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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

SAUL AMEZCUA-PENALOZA,

Petitioner-Plaintiff,

v.

John CANTU, Field Office Director of Phoenix Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No.

A-[redacted]

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 Saul Amezcua-Penaloza 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 him based on an unlawful action by ICE, (2) ordering his immediate release from immigration detention; and (3) from re-arresting Petitioner-Plaintiff Amezcua-Penaloza until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

If the Court deems oral argument necessary on July 11, 2025, Petitioner requests to appear by video.

Dated: July 11, 2025

Respectfully submitted,

/s/ Hillary Walsh
Hillary Walsh
Attorney for Petitioner-Plaintiff Saul Amezcua-Penaloza

I. INTRODUCTION

Respondents unlawfully re-detained Petitioner-Plaintiff Mr. Amezcua-Penaloza on June 27, 2025. ICE released Mr. Amezcua-Penaloza from custody on March 6, 2012, after the Immigration Judge granted bond. The bond determination was based on a comprehensive review of the relevant factors under 8 C.F.R. § 1236.1, including a determination that Mr. Amezcua-Penaloza was not a flight risk nor a danger to the community. DHS did not appeal the IJ order granting bond. To date, this bond order remains in full force and effect, as it has not been vacated or revoked by any court or administrative body.

Mr. Amezcua-Penaloza has lived in liberty for the past thirteen (13) years, during which time he has established himself as an exemplary resident and an asset to his community. He is a successful artist and business owner, a loving and supporting husband and father, and the primary financial provider for his family. Mr. Amezcua-Penaloza has raised his son and stepson as two exemplary young men, aged twenty-one (21) and twenty (20), respectively. His younger son suffers from epileptic seizures and witnessed the sudden and unwarranted detention of his father by ICE officers. As Mr. Amezcua-Penaloza was driven away, he was overcome with grief for his son, worrying that he may suffer another seizure due to witnessing this traumatic event. While in custody, he communicated with his sons about how to take over payment of bills, as he financially supports them.

Moreover, since his release on bond in 2012, Mr. Amezcua-Penaloza has consistently demonstrated his commitment to a law-abiding life, as he has neither committed any crimes nor received even a single traffic citation. Despite his case being administratively closed since 2016, he has continued to pursue pathways to regularize his immigration status, including retaining undersigned to file an application for a T nonimmigrant visa with USCIS. This type of visa gives status to immigrant victims of severe human trafficking; in Petitioner's case, his trafficking is based on a harrowing history of labor trafficking that began when he was only 14 years old and continued into adulthood from multiple traffickers. This combination of past atrocities underscores the urgent need for Mr. Amezcua-Penaloza release from detention and protection from further harm. The submission of his Form I-914, Application for T Nonimmigrant Status,

is soon forthcoming, as counsel's attention has been redirected due to Mr. Amezcua-Penaloza's current and unlawful detention; he is currently eligible to receive Trafficking Victims Assistance Program ("TVAP") benefits.

By statute and regulation, and as interpreted by the Board of Immigration Appeals (BIA), ICE has the authority to re-arrest a noncitizen and revoke their bond, but only where there has been a material 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); *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) (finding change in circumstances warranting re-detention must be "material").

The Due Process Clause further limit's ICE's re-arrest authority: for there to be due process, individuals released from incarceration have a liberty interest in their freedom, and to protect that interest, including on the particular facts of Mr. Amezcua-Penaloza's case, due process mandates that the government release Mr. Amezcua-Penaloza from his unlawful detention. Moreover, the government must provide a notice and a hearing *prior to any revocation of his conditional release from custody*, which affords him the opportunity to advance his arguments as to why his bond should not be revoked.

That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular relevance here, where Mr. Amezcua-Penaloza's detention was ***already*** found to be unnecessary to serve its purpose. An Immigration Judge (IJ) previously ordered that he need not be incarcerated to prevent flight or to protect the community in 2016, and no changed circumstances—let alone *material* changes—have occurred that would justify re-arrest.

Therefore, at a minimum, to lawfully re-arrest Mr. Amezcua-Penaloza, the government must first establish, by clear and convincing evidence and before a neutral adjudicator, that he is now a danger to the community or a flight risk, such that his re-incarceration is necessary.

Mr. Amezcua-Penaloza meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court enjoining the government

from continuing his unlawful custody and prohibiting the government to re-arrest him at any future time, unless and until he first receives a hearing before a neutral adjudicator, as demanded by the Constitution. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Mr. Amezcua-Penaloza's favor.

II. STATEMENT OF FACTS AND CASE

Mr. Amezcua-Penaloza is a citizen and national of Mexico who entered the U.S. with his parents in 1997, at the age of 14 years old. He voluntarily left in 2007, re-entered shortly after, and has remained in the country since. From the time of his initial entry at the age of 14, Mr. Amezcua-Penaloza was forced to do physically demanding labor for 14+ hours per day. As a result, he was unable to attend school.

