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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

ISIDRO BENAVIDES CARBALLO,
Plaintiff,

vs.

TONYA ANDREWS, in official capacity,
Facility Administrator of Golden State Annex;
ORESTES CRUZ, in official capacity, Field
Office Director of ICE's San Francisco Field
Office; TODD M. LYONS, in official capacity,
Acting Director of ICE, KRISTI NOEM, in
official capacity, Secretary of the U.S.
Department of Homeland Security; PAM
BONDI, in official capacity, Attorney General
of the United States;

Respondents.

Case No.: _____

**EX-PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER; POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER AND MOTION
FOR PRELIMINARY INJUNCTION**

Immigration Habeas Case

**EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER; POINTS AND
AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY INJUNCTION**

1 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local
2 rules of this Court, Petitioner Isidro Benavides Carballo ("Mr. Carballo") hereby moves this
3 Court for an order enjoining Defendants Department of Homeland Security ("DHS"), United
4 States Immigration and Customs Enforcement ("ICE"), Pam Bondi, in her official capacity as the
5 U.S. Attorney General, and Tonya Andrews, in her official capacity as Facility Administrator at
6 Golden State Annex, McFarland, California to release Mr. Carballo until he is afforded a
7 hearing, as required by the Due Process clause of the Fifth Amendment, to determine whether
8 the government can justify the necessity of his reincarceration by clear and convincing evidence.
9

10 The reasons in support of this Motion are set forth in the accompanying Memorandum of
11 Points and Authorities. This Motion is based on the attached Declarations of Genna Beier and
12 Jennifer T. Friedman with Accompanying Exhibits in Support of Petition for Writ of Habeas
13 Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and
14 Authorities in support of this Motion, Mr. Carballo raises that he warrants a temporary
15 restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth
16 Amendment in remedying his unlawful re-incarceration, which was imposed absent a pre-
17 deprivation due process hearing.
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27 EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER; POINTS AND
28 AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY INJUNCTION

1 WHEREFORE, Mr. Carballo prays that this Court grant his request for a temporary
2 restraining order enjoining ICE to release him from custody unless and until he is afforded a
3 hearing before on the question of whether his re-incarceration would be lawful. The only
4 mechanism to ensure that he is not continuously unlawfully detained in violation of his due
5 process rights is a temporary restraining order from this Court.
6

7
8 Respectfully submitted this 6th day of August, 2025.

9 /s/ Genna Beier
10 Genna Beier
11 Attorney for Petitioner
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INTRODUCTION

Petitioner Isidro Benavides Carballo (“Mr. Carballo”), by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to compel his immediate release from the custody of the Department of Homeland Security (“DHS”). Mr. Carballo was unlawfully re-detained yesterday at a DHS check-in appointment in Fresno without first being provided a due process hearing to determine whether his incarceration is justified. Mr. Carballo must be released from custody unless and until DHS proves to a neutral adjudicator by clear and convincing evidence that he presents a current danger and flight risk.

It is well-established that people released from custody have a protected liberty interest in their freedom. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972). A chorus of district courts across California have recognized that noncitizens released from ICE custody share this strong liberty interest. *See, e.g., Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025); *Galindo Arzate, v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (collecting cases).

Mr. Carballo enjoyed his liberty interest for over five years since District Judge Chhabria ordered his release from ICE custody on bail in the class action litigation *Zepeda Rivas v. Jennings*, No. 3:20-cv-02731-VC, (N.D. Cal.). Since then, he has complied with all criminal and immigration requirements. Despite Mr. Carballo’s stellar conduct on release, ICE unilaterally determined to re-detain him without notice or a hearing. When his immigration attorney

1 contacted his deportation officer for an explanation, the ICE officer stated that he had received
2 orders to detain Mr. Carballo solely due to his decades-old criminal history.

3 Mr. Carballo meets the standard for a temporary restraining order. He will suffer
4 immediate and irreparable harm absent an order from this Court enjoining the government to
5 release him from detention unless and until he receives a hearing before a neutral adjudicator, as
6 demanded by the Constitution. Since ensuring federal officials' fealty to the constitutional is in
7 the public interest, the balance of equities and public interest are also strongly in Mr. Carballo's
8 favor.
9

10 **STATEMENT OF THE FACTS AND CASE**

11
12 Petitioner Isidro Benavides Carballo ("Mr. Carballo") is currently detained at Golden
13 State Annex in McFarland, California. He is fifty-eight years old. *See* Exh. E, Declaration of
14 Jennifer Friedman (hereinafter "Friedman Decl.") at ¶ 4.

