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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

J.P.,

Petitioner-Plaintiff,

v.

Ernesto SANTACRUZ JR., Acting Field Office Director of Los Angeles Office of Detention and Removal, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, et al.;

Respondents-Defendants.

Case No. 8:25-cv-01640-FWS-JC

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION**

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## I. INTRODUCTION

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

Petitioner-Plaintiff J.P. ("J.P." or "Petitioner")—after nearly two years at liberty following approximately two years of harrowing immigration detention—fears being ripped away from his U.S. citizen family including his four children, mother, sisters, and nephews, all of whom he supports in immeasurable ways. He fears further traumatization in unreasonable and unjustified detention by Respondents.

Without injunctive relief from this Court, this is the fate awaiting J.P. Respondents, in their Opposition, put forth varying arguments as to why J.P. can be immediately re-detained without process. Each one is unavailing and should be rejected. Under the Due Process Clause, J.P. should be provided notice and a hearing before a neutral adjudicator before Respondents can deprive him of his liberty.

## II. ARGUMENT

### A. J.P. IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM

#### 1. There Are No Jurisdictional Bars to J.P.'s Claims

##### *a. Habeas is the proper vehicle for J.P.'s claims*

Respondents do not seriously contest the "in custody" requirement, see Dkt. 9 at 4-5, nor could they given J.P.'s placement on an Order of Supervision ("OSUP"), which restricts his liberty in numerous ways including "[t]hat [he] appear in person at the time and place specified, upon each and every request of the agency for identification . . . ." Dkt. 1-2, Tinto Decl., Exh. B (OSUP).

Instead, Respondents contend that J.P.'s claim is not cognizable in habeas because instead of seeking release from current custody, it requests injunctive

relief against future arrest and detention. Dkt. 9 at 5. But the Supreme Court has directly stated that "the writ is available . . . to attack future confinement and obtain future releases." *Prieser v. Rodriguez*, 411 U.S. 475, 487 (1973) (emphasis added); *see also Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 488-89 (1973) (explaining that prior Supreme Court law permitting an individual "to attack on habeas corpus only his current confinement, and not confinement that would be imposed in the future" had been overruled). The Ninth Circuit likewise has made clear that "an action sounds in habeas 'no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit . . . if success in that action would necessarily demonstrate the invalidity of confinement or its duration.'" *Pinson v. Carvajal*, 69 F.4th 1059, 1071 (9th Cir. 2023) (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005)).

Here, as J.P. challenges his future confinement as violative of Due Process, his claims are clearly sound in habeas. District courts regularly grant relief for individuals who are seeking to prevent future physical confinement. *See, e.g.*, *Ortega v. Bonnar*, 415 F.Supp.3d 963, 969 (N.D. Cal. Nov. 22, 2019) (finding the Court had jurisdiction to hear petitioner's "as-applied constitutional due process challenge to the government's ability to re-detain him without a hearing"); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *4 (N.D. Cal. June 26, 2025) (collecting cases). Thus, a habeas petition is the proper vehicle for J.P.'s claims.

***b. Title 8 U.S.C. § 1252(g) does not bar J.P.'s claims***

Despite Respondents' assertions to the contrary, *see* Dkt. 9 at 5-6, Section 1252(g) does not apply to J.P.'s instant claim. He does not challenge any discretionary "decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders[.]" 8 U.S.C. § 1252(g).

Interpreting Section 1252(g)'s mandate regarding jurisdiction, the Supreme Court has explained that this narrow provision is tethered solely to the Attorney

General's decisions with respect to these "three discrete actions." *Reno v. Am-Arab Discrimination Comm.*, 525 U.S. 471, 482 (1999). Section 1252(g) does not alter this Court's jurisdiction to review "the many other decisions or actions that may be part of the deportation process." *Id.* at 483. As the en banc Ninth Circuit explained, "The district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question—a description of the relevant law—forms the backdrop against which the Attorney General later will exercise discretionary authority." *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (en banc).