To enable him to work, the adults in his life obtained a fake social security card and employment authorization documents that claimed he was 18 years old. Later, Mr. Amezcua-Penaloza decided he wanted to pursue an education, but since he was too old to enroll in high school, so he used a false social security card to register at Phoenix College. During a minor traffic stop, a Tempe detective discovered his use of a social security number based on his Phoenix College Student ID and Petitioner's admission to working with a fake social.

As a result, on August 21, 2009, he was convicted for the offense of Solicitation to Take the Identity of Another, a class 6 felony, in violation of A.R.S. sections 13-2008,13-1002, 12-114.01, 13-610, 13-701, 13-702, 13-702.01, and 13-801. He was sentenced to eighteen (18) months of probation. The felony was subsequently redesignated a misdemeanor. Prior to his arrest, Mr. Amezcua-Penaloza had no awareness that the social security number belonged to an actual individual(s), as the entire process was orchestrated when he was 14 years old.

After being taken into ICE custody and put into removal proceedings, an Immigration Judge ordered Mr. Amezcua-Penaloza's release on a $4,000 bond. ***Exhibit A.*** Prior to making the order, the IJ held a hearing and gave full consideration of the relevant factors under 8 C.F.R. § 1236.1, and determined that Mr. Amezcua-Penaloza was not a flight risk nor a danger to the community. On March 6, 2012, ICE released Mr. Amezcua-Penaloza following the IJ's bond

order. DHS did not appeal. This IJ order remains in full force and effect, as it has not been vacated or revoked by any court or administrative body. ***Exhibit B.***

On April 18, 2016, IJ Hollis, granted the Motion to Administratively Close Removal Proceedings, with no objection filed by DHS. ***Exhibit C.***

On June 3, 2025, DHS filed a Motion to Recalendar Administratively Closed Proceedings. The Motion remains pending, with no future hearing date set. ***Exhibit D.***

On June 11, 2025, Mr. Amezcua-Penaloza retained undersigned counsel to submit Form I-914, Application for T Nonimmigrant status, who thoroughly assessed his circumstances and determined that he qualifies for relief. This status is designed for individuals who have endured severe hardships, and in his case, it is based on a harrowing history of labor trafficking that began when he was only fourteen (14) years old and by another trafficker in adulthood. ***Exhibit E.***

On June 27, 2025, with his removal case still administratively closed and with the IJ's bond order still intact, ICE detained Mr. Amezcua-Penaloza. ICE has never articulated why Mr. Amezcua-Penaloza was now a flight risk or a danger to his community, or how he violated any conditions of his 2012 bond release.

It is essential for this Court to intervene to guarantee that Mr. Amezcua-Penaloza is released from custody due to this unlawful arrest. He should be returned to his family home in Phoenix, Arizona, and ICE should be mandated to provide him a hearing before determining to re-arrest him. This unlawful conduct taken against Mr. Amezcua-Penaloza is already cause for suffering irreparable harm to him and his family

III. LEGAL STANDARD

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

a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Amezcua-Penaloza overwhelmingly satisfies both standards.

ARGUMENT

A. MR. AMEZCUA-PENALOZA 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). Mr. Amezcua-Penaloza is likely to remain in unlawful custody in violation of his due process rights without intervention by this Court. Mr. Amezcua-Penaloza will continue to suffer irreparable injury if he continues to be detained without due process.

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

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

The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond 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 Mr. Amezcua-Penaloza weighty interest in his freedom from unlawful detention.

The District of Arizona has recognized that when the government seeks to revoke or stay a noncitizen's release from custody, due process under the Fifth Amendment requires a meaningful opportunity to be heard before the deprivation occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of erroneous deprivation; and 3) the burden on the government – "the

fundamental requirement of due process – the opportunity to be heard at a meaningful time and manner." *Organista*, No. CV-18-00285-PHX-GMS, at 4.; *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003). In weighing the *Matthews* factors, the court declared that "there is no meaningful dispute that Petitioner has a liberty interest in being heard before the BIA can prolong his detention." *Organista*, No. CV-18-00285-PHX-GMS, at 4.

Likewise, federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Mr. Amezcua-Penaloza, *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. Mr. Amezcua-Penaloza Has a Protected Liberty Interest in His Conditional Release

Mr. Amezcua-Penaloza'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 March 6, 2012, Mr. Amezcua-Penaloza exercised that freedom under the IJ's order granting him release from custody. Accordingly, he 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 release in [Mr. Amezcua-Penaloza 's case], with the liberty interest in parole as characterized by *Morrissey*,'" they bear similar features in liberty interests. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Amezcua-Penaloza's release "enables him to do a wide range of things open to persons,'" including to live at home, work, care for his family, for whom he is the financial provider, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

Amezcua-Penaloza's is proud and responsible business owner, and the primary financial provider for his wife and two sons, including his 20-year-old stepson who suffers from epileptic seizures. He has not committed any crimes, not even a traffic citation, for the past thirteen (13) years since his bond release. He has a credible Form I-914, Application for T nonimmigrant status pending submission to the United States Citizenship and Immigration Services (USCIS).