15 **Lengthy US Residence and Family Ties**

16
17 Mr. Carballo, whose true name is Jose Isidro Carballo, arrived in the United States in
18 1985, when he was around eighteen years old. *See* Friedman Decl. at ¶¶ 3-4. He came fleeing the
19 violent civil war in El Salvador, including witnessing the murder of his brother. *Id.* at ¶ 4. He
20 was taken by force by guerilla forces and made to train with them in the jungle until he
21 escaped. *Id.* After arrival, Mr. Carballo was granted temporary residency as a Temporary
22 Special Agriculture worker. *Id.* at ¶ 6. That status later expired. *Id.*

23
24 Since 2020, Mr. Carballo has been at liberty in Fresno, California where he lives with his
25 fiancé, Mariel Valle. *Id.* at ¶ 19. Mr. Carballo and Ms. Valle have lived together for the past three
26 years and rely heavily on each other. *Id.* Ms. Valle suffers from high blood pressure, among

1 other chronic health conditions. *Id.* Mr. Carballo helps her keep a healthy lifestyle and reminds
2 her to take her medication. *Id.* Mr. Carballo also has a strong relationship with Ms. Valle's three
3 adult children, Shakina, Jessie, and Nestor. *Id.* at ¶ 20. Mr. Carballo also has extended family,
4 including his cousin, Rafael Alfaro, and his family who reside in Indio, California; his nephew
5 Elio Carballo in Washington, his niece Rosie Carballo in Coachella, CA; and his niece Marvyn
6 Carballo in Miami, Florida. *Id.* at ¶ 21.

8 **Mr. Carballo's 1990 Arrest and Conviction**

9
10 Unfortunately, the violence and trauma that Mr. Carballo experienced in El Salvador
11 deeply impacted him. He also started drinking alcohol heavily upon arrival in the United States
12 in part to cope with his past trauma. *Id.* at ¶ 5. Mr. Carballo's troubled past mixed with alcohol
13 led to multiple problems with the law as a young man. *Id.* In 1987, he was convicted of the
14 offense of providing a false name to a police officer, a misdemeanor, and sentenced to 10 days
15 jail. *Id.* at ¶ 7. In 1988, he was convicted of assault with a deadly weapon, a misdemeanor, and
16 sentenced to 30 days. *Id.* In 1989, he was convicted of taking a vehicle without an owner's
17 consent. *Id.* In 1989, he was convicted of discharging a firearm in a negligent manner, a felony,
18 and sentenced to 364 days jail and three years probation. *Id.*

20 In 1989, he shot and killed a man with whom he got into an argument. *Id.* at ¶ 8. Mr.
21 Carballo has related that as a young man, he was impulsive and angry, especially when using
22 alcohol, which he attributes largely to the violence he escaped in El Salvador. *Id.* On the day of
23 the incident, he acted in an angry outburst and killed a man after a verbal argument between the
24 two of them at a restaurant. *Id.* In 1990, he was convicted of murder and sentenced to 25 years to
25 life in prison. *Id.*

Rehabilitation in Prison and Release on Parole

In prison, Mr. Carballo initially continued making poor decisions, including becoming affiliated with a gang. *Id.* at ¶ 9. Eventually, Mr. Carballo realized he needed to turn his life around. *Id.* at ¶ 10. He dedicated himself to sobriety, self-improvement, and a law-abiding life. *Id.* In 2015, he renounced all gang affiliation and in 2016, went through a debrief process to officially disassociate from the gang. *Id.* As part of his drop-out process, he was placed in segregation, then in protective custody in a special needs yard. *Id.* He was brutally stabbed in retaliation for his attempt to end his affiliation on at least two occasions. *Id.* His former affiliation was considered by the Parole Board, which recognized that he made great efforts to leave the gang and that he was a changed person. *Id.*

In 2020, the California Parole Board, whose mission it is to “protect and preserve public safety” and which includes a panel of independent commissioners, recommended Mr. Carballo’s release from custody because he has changed and does not present a danger to the community.¹ *Id.* at ¶ 11. The Board’s decision was then reviewed by the Governor of California who allowed the decision to stand.² *Id.*

The Parole Board found that Mr. Carballo had changed his life and attitude while in prison, determining that he is not a risk to public safety and was suitable for parole. *Id.* at ¶ 12. The Parole Board relied on Mr. Carballo’s significant self-help programming, including

¹ See <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/events-before-a-parole-suitability-hearing/> (last accessed Aug. 5, 2025).

² See <https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/what-to-expect-after-a-parole-suitability-hearing/> (last accessed August 5, 2025).