Here, J.P.'s claims do not arise from Respondents' discretionary decision to execute a removal order, contrary to their assertions. First, J.P. does not have an *executable* removal order. At present, J.P.'s removal proceedings are pending before the Board of Immigration Appeals ("BIA"), after Respondents appealed the Immigration Judge's ("IJ") grant of deferral of removal under the Convention Against Torture ("CAT"). *See* Dkt. 2 at 23; *see also* Dkt. 1-3, Kavanagh Decl., at ¶ 9; Dkt. 1-1, Tinto Decl., Exh. D (EOIR Case Status). That appeal is still pending with no determination by the BIA. *Id.* Therefore, Respondents cannot, legally execute a removal order against J.P. where no executable order exists. Second, J.P.'s claims do not stem from any other challenge to a discretionary decision regarding his removal proceedings, which are pending, per Respondents' appeal, before the appropriate administrative body. *See Hovsepian*, 359 F.3d at 1155 ("[T]he consideration of a purely legal question, which does not challenge the Attorney General's discretionary authority, supports jurisdiction.") (citing *Ali v. Ashcroft,* 346 F.3d 873, 878–79 (9th Cir.2003)). Thus, Section 1252(g) does not bar review of J.P.'s claims in this case.

***c. Neither Section 1252(a)(5) nor (b)(9) bars J.P.'s claims***

Respondents' arguments that 1252(a)(5) and (b)(9) strip this Court of jurisdiction over J.P.'s claims misconstrue those claims. Dkt. 9 at 5-6. As

aforementioned, Respondents are incorrect in assuming J.P. has an executable final order of removal. He does not, and as such, his claim here does *not* seek review of a final order of removal. Because 8 U.S.C. §§ 1252(a)(5) and (b)(9) address review of final orders of removal, they are inapplicable in J.P.'s case.

Assuming *arguendo* J.P. did have an executable final order of removal, as a threshold matter, J.P. would not be seeking "judicial review of an order of removal entered or issued." 8 U.S.C. § 1252(a)(5). As Congress clarified, the statute does "not intend[] to preclude habeas review over challenges to detention that are independent of challenges to removal orders." *Singh v. Holder*, 638 F.3d 1196, 1211 (9th Cir. 2011) (citing H.R.Rep. No. 109–72, at 175) (internal quotations omitted). This is precisely what J.P. challenges and what § 1252(a)(5) does not preclude: his re-detention by Respondents without notice or a hearing.

Respondents' other arguments that J.P.'s claims fall under the scope of § 1252(b)(9) distort both the claims and settled authority confirming the narrow scope of § 1252(b)(9). *See* Dkt. 9 at 6. J.P.'s challenge to his re-detention does *not* arise from his removal proceedings and cannot be meaningfully reviewed through a petition for review. Applying § 1252(b)(9) to bar his claim would transform a channeling provision into a jurisdiction-stripping provision, defying the statutory structure. *E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020) ("[T]he point of the provision is to channel claims into a single petition for review, not to bar claims that do not fit within that process."). The channeling-vs-stripping distinction is compelled by the Supreme Court's narrow interpretation of what claims "arise from" proceedings: it has dismissed as "extreme" and "absurd" broader readings, such as Respondents' here, that would render valid claims "effectively unreviewable." *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018).

J.P. has no executable final removal order and—even if he did—Sections 1252(a)(5) and (b)(9) do not bar his claims. J.P.'s petition and application for a preliminary injunction are properly before this Court.

**2. Respondents' Analysis Contains Fundamental Errors**

***a. The specific detention statute under which J.P. would be detained is immaterial to the issue of what due process is owed to J.P.***

Respondents spend their Opposition arguing that because J.P. is "*post*-final order" of removal and subject to detention under 8 U.S.C. § 1236(a)(6)—the purpose of which is to "execute" his removal order—he deserves no due process after being at liberty for two years. Dkt. 9 at 8. This is a faulty assumption and misses the crux of J.P.'s claim.

First, as noted above, J.P. does *not* have an executable final order of removal; his case is currently pending before the BIA. Respondents cannot legally remove him, so they cannot argue that re-detaining J.P. would be for the purpose of executing his removal order. *See supra*, Section II(A)(1)(*b*). Even without an executable final order of removal, due to the current posture of J.P.'s removal case, it is a complex legal question what detention authority would govern his re-detention: 8 U.S.C. § 1226(c), under which J.P. was initially detained, or § 1231(a)(6), governing individuals with final orders of removal. *Cf. Avilez v. Garland*, 69 F.4th 525, 537 (9th Cir. 2023) (holding that the government's authority to detain a noncitizen under § 1226(c) applies throughout both the administrative (i.e. before the IJ and BIA) and judicial (i.e. before a court of appeals) phases of removal proceedings, "pending a decision on whether the [noncitizen] is to be removed from the United States.") (citing *Jennings*, 583 U.S. 281).