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

Mr. Amezcua-Penaloza asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for thirteen (13) years, during which time he has complied with all conditions of release and served as the financial provider for his family; (3) where he has a

credible claim for T nonimmigrant relief, with Form I-914, Application for T nonimmigrant status pending preparation by undersigned counsel; (4) where no change in circumstances exist that would justify his lawful detention; and (5) where the only circumstance that has changed is DHS's *pending* Motion to Recalendar Administratively Closed Proceedings combined with ICE's move to arrest as many people as possible under the new administration's initiative, due process mandates that he be released from his 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 [Mr. Amezcua-Penaloza 's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws 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 Mr. Amezcua-Penaloza 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 [Mr. Amezcua-Penaloza 's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

i. Mr. Amezcua-Penaloza 's Private Interest in His Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Amezcua-Penaloza, 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, Mr. Amezcua-Penaloza retains a truly weighty liberty interest even though he is under conditional release.

What is at stake in this case for Mr. Amezcua-Penaloza 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 his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

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

The government's interest in maintaining an unlawful detention without a due process hearing is low, and when weighed against Mr. Amezcua-Penaloza 's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping him in unlawful custody; (2) re-arresting Mr. Amezcua-Penaloza 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 him from the United States in violation of an agency order and district court injunction. It becomes abundantly clear that the *Mathews* test favors Mr. Amezcua-Penaloza 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 Mr. Amezcua-Penaloza with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Mr. Amezcua-Penaloza is a flight risk or danger to the community would impose only a *de minimis* burden on

the government, because the government routinely provides this sort of hearing to individuals like Mr. Amezcua-Penaloza.

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Mr. Amezcua-Penaloza when he was released after bond determination hearing in 2012, and since has lived at liberty as a financial provider for his family, without any criminal or civil traffic infractions. Furthermore, there is no court hearing scheduled for Mr. Amezcua-Penaloza's administratively closed case at this time.

On March 6, 2012, an Immigration Judge determined that Mr. Amezcua-Penaloza was not a flight risk or a danger to the community and Mr. Amezcua-Penaloza 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).

It is difficult to see how the government's interest in detaining Mr. Amezcua-Penaloza has materially changed since he was released in March 2016, absent any circumstances indicating he is a danger to the community or a flight risk. The government's interest in detaining Mr. Amezcua-Penaloza at this time is extremely low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[1]

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[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

Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Amezcua-Penaloza does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his bond should be revoked and whether he 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. Mr. Amezcua-Penaloza has an administratively closed matter since April 18, 2016, which has not been reopened by the Immigration Judge to date. ICE's unlawful action of placing him in custody is more of a financial burden than releasing him and providing any pre-custody hearing before any future re-arrest occurs.

In the alternative, providing Mr. Amezcua-Penaloza 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 his re-arrest. But there is no justifiable reason to re-incarcerate Mr. Amezcua-Penaloza 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 Mr. Amezcua-Penaloza from unlawful custody and enjoining Mr. Amezcua-Penaloza's re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Amezcua-Penaloza is a flight risk or

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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.").

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 Mr. Amezcua-Penaloza from unlawful custody and providing Mr. Amezcua-Penaloza a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Amezcua-Penaloza can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances; such circumstances that ICE's March 2016 release due to a IJ's bond determination should be altered or revoked because clear and convincing evidence exists to establish that Mr. Amezcua-Penaloza is a danger to the community or a flight risk.

The procedure Mr. Amezcua-Penaloza 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 Mr. Amezcua-Penaloza's re-incarceration is warranted

As the above-cited authorities show, Mr. Amezcua-Penaloza is likely to succeed on his claim that the current arrest and detention that ICE effectuated on June 27, 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.

2. Mr. Amezcua-Penaloza Will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Amezcua-Penaloza will suffer irreparable harm were he 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]

Mr. Amezcua-Penaloza has been out of ICE custody for more than thirteen (13) years. During that time, he has worked hard to establish a stable life for himself, his wife, and his children. He has an asset to his community and a successful business owner. Since his release in 2012, he has not violated the law. Continued detention is bound to result in irreversible harm not only to Mr. Amezcua-Penaloza but will also significantly affect his wife and two sons, particularly his youngest son who suffers from epileptic seizures. Becasue Mr. Amezcua-Penaloza is a business owner and the primary sole financial provider for his family, the implications of his detention are profoundly impactful.

As detailed *supra*, Mr. Amezcua-Penaloza contends that his re-arrest absent a hearing before a neutral adjudicator violates his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Amezcua-Penaloza from suffering irreparable harm by being subject to unlawful and unjust detention.

3. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

The balance of equities and the public interest undoubtedly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Mr. Amezcua-Penaloza . 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

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

preliminary injunction ordering it to comply with the Constitution.

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

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 Mr. Amezcua-Penaloza 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.

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