1 participating in Alcoholics Anonymous (AA) and Narcotics Anonymous (NA), Criminal Gangs
2 Anonymous, and Victim Impact. *Id.* They also considered his extensive vocational training and
3 job skills, his lack of disciplinary misconduct since 2014, and multiple laudatory
4 recommendations. *Id.* As mentioned, the Parole Board recognized his disassociation from the
5 gang, even when it caused him to be stabbed on multiple occasions. *Id.* The California Parole
6 Board placed great weight in Mr. Carballo' age at the time of the offense, 21 years old, and
7 found that he had significant insight and remorse into his past actions, had developed impulse
8 control, and had realistic and concrete plans for the future including how to avoid relapsing into
9 criminal behavior. *Id.*

12 The Parole Board process involves a thorough and lengthy evaluation including an
13 interview by one of the Parole Board's forensic clinical psychologists for purposes of producing
14 a comprehensive risk assessment, a review of his institutional behavior and programming, with
15 input from solicited from the District Attorney, victim and victim's family, and a review of his
16 criminal history and the circumstances of his crime.³ *Id.* at ¶ 13. The psychologist who evaluated
17 Mr. Carballo in 2020 found him to be a low risk of re-offense if released. *Id.*

19 Mr. Carballo feels great remorse for causing the death of his victim and for the harm he
20 caused the family of the victim, as well as the harm his crime caused the community. *Id.* at ¶ 14.
21 He wrote letters of remorse and guilt to the victim's family through the Parole Board. *Id.* The
22 victim's sister came to the Parole Board, and told the Board that the family had decided to
23

26 ³ See [https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/events-before-a-](https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/events-before-a-parole-suitability-hearing/)
27 [parole-suitability-hearing/](https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/events-before-a-parole-suitability-hearing/)

1 forgive Mr. Carballo. *Id.* He has done everything what he can to change his life, engaging in
2 rehabilitative programming, and improving himself in every way possible. *Id.*

3 **Arrest by ICE and Release by District Court**

4
5 Upon his release from prison, in July 2020, Mr. Carballo was detained by ICE at the
6 Mesa Verde Detention Center in Bakersfield, California. *Id.* at ¶ 15.

7 On July 29, 2020, the Department of Homeland Security filed a Notice to Appear,
8 charging Mr. Carballo as inadmissible under Section 212(a)(6)(A)(i) of the Immigration and
9 Nationality Act, as a noncitizen present without being admitted or paroled; and under section
10 212(a)(2)(A)(i)(I), as a noncitizen who has been convicted of a crime involving moral
11 turpitude. *Id.* at ¶ 16; Exh. A, NTA.

12
13 On August 5, 2020, Mr. Carballo was ordered released from custody through a bail order
14 issued in *Zepeda Rivas v. Jennings*, No. 3:20-cv-02731-VC, (N.D. Cal.) (hereafter “*Zepeda*
15 *Rivas*”), a class action lawsuit challenging the conditions of ICE custody at the Yuba County Jail
16 and Mesa Verde Detention Center during the COVID-19 pandemic. *Id.* at ¶ 17; Exh. B, Bail
17 Order. Finding an “exceedingly strong likelihood that they will prevail on their claim that current
18 conditions at the facilities violate class members’ due process rights by unreasonably exposing
19 them to a significant risk of harm,” District Judge Vince Chhabria held that the case presented
20 “extraordinary” circumstances warranting a process of releasing class members on bail pending
21 the litigation. *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36, 40 (N.D. Cal. 2020). Judge
22 Chhabria noted that in the bail process, “care will be taken both to avoid releasing detainees who
23 are a danger to the community and to minimize the possibility that released detainees will fail to
24 appear for their removal proceedings.” *Id.*

1 At the outset of the litigation, ICE released many class members independently of court
2 order, through its authority to release noncitizens who do not pose a risk of flight or danger to the
3 community. 8 C.F.R. § 236.1(c)(8). The district court also considered bail applications for
4 hundreds of class members. In the bail process, a class member was required to disclose detailed
5 information regarding their individual circumstances, including all prior criminal convictions,
6 any pending criminal charges or outstanding warrants, proposed residence, community ties,
7 employment history. *Zepeda Rivas*, Draft Short Form Bail Application Template, Dkt. 65 (N.D.
8 Cal. May 1, 2020).

10 *Zepeda Rivas* class members bore a heavy burden to establish eligibility for release; the
11 court ordered that “no detainee will be released unless they have demonstrated extraordinary
12 circumstances justifying release while the habeas petition is pending, based on a consideration of
13 the following factors: (i) the likelihood that the class will ultimately prevail on its habeas
14 petition; (ii) the risk posed to the detainee by current conditions at the facilities; (iii) the
15 likelihood that the detainee will not be a danger to the community if released with conditions;
16 and (iv) the likelihood that the detainee will appear for subsequent immigration/removal
17 proceedings as required.” *Zepeda Rivas*, Standard for Considering Bail Requests, Dkt. 90 (N.D.
18 Cal. May 4, 2020).