Nevertheless, it is a question irrelevant to the instant case and a distraction from the due process claim at issue. J.P.'s liberty interest stems not from a specific

detention statute but from his conditional release on bond and his freedom from imprisonment over the past two years. Under either scenario—detention under § 1231(a)(6) or § 1226(c)—J.P.'s due process would be violated upon being re-detained by Respondents without notice or hearing. Nor would J.P. be afforded any meaningful review upon re-detention to satisfy the process owed at the loss of his liberty.

District courts have rejected Respondents' arguments that the procedural due process owed to petitioners like J.P. depends on the specific detention authority. *See, e.g.*, *Jorge M.F. v. Jennings*, 534 F.Supp.3d 1050, 1055 (N.D. Cal. 2021) (holding that whether the petitioner would be subject to detention under § 1226(a), (b) or (c) if re-arrested by ICE, the procedural due process inquiry regarding re-arrest or re-detention of a non-citizen after release on bond is the same) (internal quotations and citations omitted); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1606294, at *2 (N.D. Cal. May 20, 2022) ("The Court is unpersuaded by Respondents' arguments . . . [and] the *Jorge M.F.* court rejected similar arguments regarding the application of due process under different immigration [detention] statutes."); *cf. Diouf v. Napolitano*, 634 F.3d 1081, 1084 (9th Cir. 2011) (holding that individuals detained under § 1231(a)(6) are entitled to the same procedural safeguards against prolonged detention as those detained under § 1226(a)).

Respondents also contend that because J.P. has an executable final order of removal, he has a diminished liberty interest. *See* Dkt. 9 at 9. Not so. Unlike some noncitizens detained under § 1231(a)(6) who have final, *executable* removal orders, and similar to the petitioners in *Jorge M.F.* and *Ortega v. Bonnar*, J.P. is not removable anytime in the near future. His application for relief, originally granted by the IJ, is now pending on Respondents' appeal before the BIA. J.P. is also entitled to future process in those proceedings, including a petition for review before the Ninth Circuit. Thus, J.P.'s liberty interest is arguably greater than

petitioners in *Jorge M.F.* and *Ortega v. Bonnar*, where they had pending petitions for review of the denial of relief. 534 F.Supp.3d at 1053; 415 F.Supp.3d at 966.

Further, J.P. was initially granted bond by order of an IJ who found that he was not a danger and that the minimum possible bond of $1,500, with no "ankle/electronic monitoring," was sufficient to guard against any possible flight risk. Dkt. 1-1, Tinto Decl., Exh. A (IJ Bond Order). Unlike in *Ortega v. Bonnar, Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020), and *Jorge M.F.*, cases in which the IJ or BIA revoked bond, the IJ order granting J.P. bond has never been disturbed, adding to his liberty interest. *Id.* In fact, Respondents have not even alleged that J.P. is a danger or flight risk. *See generally* Dkt. 9. They argue that no such finding is necessary before they strip him of his liberty. *Id.* at 7, 9. If Respondents were allowed to proceed as they argue they should,

> "ICE's detention decisions would then be effectively unreviewable by any neutral decisionmaker . . . , and [if after a prolonged detention habeas petition, an] IJ ordered the person released again, ICE could repeat the process the next day. In this alternate universe, ICE would never need to appeal a bond decision, given its unfettered authority to set additional conditions of bond and to re-detain individuals at will. *That is a recipe for arbitrary and erroneous deprivations of liberty*."

*Guillermo M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *8 (N.D. Cal. July 17, 2025) (emphasis added).

What matters in J.P.'s case is whether "the specific conditional release in [his case]" approximates the "liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010). Here, just a in *Morrissey*, J.P.'s release "enables him to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to live at home; work; care for his children, mother, sisters, and nephews; receive

ongoing reentry support from the California Department of Rehabilitation regarding employment, education, and other social services; enroll in Santa Ana College; and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). His liberty interest is profound.

Respondents' assumption that J.P. has an executable final order of removal, and a diminished liberty interest, is erroneous and misguided. J.P.'s weighty liberty interest is protected by the Due Process Clause and does not stem from a specific detention statute. *See, e.g.*, *Guillermo M.R.*, 2025 WL 1983677, at *5 (holding that petitioner who would be subject § 1231(a)(6) if re-detained by ICE, and who was "already released on immigration bond," "possess[es] an interest in [his] continued liberty, which grows over time, and a due process right to a hearing before being re-detained.").

