re-detain Ms. Sanchez is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See 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"). In turn, to protect that interest, on the particular facts of Ms. Sanchez's case, due process required notice and a hearing, prior to any re-arrest, at which she was afforded the opportunity to advance his arguments as to why he should not be re-detained. This never occurred. ZN Decl. at Exh. C, Rodriguez Diaz v. Kaiser, et al., 3:25-cv-05071 (N.D. Cal. June 14, 2025) (TRO prohibiting the government from re-detaining the petitioner without notice and a hearing before a neutral adjudicator); Exh. D, T.P.S. v. Kaiser, et al., 3:25-cv-05428 (N.D. Cal. June 30, 2025) (same).

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) 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 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. 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 his child, for whom he is the sole caretaker, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

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

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

Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Ms. Sanchez with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932;

Zinermon, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [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 him to constitutional due process before he is 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 he 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 non-citizen 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 he 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 he 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 explanation for re-arresting Ms. Sanchez indicates no purpose at all, other than to wait for the possibility that another country may change its mind and agree to accept her. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's compliance with the removal process. *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 his 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 [his] 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 he was released in January 2023, when he 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, nor does the possibility of Mexico amending its current policy not to accept third country removals present sufficient likelihood of removal such that the government has established circumstances have changed in the Petitioner's case.[1]

Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful pred-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 rather a routine hearing regarding to determine 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

[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.").

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 him detained. g to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

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

Releasing Ms. Sanchez from unlawful custody and providing Ms. Sanchez a pre-deprivation hearing would decrease the risk of her being erroneously deprived of his 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 unlawful. 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.

4. Ms. Sanchez is Likely to Succeed on the Merits of Her Claim That She is Entitled to Constitutionally Adequate Procedures Prior to Any Third Country Removal.

Finally, Ms. Sanchez is likely to succeed on the merits of his claim that he must be provided with constitutionally adequate procedures—including notice and an opportunity to respond and apply for fear-based relief—prior to being removed to any third country.

Under the INA, Respondents have a clear and non-discretionary duty to execute final orders of removal only to the designated country of removal. The statute explicitly states that a noncitizen "shall remove the [noncitizen] to the country the [noncitizen] . . . designates." 8 U.S.C. § 1231(b)(2)(A)(ii) (emphasis added). And even where a noncitizen does not designate the country of removal, the statute further mandates that DHS "shall remove the alien to a country of which the alien is a subject, national, or citizen. See id. § 1231(b)(2)(D); *see also Jama v. ICE*, 543 U.S. 335, 341 (2005).

As the Supreme Court has explained, such language "generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive," *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661 (2007) (*quoting Ass'n of Civilian Technicians v. Fed. Labor Relations Auth.,* 22 F.3d 1150, 1153 (D.C. Cir. 1994)); *see also Black's Law Dictionary* (11th ed. 2019). Accordingly, any imminent third country removal fails to comport with the statutory obligations set forth by Congress in the INA and is unlawful.

Moreover, prior to any third country removal, ICE must provide Ms. Sanchez with sufficient notice and an opportunity to respond and apply for fear-based relief as to that country, in compliance with the INA, due process, and the binding international treaty: The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Currently, DHS has a policy of removing or seeking to remove individuals to third countries without first providing constitutionally adequate notice of third country removal, or any meaningful opportunity to contest that removal if the individual has a fear of persecution or torture in that country.

Instead, the policy squarely violates the INA because it does not take into account, or even mention, an individual's designated country of removal—thereby fully contravening the statutory instruction that DHS must only remove an individual to the designated country of removal. U.S.C. § 1231(b)(2)(A)(ii).