21 After plaintiffs submitted a bail application for a class member, the government had the
22 opportunity to respond. The government vigorously contested each bail application, and the court
23 denied a number of applications. *Zepeda Rivas v. Jennings*, 465 F. Supp. 3d 1028, 1030 (N.D.
24 Cal. 2020). The court imposed numerous conditions of release on class members granted bail,
25 which including a requirement to submit to location monitoring as directed by ICE. Dkt. 108,
26

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1 369, 502, 543. The Ninth Circuit upheld the district court's authority to release class members on
2 bail and declined to reverse any bail orders the district court issued. *Zepeda Rivas v. Jennings*,
3 845 F. App'x 530, 535 (9th Cir. 2021).

4
5 Mr. Carballo was granted release on bail on August 5, 2020, taking into account his full
6 criminal history and his subsequent rehabilitation. *Zepeda Rivas*, Bail Order, Dkt. 492 (N.D. Cal.
7 Aug. 5, 2020)(conditioning his release on space availability in the transitional housing facility),
8 Exh. C.

9
10 On June 9, 2022, the district court approved a Settlement Agreement resolving the
11 *Zepeda Rivas* litigation, which remained in effect until June 9, 2025. *Zepeda Rivas*, Final
12 Settlement Agreement, Dkt. 1205 (N.D. Cal. Aug. 5, 2020). Under the Settlement Agreement,
13 ICE was permitted to re-detain class members if a class member "pose[d] a threat to public
14 safety or national security, and/or a risk of flight" based on the satisfaction of certain criteria. *Id.*
15 at III.A-B. At no point while the Settlement Agreement was in effect did ICE allege that Mr.
16 Carballo posed a flight risk or danger to the community or seek his re-detention.

17
18 During the five years Mr. Carballo has been free from custody, he has continued his
19 recovery, met his life partner and gotten engaged, complied with all conditions of release, and
20 has not been re-arrested. His behavior has only bolstered the finding implicit in his bail order,
21 and underscored by ICE's decision to not seek his re-detention during the pendency of the
22 Settlement Agreement, that he is neither a danger nor a flight risk.

23 24 **Impeccable Post-Release Conduct for Five Years**

25 Mr. Carballo has lived an exemplary life free of criminal conduct since his release from
26 ICE custody. *Id.* at ¶ 18. For the first year and a half to two years following his release, as

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1 required by parole, he lived in transitional housing and complied with all the rules and
2 requirements there. *Id.* Since his release, he has been successfully discharged from parole in
3 2021. *Id.*

4
5 Mr. Carballo has also built a family since his release. *Id.* at ¶ 19. He met and fell in love
6 with his now-fiancée, Mariel Valle, with whom he has lived for the past three years in Fresno,
7 California. *Id.* He works in agriculture, picking fruit in the fields. *Id.* at ¶ 22. He has maintained
8 his sobriety and avoided all contact with the police. *Id.* at ¶¶ 23, 25.

9 **Health Issues**

10
11 In 2021, Mr. Carballo suffered a serious fall at work and suffered multiple injuries,
12 including three broken discs in his back and left arm has diminished strength and mobility. *Id.* at
13 ¶ 24. His medical team has determined he needs back surgery which has yet to be scheduled. *Id.*
14 Since that time, he has suffered chronic pain and takes pain killers. *Id.*

15
16 Since his accident, Mr. Carballo ability to work in agriculture has been impacted and he
17 has had to decrease his hours based on pain and physical restriction. *Id.*

18 **On-Going Removal Proceedings And Applications for Relief**

19
20 Mr. Carballo has continued to pursue his legal avenues to fight his deportation since his
21 release from ICE custody. *Id.* at ¶ 26. After he was released by ICE, his removal proceedings
22 were transferred to the non-detained docket in the San Francisco Immigration Court. *Id.*

23
24 On November 16, 2020, he was scheduled to appear in immigration court for a master
25 calendar hearing on May 6, 2021. *Id.* at ¶ 27. On April 13, 2021, that hearing was vacated and
26 rescheduled for September 16, 2021. *Id.* On August 18, 2021, that hearing was vacated and
27 rescheduled for February 3, 2022. *Id.* On January 7, 2022, that hearing was vacated and

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1 rescheduled for June 9, 2022. *Id.* On May 9, 2022, that hearing was vacated and rescheduled for
2 January 5, 2023. *Id.* On December 16, 2022, that hearing was vacated and rescheduled for
3 February 29, 2024. *Id.* On February 2, 2024, that hearing was vacated and rescheduled for July
4 23, 2024. *Id.* On March 19, 2024, that hearing was scheduled and the Immigration Judge issued
5 an Order for Mr. Carballo to file applications for relief. *Id.*
6