***b. Respondents' reliance on Demore and Zadvydas is misplaced and ignores relevant precedent***

Respondents improperly rely on the Supreme Court's decisions in *Demore v. Kim*, 538 U.S. 510 (2003), and *Zadvydas v. Davis*, 533 U.S. 678, to argue that the Court has found mandatory detention during immigration proceedings without a *pre-deprivation* hearing to be constitutional.[1] *See* Dkt. 9 at 6. This interpretation is erroneous, the cases are inapposite here, and Respondents fail to engage with the substantial and relevant Supreme Court precedent and mounting caselaw cited in J.P.'s filings. *See* Dkt. 1; Dkt. 2.

The Supreme Court's holdings in *Demore* and *Zadvydas* are inapplicable here because both involved challenges where the noncitizen was *already* in immigration detention for a prolonged period and was contesting the length of their detention. These petitioners did not seek a *pre*-deprivation hearing before a neutral

[1] Curiously, Respondents claim here that J.P. would be subject to mandatory detention under 8 U.S.C. § 1226(c), *see* Dkt. 9 at 5.

adjudicator challenging their initial detention; they sought a custody hearing where detention was ongoing and had become unreasonably prolonged. The Court in *Demore* and *Zadvydas* thus made no such determination about the constitutionality of a *pre*-deprivation hearing where a noncitizen faced *re*-detention by Respondents.

J.P. is not currently in immigration detention or challenging his initial placement in detention; he has already brought and won this challenge. *See* Dkt. 2 at 43 n.15; *J.P. v. Garland*, 685 F.Supp.3d 943 (N.D. Cal. Aug. 7. 2023). J.P. is instead challenging his *re*-detention by Respondents, given his life at liberty for nearly two years after being granted bond by an IJ, creating a liberty interest that entitles him to notice and an opportunity to be heard regarding the necessity and legality of his re-detention, before any such re-detention can take place.

Regardless of this fundamental factual discrepancy, Respondents further misinterpret the holdings in *Demore* and *Zadvydas* to argue that Due Process does not require a hearing. Respondents first argue that the Court in *Demore* rejected the principle that mandatory detention under 8 U.S.C. § 1226(c) without an individualized determination about danger or flight risk did not violate Due Process. *See* Dkt. 9 at 7. This is incorrect. The Supreme Court in *Demore* reviewed only Section 1226(c)'s *facial* validity and upheld it on the understanding that it authorized detention without a hearing for a "limited period." 538 U.S. at 529-30. The Court's holding was based on the "brief" nature of most detentions under that statute. *Id.* at 531.[2] The majority in *Demore* made no holding as to whether, once detention becomes prolonged, due process requires release absent an individualized determination as to danger or flight risk. 538 U.S. at 532 (Kennedy,

[2] After the *Demore* Court issued its decision, the government admitted that it had submitted false estimates of detention duration that were much shorter than in reality; in fact, people who appealed immigration court decisions spent over a year in custody, on average. *See* Letter from Ian H. Gershengorn, Acting Solic. Gen., to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016).

J., concurring) ("[S]ince the Due Process Clause prohibits arbitrary deprivations of liberty, a [noncitizen] such as respondent could be entitled to an individualized determination as to his risk of flight and dangerousness if the continued detention became unreasonable or unjustified."); *see also Perera v. Jennings*, 598 F.Supp.3d 736, 744 (N.D. Cal. 2022) ("[J]ust because § 1226(c) does not grant the Attorney General statutory authority to release individuals . . . on his own accord does not mean that the Court does not have the power to grant petitions for habeas corpus raising as-applied constitutional challenges to that detention without a bond hearing.").

Respondents then cite *Zadvydas* to assert that no process is due to noncitizens in detention who have a final order of removal because the government's "interest in effecting the removal of [noncitizens] [is] a constitutional justification for detention." Dkt. 9 at 7. This assertion is again erroneous and inapplicable in J.P.'s case. First, J.P. does not have an executable final order of removal. Second, the Supreme Court in *Zadvydas* made clear that six months of detention with no clear end in sight was constitutionally suspect, requiring further justification from the government in the form of an individualized determination. *See Zadvydas*, 533 U.S. at 701 ("Congress previously doubted the constitutionality of detention for more than six months," and "[a] statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem."); *Jennings*, 583 U.S. at 299-300 (leaving open the question of whether prolonged detention under Section 1226(c) without a bond hearing violates the Due Process Clause).[3]

[3] *See also* Joint Status Report, *Rodriguez v. Marin*, No. CV 07-3239, at *2 (C.D. Cal. Mar. 5, 2018) (ECF No. 478) (where the government agreed that the class-wide permanent injunction entered by the district court in *Jennings* for individuals held in immigration detention in the Central District of California remains in place, and requires an automatic bond hearing before the IJ at six months of detention, including for individuals detained under § 1226(c) and 1231(a), where the

Contrary to what Respondents assert, the principles established in *Demore* and *Zadvydas* are clear: the Supreme Court signaled that the government's ability to detain noncitizens was not unfettered and could not run afoul of Due Process.