Further, the policy plainly violates the United States' obligations under the Convention Against Torture and principles of due process because it allows DHS to provide individuals with no notice whatsoever prior to removal to a third country, so long as that country has provided "assurances" that deportees from the United States "will not be persecuted or tortured." *Id.* If, in turn, the country has not provided such an assurance, then DHS officers must simply inform an individual of removal to that third country, but are not required to inform them of their rights to apply for protection from removal to that country under the Convention Against Torture. *Id.* Rather, noncitizens instead must already be aware of their rights under this binding international treaty, and must affirmatively state a fear of removal to that country in order to receive a fear-based interview to screen for their eligibility for protection under the Convention Against Torture. *Id.* Even so, the screening interview is hardly a meaningful opportunity for individuals to apply for fear-based relief, because the interview happens within 24 hours after an individual states a fear of removal to a recently-designated third country, which hardly provides for any time to consult with an attorney or prepare any evidence for the interview. *Id.* And, in actuality, the screening interview is not a screening interview at all, because USCIS officers under the policy are instructed to determine at this interview "whether the alien would more likely than not be persecuted on a statutorily protected ground or tortured in the country of removal"—which is the standard for protection under

the Convention Against Torture that Immigration Judges apply after a full hearing in Immigration Court. *Id.* Then, if the USCIS officer determines that the noncitizen has not met this standard, they will then be removed to the third country to which they claimed, and tried to demonstrate within 24 hours, a fear of persecution or torture. *Id.* Finally, there is no indication that any of this process will occur in an individual's native language. *Id.* This is nothing more than a fig leaf of due process meant to deprive individuals of the protection that the law and treaty are supposed to provide them.

Clearly, this policy violates the Convention Against Torture, which instructs that the United States cannot remove individuals to countries where they will face torture, because the policy allows DHS to swiftly remove noncitizens to countries where they very well may face torture if those countries simply provide the United States with "assurances" that deportees will not be tortured. *Id.* Moreover, the policy puts the onus of individuals to be aware of their rights under the Convention Against Torture—which is a treaty that binds the United States government—instead of ensuring that DHS officials make individuals aware of their rights, which would more squarely comport with DHS's obligations under the treaty not to remove individuals to countries where they face torture. *Id.* For similar reasons, the policy also violates principles of due process, because it does not provide individuals with notice or any meaningful opportunity to apply for fear-based relief. *Id.* Again, the policy allows individuals to be removed to third countries without any notice or an opportunity to be heard if that country merely promises that deportees will not face torture there, and if individuals are otherwise unaware of their right to seek fear-based relief. *Id.*

The U.S. District Court for the District of Massachusetts previously issued a nationwide preliminary injunction blocking such third country removals without notice and a meaningful opportunity to apply for relief under the Convention Against Torture. *D.V.D., et al. v. U.S. Department of Homeland Security*, et al., No. 25-10676-BEM (D. Mass. Apr. 18, 2025). The U.S. Supreme Court has since granted the government's motion to stay the injunction on June 23, 2025, just before the Court published *Trump v. Casa*, No. 24A884 (June 27, 2025) limiting nationwide injunctions. Thus, the Supreme Court's order, which is not accompanied by an opinion, signals only disagreement with the nature, and not the substance, of the nationwide preliminary injunction. This is made clear by the Court's decision in *Trump v. J.G.G.*, 604 U.S. ____ (2025), where the Court explained that the putative class plaintiffs there had to seek relief in individual habeas actions (as opposed to injunctive relief in a class action) against the implementation of Proclamation No. 10903 related to the use of the Alien Enemies Act to remove non-citizens to a third country. Regardless, ICE appears to be emboldened and intent to implement its campaign to send noncitizens to far corners of the planet—places they have absolutely no connection to whatsoever—in violation of individuals' due process rights.

Ms. Sanchez's removal to a third country would violate her due process rights unless she is first provided with sufficient notice and a meaningful opportunity to apply for protection under the Convention Against Torture. Intervention by this Court is necessary to protect those rights.

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

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

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

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.

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 irreparable 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.

C. 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 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 she 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.

VI. 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 re-detention is not indefinite and further whether she is a danger to the community or a flight risk; and (3) not remove her to any third country without first providing her with constitutionally-compliant procedures.

Dated: July 23, 2025

Respectfully submitted,

/s/ Gregory Fay

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