7 On May 14, 2024, Mr. Carballo filed an application for deferral of removal under the
8 Convention Against Torture (CAT) on Form I-589 with the Immigration Court along with
9 identity documents. *Id.* at ¶ 28. Also on May 14, 2024, the Court scheduled Mr. Carballo's
10 Individual Hearing for April 9, 2026 at 10am at the Concord Immigration Court. *I*
11

12 Mr. Carballo has consistently remained vigilant about keeping track of his next
13 immigration court hearing despite all the rescheduled hearings and stays in close contact with his
14 immigration attorney about what is needed for his case. *Id.* Mr. Carballo and his immigration
15 attorney were preparing for that final hearing on the merits of his application for relief for next
16 April 2026. *Id.* He has also updated the Immigration Court every time he moved, filing EOIR
17 Form E-33 as required with every address change on December 7, 2020 and November 6,
18 2023. *Id.*
19

20 Mr. Carballo faces near-certain torture or death if he is returned to El Salvador. *Id.* at ¶
21 30. He is anxious and motivated to pursue his application for relief, deferral of removal under
22 CAT, and any subsequent appeals that may be necessary. *Id.*
23

24 **Unexplained Re-Arrest by ICE Despite Compliance with ISAP**

25 On May 14, 2025, ICE contacted Mr. Carballo and instructed him to report for a check-in
26 the next day. *Id.* at ¶ 31. On May 15, 2025, Mr. Carballo reported to ICE and was placed on
27

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1 Intensive Supervision Appearance Program (ISAP). *Id.*

2 Since then, Mr. Carballo has complied with all ISAP requirements, including virtual
3 reporting every week and home visits. *Id.* On May 22, 2025, he reported in person. *Id.* ISAP
4 conducted multiple home visit, including June 27, 2025 and a second in July. *Id.* He dutifully
5 reported every Friday by sending a photograph of himself through an app, most recently this
6 past Friday, August 1, 2025. *Id.*

7
8 On July 23, 2025, Mr. Carballo received a call from ICE asking him to come to the office
9 on August 5, 2025 at 7am. *Id.* at ¶ 32. The ICE officer informed Mr. Carballo that they were
10 calling him in to return his passport to him. *Id.* On August 5, 2025 he dutifully reported to the
11 Fresno ICE Field Office as directed. *Id.* He was immediately detained. He reports that he was
12 told that he was redetained because of his past criminal history. *Id.*

13
14 On August 5, 2025, Mr. Carballo's immigration attorney, Jennifer T. Friedman, was able
15 to speak with deportation officer ("DO") Moradi. *Id.* at ¶ 33. DO Moradi informed her that Mr.
16 Carballo was being redetained due to his "egregious crime." *Id.* Mr. Carballo's attorney informed
17 DO Moradi that Mr. Carballo has not been arrested since his release and inquired as to why he
18 needed to be detained in light of that. *Id.* DO Moradi asserted that he had not yet reviewed Mr.
19 Carballo's file but that he would remain detained. *Id.*

20
21 **Mr. Carballo's Detention at Golden State Annex**

22 ICE transferred Mr. Carballo to Golden State Annex that day, on August 5, 2025. *Id.* at ¶
23 34; Ex. X, DHS filed form I-830E, Notice to EOIR: Alien Address. Golden State Annex is a
24 private detention center located in McFarland, California, that is owned and operated by GEO
25 Group, Inc. ("GEO"). The GEO Group is a private prison company that has facilities on three
26
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continents.⁴ While Golden State Annex is now used as an immigration detention center it was “previously used as a correctional facility.” *Martinez Leiva v. Becerra*, No. 23-02027-CRB, 2023 WL 3688097, at *2 (N.D. Cal. May 25, 2023). For years, immigrants detained at Golden State Annex have raised the alarm about unlivable and unsanitary housing conditions, as well as concerns regarding their treatment.⁵

Mr. Carballo is concerned about the impact of his redetention on his partner. *Id.* at ¶ 19. Further, Mr. Carballo is also missing the chance to earn money during this agricultural season to help support himself and his family. *Id.* at ¶ 22. If released from custody, Mr. Carballo plans to reside back with his fiancé in Fresno. at ¶ 19. He intends to return to working with his employers. *Id.* at ¶ 22. He is also anxious to access his necessary medical treatment including back surgery. *Id.* at ¶ 24.

LEGAL STANDARD

Petitioner 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

⁴ The GEO Group, Inc., <https://www.geogroup.com/facilities/golden-state-annex/> (last visited August 5, 2025).