Improperly relying on *Demore* and *Zadvydas*, Respondents fail to meaningfully address relevant Supreme Court precedent preventing Respondents from *re*-detaining individuals without any due process. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483.[4] In all three cases, the Supreme Court determined 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." *Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

Respondents also fail to grapple with the growing caselaw, rooted in the Due Process Clause and cited by this Court in its TRO order, applying *Morrisey* and its progeny to bar immigration authorities from re-detaining noncitizens like J.P. without a pre-deprivation hearing—and in the event of re-detention, ordering immediate release based on the violation of Due Process.[5] *See, e.g., Arzate v.*

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government bears the burden of justifying continued detention by clear and convincing evidence).

[4] *See also Ortega v. Bonnar*, 415 F.Supp.3d at 969-70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

[5] *See, e.g., Maklad v. Murray*, No. 1:25-cv-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (ordering immediate release of illegally arrested petitioner and enjoining Respondents from re-arresting petitioner without a pre-deprivation bond hearing at which the government bears the burden of demonstrating, by clear and convincing evidence, that petitioner is a danger to the community or a flight risk); *see also* Dkt. 2 at 25 n.13 (collecting cases where Respondents re-detained individuals previously released by either an IJ or ICE itself, and district courts subsequently ordered immediate release from custody and

*Andrews*, No. 1:25-cv-00942-KES-SKO, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025) (granting petitioner's motion for a temporary restraining order where petitioner had been released on an IJ-granted bond two years prior, and finding that petitioner's arrest one year prior, where no charges were filed, was not a justifiable changed circumstance that would allow ICE to unilaterally re-arrest petitioner absent a pre-deprivation hearing before an IJ); *see also* Dkt. 2 at 32-33 (collecting cases).

Respondents' argument that there is no precedent for pre-deprivation hearings for noncitizens facing re-detention is improper. J.P.'s request for this process is supported in substantial caselaw.

***c. J.P. would not be afforded sufficient process post-deprivation if Respondents re-detain him without notice or a hearing***

If re-arrested by Respondents, J.P. would be subject to detention—whether pursuant to § 1231(a) or § 1226(c)—that provides no meaningful process and that could last for years, as his prior detention did. Respondents argue that the laws permit the government to re-detain J.P. without providing any process, and also that, if re-detained, J.P. would be afforded sufficient process *post*-deprivation. In doing so, they cite to minimal statutory and regulatory procedures governing individuals detained under 8 U.S.C. § 1231(a)(6), including a review of detention status at 90 days, *see* 8 U.S.C. § 1231(a)(2), and an option to seek district court review of detention after 180 days via a habeas petition, pursuant to the Supreme Court's holding in *Zadvydas*. *See* Dkt. 9 at 9.

Again, Respondents' arguments here hinge on the erroneous assumption that J.P. has an executable final order of removal. Thus, Respondents' contentions regarding the government's interest in effectuating removal orders and the lack of

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enjoined Respondents from re-detaining the individual without providing a pre-deprivation hearing).

any protections in law to prevent unilateral re-detention of noncitizens are unavailing here. Even if Respondents are correct that J.P.'s detention would be governed by 8 U.S.C. § 1231(a)(6), though still without an executable final order of removal, the government is still not permitted to run afoul of due process and re-detain J.P. without notice or a hearing based on his significant liberty interest.