⁵ See e.g., “Advocacy Letter: Urgent request to stop new intakes at Golden State Annex,” CCIJ (March 11, 2024) at <https://www.ccijustice.org/advocacy-gsa-population-increase> (highlighting a rise in reports regarding failure to provide drinking water, timely and adequate medical care, soap or underwear and shoes, and disruptions to means and programming).

temporary restraining order standards are “substantially identical”). Even if Petitioner 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, Petitioner satisfies both standards.

ARGUMENT

PETITIONER 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). As explained *infra* at Section A, when Mr. Carballo was re-arrested prior to receiving a hearing before a neutral adjudicator to determine the necessity of his continued detention, it clearly violated his due process rights. Mr. Carballo has already suffered irreparable injury in the form of incarceration and will continue to suffer irreparable injury each day he remains detained without due process.

A. MR. CARBALLO IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM THAT, IN THIS CASE, THE CONSTITUTION REQUIRED A HEARING BEFORE A NEUTRAL ADJUDICATOR PRIOR TO ANY RE-INCARCERATION BY ICE.

Mr. Carballo is likely to succeed on his claim that, in his particular circumstances, the

Due Process Clause of the Constitution prevents Respondents from re-arresting him without first providing a pre-deprivation hearing before a neutral adjudicator where the government justifies the necessity of his redetention by clear and convincing evidence.

1. Mr. Carballo Has a Protected Liberty Interest in His Conditional Release

“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). For five years preceding his re-detention on August 4, 2025, Mr. Carballo exercised that freedom under the district court’s order granting him release. Importantly, during that time Mr. Carballo followed the law, attended any required hearings, and complied with all ICE requirements, including attending check-ins, home visits and electronic monitoring through the Intensive Supervision Appearance Program (“ISAP”).

While that freedom may ultimately be revocable should circumstances materially change, *see Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) and *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196-97 (N. D. Cal. 2017), he nonetheless retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding 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); *see also Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-70 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ’s bond determination); *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277, at *2 (N.D. Cal. 2020) (same); *Jorge M.F. v. Jennings*, 534 F.Supp.3d 1050, 1054-55 (N.D. Cal. 2021) (same).

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

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

20 As the First Circuit has explained, when analyzing the issue of whether a specific
21 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the
22 issue by comparing the specific conditional release in the case before them with the liberty
23 interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887
24 (1st Cir. 2010) (internal quotation marks and citation omitted). See also, e.g., *Hurd v. District of*
25 *Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical

1 confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him
2 to constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152,
3 *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

4
5 An individual maintains a protectable liberty interest even where she obtains liberty
6 through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v.*
7 *Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process supports the notion that an
8 inmate released on parole by mistake, because he was serving a sentence that did not carry a
9 possibility of parole, could not be re-incarcerated because the release was not his fault and he
10 had appropriately adjusted to society, so it “would be inconsistent with fundamental principles of
11 liberty and justice” to return him to prison) (cleaned up).

12
13 Moreover, because Mr. Carballo faces civil detention, “his liberty interest is arguably
14 greater than the interest of the parolees in *Morrissey*.” *See Ortega v. Bonnar*, 415 F.Supp.3d 963,
15 970 (N.D. Cal. 2019). Mr. Carballo was released pending removal proceedings, unlike parolees
16 or probationers, who have a diminished liberty interest given their underlying convictions. *See,*
17 *e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987).
18 As someone at risk of civil detention, therefore, “it stands to reason that [Mr. Carballo] is entitled
19 to protections at least as great as those afforded to an individual . . . accused but not convicted of
20 a crime.” *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

21
22 District courts have overwhelmingly held that noncitizens released during their removal
23 proceedings have a similar liberty interest to that articulated in *Morrissey*. *See, e.g., Meza v.*
24 *Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*,
25 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
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1 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
2 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025
3 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL
4 1676854, at *4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Kaiser*, No. 3:25-cv-05436-RFL
5 (N.D. Cal. June 30, 2025).
6

7 In the last month alone, two courts in this district have recognized the strength of a
8 noncitizen's protected liberty interest following release from ICE custody. *See Garcia v.*
9 *Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *5 (E.D. Cal. July 14, 2025);
10 *Galindo Arzate, v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *1
11 (E.D. Cal. Aug. 4, 2025).
12

13 As in those cases, when this Court “‘compar[es] the specific conditional release in
14 [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear
15 that they are on all fours. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr.
16 Carballo's release “enables him to do a wide range of things open to persons” who have never
17 been in custody or convicted of any crime, including to live at home, work, and “be with family
18 and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at
19 482.
20