Respondents cite to 8 C.F.R. §§ 241.4(*l*)(1) and (2), to argue that the government is authorized to unilaterally revoke supervised release without any process. This is not so.[6] First, 8 C.F.R § 241.4(*l*) allows ICE discretion to revoke release only for individuals released upon a decision by ICE under § 241.4, not for individuals released on an IJ-ordered bond. *See* 8 C.F.R. § 241.4(*l*)(1). Here, J.P. was released on an IJ-granted bond, not release by ICE, and therefore §§ 241.4(*l*)(1) and (2) would not apply. Second, assuming arguendo that they do, the process set forth in § 241.4(*l*) is insufficient to meet due process standards in this case.[7] The "initial informal interview" in § 241.4(*l*)(3) would not be conducted by a neutral adjudicator but by ICE officers—likely the same officers who made the re-detention decision. *See id.* There is no right to have Counsel present, present evidence, examine and confront evidence, or cross-examine witnesses. *See id.* There is no evidentiary standard ICE must meet under this process. *See id.* The decision is only reviewed approximately three months later by the ICE

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[6] Respondents cite to *Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) to contend J.P. has no due process rights under 8 C.F.R. § 241.4(*l*). *Moran* is inapposite, as it was a facial challenge to the regulation brought by petitioners with final orders of removal. Here, J.P. brings an as-applied due process claim, not a facial challenge, nor does he have a final order of removal.

[7] *See also Matter of Sugay*, 17 I. & N. Dec. 647, 640 (BIA 1981) (recognizing an implicit limitation on ICE's authority to re-arrest noncitizens and holding that "where a previous bond determination has been made by an immigration judge, no change should be made by [DHS] absent a change of circumstance."); *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances . . . ICE cannot redetain Panosyan.").

Headquarters Post-Order Detention Unit ("HQPDU"), not any neutral adjudicator. *See id.*

Respondents also cite *Zadvydas* to suggest that J.P. can "request release" after six months of detention, seemingly to assert that this is constitutionally sufficient *post*-deprivation process for individuals with final orders of removal. Dkt. 9 at 9. Yet in the same breath, Respondents contend that the law "does not require that every noncitizen not removed must be released after six months." *Id.* (internal quotation marks omitted). Regardless, *Zadvydas* is inapplicable here. As noted above, *see supra* Section II(A)(2)(*b*), it was decided in the context of prolonged initial detention, whereas here, the liberty interest is significantly greater, given that J.P. has been enjoying his freedom for the past two years. *See* 533 U.S. at 684-5. Notably, the Supreme Court in *Zadvydas* contemplated the regulatory scheme under 8 C.F.R § 241.4, providing for periodic custody reviews of individuals detained post-final order of removal, and still determined it was insufficient to protect against due process violations where post-final order detention becomes unreasonably prolonged. *Id.* at 683-84, 690.

Finally, if Respondents are *in*correct, and J.P.'s re-detention would place him under 8 U.S.C. § 1226(c)'s detention authority, he would receive no statutory or regulatory post-deprivation process whatsoever. Section 1226(c) provides for mandatory detention of noncitizens and does not include or require any review or process before a neutral adjudicator. J.P. can only request that Respondents—non-neutral, one-sided parties—reassess his custody status pursuant to their prosecutorial discretion directive. This process is unavailing, and during his prior nearly-two-year detention, Respondents denied J.P.'s four requests for release. *See* Dkt. 1-3, Kavanagh Decl., at ¶ 11.

Under either detention statute authority, if J.P. is re-detained, he would have no statutory or regulatory mechanism by which to seek review before a neutral adjudicator.

***d. Providing a pre-deprivation hearing costs Respondents nothing and does not impair law enforcement or threaten greater flight risk***

In their Opposition, Respondents argue—albeit briefly and under the erroneous assumption that J.P. has an executable final order of removal—that requiring a pre-deprivation hearing for individuals like J.P. would "impair law enforcement" and "increase the risk of flight." Dkt. 9 at 9. But Respondents provide no evidence in support of these claims. Neither do Respondents allege nor present any evidence that J.P. himself presents any such risk of flight (or danger, for that matter), or that providing him a pre-deprivation hearing would threaten law enforcement. Respondents could not prevail on such an argument given the specific facts of this case. Further, any argument by Respondents that their interest in enforcing removal of noncitizens and protecting public safety is utmost, Respondents' interests are easily addressed by a neutral adjudicator's determination of whether J.P. poses a flight risk or danger to the community. The burden of such a hearing does not pose a substantial cost to the government; in fact, it may result in substantial cost savings compared to the price of erroneous re-detention. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

***e. Detention is not mandatory to execute a final order of removal***

Respondents also argue that detention is mandatory to execute a final order of removal. *See* Dkt. 9 at 9. That is incorrect. Respondents have regularly relied on a "bag and baggage letter"[8] to direct non-detained individuals whose removal

[8] When a noncitizen has a final order of removal, ICE may issue Form I-166, Notice to Surrender for deportation, ordering them to appear on a specific date and time for removal. Office of Enforcement and Removal Operations, ICE, DHS, Bond Management Handbook, at 14 (last accessed Aug. 10, 2025), https://www.ice.gov/doclib/foia/dro_policy_memos/eroBondManagementHandbook2018-ICFO-31476.pdf. More commonly known as a "Bag and Baggage" letter,

orders have become final, to report for deportation. *See Nen Di Wu v. Holder*, 646 F.3d 133, 134 (2d Cir. 2011) (issuing a bag and baggage letter instructing noncitizen to report to immigration officer ready for deportation); *Singh v. Gonzales*, 494 F.3d 1170, 1172 (9th Cir. 2007) ("Such an order issues once the government determines that there is no further administrative relief available to [noncitizen] who is subject to an order of removal, and instructs the [noncitizen] to appear at a specified location and time for removal."). As such, the idea that detention is the only way for Respondents to reliably effectuate removal is not only evidentiarily unsupported in Respondents' brief, but is in fact contradicted by practices of Respondents.

**3. Due Process Requirements for Pre-Deprivation Notice and Hearing**

The Supreme Court "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). In this case, where no urgency or special circumstance exists such that a pre-deprivation hearing is impracticable, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty. *See Guillermo M. R.*, 2025 WL 1983677, at *9 ("[A]bsent evidence of urgent concerns, a *pre*-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ."). Respondents should thus be required to provide J.P. with notice and a hearing *prior* to any re-detention and revocation of his bond. *See Morrissey*, 408 U.S. at 481-82; *see also* Dkt. 2 at 37-38.

At such hearing, Respondents should be required to prove by clear and convincing evidence the necessity of a noncitizen's re-detention. In similar cases,

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this notice "directs an individual to report to an immigration officer ready for deportation." *Matter of Nivelo Cardenas*, 28 I. & N. Dec. 68, 72 n.3 (BIA 2020).

other district courts have found that the Due Process Clause requires the government to bear the burden, both in the pre- and post-deprivation habeas context. *See Arzate*, 2025 WL 2230521, at *7 ("[Respondents] may not re-detain petitioner unless the government proves by clear and convincing evidence at a bond hearing before an immigration judge that petitioner is a flight risk or danger to the community.") (post-deprivation); *Singh v. Andrews*, No. 25-cv-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025) (post-deprivation); *Jorge M.F.*, 534 F.Supp.3d at 1057 (pre-deprivation); *Perera*, 598 F.Supp.3d at 746-47 (post-deprivation); *Pham v. Becerra*, 717 F.Supp.3d 877 (N.D. Cal 2024) (post-deprivation).

**B. J.P. HAS ESTABLISHED THAT HE WILL SUFFER IMMEDIATE AND IRREPARABLE HARM ABSENT A PRELIMINARY INJUNCTION**

Respondents argue that J.P. has "not demonstrated he will suffer irreparable injury absent his release," and state that his irreparable harm is merely a "possibility." Dkt. 9 at 10 (internal quotations omitted). First, Respondents again miss the mark, as J.P. is not asking for "release" in the instant case; he is asking for due process in the form of notice and hearing *before* any re-detention can occur. Further, the injury is not merely speculative or a "possibility." *Id.* In Respondents' own declaration from Deportation Officer Brenden Robbins, they state that J.P. was called to report in person and do not otherwise state that J.P. would not be re-detained. *See* Dkt. 9-1 at ¶ 21. Respondents also fail to contend with the evidence J.P. cited establishing that individuals just like him are currently being targeted and re-detained. *See supra*, Section II(A)(2)(*b*) 11-12 and *see* Dkt. 2 at 32-33 (collecting cases of petitioners like J.P. who were threatened with re-detention or in fact re-detained, obtained a preliminary injunction returning them to the *status quo*, and were granted due process in the form of notice and a pre-deprivation hearing); *see also* Dkt. 2 at 11 n.1; *Id.* at 40 n.14 ("[A] senior White House

official[] told Fox News that the White House was looking for ICE to arrest 3,000 people a day….").