21 Since his release in 2020, Mr. Carballo has built a law-abiding life. He met Mariel Valle,
22 fell in love, and got engaged. The couple has shared a home and rely on each other financially
23 and emotionally. Mr. Carballo has become close to Ms. Valle's adult children. He has also
24 maintained relationships with his own extended family, including his cousin and nieces and
25 nephew. He works consistently in agriculture, picking fruit. He has been receiving treatment and
26
27

1 pain management for a work accident he suffered in 2021. While released, he was able to
2 participate in the “attachments of normal life,” *Morrissey*, 408 U.S. at 482, and as such, he has a
3 protected liberty interest and his continued detention without adequate process violates his due
4 process rights.
5

6 **2. Mr. Carballo’s Liberty Interest Before any Re-Arrest and** 7 **Revocation of Bond**

8 The Supreme Court “usually has held that the Constitution requires some kind of a
9 hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
10 113, 127 (1990) (emphasis in original). This is so even in cases where that freedom is lawfully
11 revocable. *See Hurd*, 864 F.3d at 683 (emphasis added) (citing *Young*, 520 U.S. at 152 (re-
12 detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon*,
13 411 U.S. at 782 (holding the same, in context of probation); *Morrissey*, 408 U.S. 471 (holding
14 the same, in context of parole). Only in a “special case” where post-deprivation remedies are
15 “the only remedies the State could be expected to provide” can post-deprivation process satisfy
16 the requirements of due process. *Zinerman*, 494 U.S. at 985.
17

18 Because, in this case, the provision of a pre-deprivation hearing was both possible and
19 valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Mr.
20 Carballo with notice and a hearing prior to any re-incarceration. *See Morrissey*, 408 U.S. at 481-
21 82; *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985); *Zinerman*, 494 U.S. at 985;
22 *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452
23 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings
24
25
26
27

1 may not constitutionally be held in jail pending the determination as to whether they can
2 ultimately be recommitted).

3 The decision in *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8
4 (E.D. Cal. Mar. 3, 2025), illustrates what due process requires prior to re-detention by ICE.
5 There, Mr. Doe, a noncitizen from India, had been re-detained by ICE at a standard check-in
6 more than five years after his release on a bond. *Id.* at *1. In granting a preliminary injunction,
7 the Court held that even with new adverse facts following release, Mr. Doe had established a
8 strong likelihood of success in showing that he had an interest in his continued liberty and that
9 mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii) would violate this due
10 process rights unless he was afforded adequate process. *Id.* at *5. The Court further held that,
11 after applying the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Doe
12 was entitled to a hearing before an IJ to determine whether his detention is warranted. *Id.* at *6,
13 *8. At this hearing, the government bore the burden of establishing, by clear and convincing
14 evidence, whether Mr. Doe posed a danger or a flight risk.
15

16 As in *Doe*, Mr. Carballo has a protected liberty interest in his freedom, and before
17 Respondents may deprive him of that, the Fifth Amendment requires they first prove that they
18 have a lawful basis to do so. Thus, Mr. Carballo is entitled to release to preserve the status quo
19 ante and a hearing to determine whether his re-detention would be unlawful. Here, that would
20 mean a hearing in which a neutral judge can evaluate whether DHS can establish that Mr.
21 Carballo presents a *current* danger or flight risk by clear and convincing evidence.
22

23
24 **i. Mr. Carballo' Private Interest in His Liberty is Profound.**

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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. Carballo, 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.

What is at stake in this case for Mr. Carballo is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision 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). This interest weighs heavily in his favor when determining what process Mr. Carballo is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

ii. The Government’s Interest in Keeping Mr. Carballo Detained Without a Hearing is Low and the Burden on the Government to Release Him from Custody Unless and Until he is Provided a Hearing is Minimal

1
2 The government's interest in keeping Mr. Carballo in detention *without a due process*
3 *hearing* is low and, when weighed against his significant private interest in his liberty, the scale
4 tips sharply in favor of releasing him from custody unless and until the government demonstrates
5 by clear and convincing evidence that he is a flight risk or danger to the community.

6
7 Immigration detention is civil and cannot be punitive in purpose or effect. The
8 government's only interests in holding an individual in immigration detention can be to prevent
9 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*
10 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a
11 sudden interest in detaining Mr. Carballo in 2025 due to a conviction thirty-five years ago, when
12 multiple prior adjudicators knew of this conviction and determined that he should still be
13 released, and when Mr. Carballo has displayed unimpeachable conduct for the last five years.