Further, the injury to J.P., if denied this process, would indeed be "extreme" and "very serious." Dkt. 9 at 10. The Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to immigration detention." *Hernandez*, 872 F.3d at 995. Here, again, Respondents fail to contend with the facts of this case. Specifically, if wrongfully re-detained, J.P. stands to lose the liberty he has lived with for the past two years, his children, his mother, his sisters, his nephews, employment, and the support services he has accessed during this time. *See* Dkt. 1-2, J.P. Decl. at ¶¶ 33-41; Dkt. 1-1, Tinto Decl., Exhs. K-M, P-Y, II, JJ, VV. J.P. also faces irreparable psychological harm that he has *already* experienced in immigration detention and continues to live with at present. *See* Dkt. 1-2, J.P. Decl. at ¶¶ 29-32; Dkt. 1-1, Tinto Decl., Exh. J (Psychological Evaluation) (diagnosing J.P. with [redacted]); *Id.* at Exh. I ("Without a doubt, [J.P.] falls into this category of individuals most vulnerable to the adverse impact of detention."). Just the mere prospect of returning to detention, where he already spent nearly two years, has caused J.P. and his family increased anxiety and fear. *See* Dkt. 1-2, J.P. Decl. at ¶¶ 47, 51; Dkt. 1-1, Tinto Decl., Exh. M at ¶¶ 24-27. Detention will likely have a profoundly destabilizing effect on J.P.'s mental health and lead to decompensation, *see* Dkt. 1-1, Tinto Decl., Exh. I ("[I]t is my clinical opinion that [J.P.'s] mental health would drastically deteriorate if he were re-detained by ICE.")—especially given the inadequacy of mental health treatment in detention.[9]

Respondents' argument also suggests that J.P.'s alleged irreparable injury presumes a constitutional violation. *See* Dkt. 9 at 10. However, that is exactly what

[9] *See, e.g.*, California Department of Justice ("Cal DOJ"), 2025 Report: *Immigration Detention in California—A Comprehensive Review with a Focus on Mental Health* (rev. May 2025), https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf.

J.P. claims is at stake: a constitutional violation. It also assumes that J.P.'s constitutional claim will fail. However, J.P. has already demonstrated he is either likely to succeed or has raised serious questions on the merits of his claims. *See supra*; *see also* Dkt. 10; *Ortega v. Kaiser*, 2025 WL 1771438, at *4-5.

Finally, Respondents again erroneously equate J.P.'s circumstances to the case of an individual already in immigration detention requesting custody review by a neutral adjudicator. *See* Dkt. 9 at 10. This is misguided because J.P. is presently free and has been free for the past two years. His liberty interest—and the harm he faces if it is unconstitutionally infringed upon—is therefore *not* "the same" as "any habeas corpus petitioner in immigration custody." *Id.*; *see also Guillermo M. R.*, 2025 WL 1983677, at *5 ("[T]hose already released on immigration bond possess an interest in their continued liberty, which grows over time, and a due process right to a hearing before being re-detained.").

**C. THE BALANCE OF EQUITIES TIPS SHARPLY IN J.P.'S FAVOR**

The balance of equities and the public interest tip sharply in J.P.'s favor. Although the public has an interest "in the orderly and efficient administration of this country's immigration laws," as Respondents assert, the public also has "a strong interest in upholding procedural protections against unlawful detention." *Guillermo M. R.*, 2025 WL 1983677, at *10 (quoting *Ortiz Vargas*, 2020 WL 5074312, at *4) (internal quotation marks omitted); *see also Arzate*, 2025 WL 2230521, at *7 ("Faced with a choice between [minimally costly procedures] and preventable human suffering, as discussed above, the Court concludes that the balance of hardships tips decidedly in [petitioner's] favor.") (quoting *Hernandez*, 872 F.3d at 996, quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)) (internal quotations marks omitted). Respondents' stated interest in J.P.'s removal is premature, as he does not currently have a final order of removal. To rely on a public interest that is not at stake in this case is inappropriate.

Moreover, at base, Respondents "cannot reasonably assert that they are harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). The government's interest in enforcing immigration laws cannot come at the expense of a violation of J.P.'s constitutional rights.

## III. CONCLUSION

For the foregoing reasons, this Court should grant a preliminary injunction enjoining Respondents from re-arresting J.P., unless and until he is provided notice and a hearing before a neutral decisionmaker.

Dated: August 13, 2025

Respectfully submitted,

/s/ Mariel Villarreal
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## CERTIFICATE OF COMPLIANCE WITH L.R. 11-6.2

The undersigned, counsel of record for Petitioner-Plaintiff, certifies the Reply to Respondents' Opposition to Petitioner's Ex Parte Application for a Temporary Restraining Order / Preliminary Injunction contains 6,830 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 13, 2025

Respectfully submitted,

/s/ Mariel Villarreal
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