14
15 Moreover, the "fiscal and administrative burdens" that release from custody would
16 pose—unless and until a pre-deprivation bond hearing is provided—are nonexistent. *See*
17 *Mathews*, 424 U.S. at 334-35. To the contrary, his release will save the government significant
18 expenditure in resources until a neutral adjudicator decides whether his re-detention meets any
19 valid civil purpose. As the Ninth Circuit noted, "[t]he costs to the public of immigration
20 detention are 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5
21 million." *Hernandez*, 872 F.3d 976, 996 (9th Cir. 2017).

22
23 The minimal administrative cost of providing a bond hearing pales in comparison to the
24 costs of detaining Mr. Carballo for what will likely be years as he presents his application for
25 relief from removal. *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. May 31, 2024) (cleaned up)

(when a noncitizen “poses no danger and is not a flight risk, all the government does in requiring detention is separate families and remove from the community breadwinners, caregivers, parents, siblings and employees”).

Giving Mr. Carballo a bond hearing before a judge is a routine procedure that the government provides to those in immigration jails on a daily basis. *See Doe* at *6 (“The effort and cost required to provide Petitioner with procedural safeguards is minimal and indeed was previously provided in his case.”). At that hearing, the court would have the opportunity to determine whether Mr. Carballo’s 1990 conviction, for which he has already been found to be rehabilitated, merits his indefinite detention without a hearing. 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.

iii. Without Release from Custody Until the Government Provides a Due Process Hearing, the Risk of Erroneous Deprivation of Liberty is High and Process in the Form of a Hearing Where ICE Carries the Burden Would Decrease That Risk

Releasing Mr. Carballo from custody until he is provided a pre-deprivation hearing would decrease the risk of an erroneous deprivation of his liberty. Before Mr. Carballo 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 that his 2020 release by district court order should be altered or revoked because clear and convincing evidence exists to establish that Mr. Carballo is a danger to the community or a flight risk. *See*

1 *e.g. Diaz*, 2025 WL 1676854, at *3 (finding that “the three factors relevant to the due process
2 inquiry set out in *Mathews*...support requiring a pre-detention hearing for [Mr. Carballo].”).

3
4 There is no change in circumstances to justify Mr. Carballo’ re-detention, much less a
5 material change. *Saravia*, 280 F. Supp. 3d at 1197, *aff’d sub nom. Saravia for A.H.*, 905 F.3d
6 1137 (DHS “generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change
7 in circumstances.”). Further, no current evidence suggests that Mr. Carballo is a danger to the
8 community. While he has committed serious offenses in his youth, those stem from behaviors
9 from 1989 and earlier. After serving thirty years in prison, it was determined that he was a low
10 risk of reoffending and that he had fully rehabilitated himself. As such, he was found suitable for
11 release on parole. In August 2020, District Judge Vince Chhabria again weighed his criminal
12 history with the mitigating factors, mainly the length of time since commission, his extensive
13 rehabilitation, and the parole board’s decision, and ordered him released in *Zepeda Rivas v.*
14 *Jennings*. Both of these neutral adjudicators have been proven correct by Mr. Carballo’s
15 outstanding conduct since his release five years ago.
16
17

18 Nor is Mr. Carballo a flight risk. He has a stable residence, where he has lived for three
19 years with his partner. He complied with all parole requirements upon release from ICE custody,
20 including residing in transitional housing and successfully completed parole. He has been
21 consistently checking in with ICE and complying with ISAP as requested. Mr. Carballo’s post-
22 release conduct in the form of his compliance with ICE check-ins and ISAP requirements further
23 confirms that he is not a flight risk and that he is likely to present himself at any future hearings
24 or ICE appearances.
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1 In any event, the proper place for any alleged facts regarding danger and flight risk to be
2 adduced is at a hearing before a neutral arbiter. As the court in *Doe* held:

3
4 Given that Petitioner was previously found to not be a danger or risk of flight and the
5 unresolved questions about the timing and reliability of the new information, the risk of
6 erroneous deprivation remains high. Moreover, the value in granting Petitioner
7 procedural safeguard is readily apparent. At a hearing, a neutral decisionmaker can
8 consider all of the facts and evidence before him to determine whether Petitioner in fact
9 presents a risk of flight or dangerousness.

10 *Doe*, 2025 WL 691664, at *5.

11 The same principles hold true here. Mr. Carballo has already been erroneously deprived
12 of his liberty, and the risk that he will continue to be so deprived is high if ICE is permitted to
13 keep him detained after making a unilateral decision to re-detain him. *See Diouf v. Napolitano*,
14 634 F.3d 1081, 1091-92 (9th Cir. 2011) (observing that the risk of an erroneous deprivation of
15 liberty is reduced where a neutral decisionmaker, rather than ICE, makes custody
16 determinations). No statutory mechanism provides Mr. Carballo any process before a neutral
17 adjudicator following his re-detention. As a result, absent this Court's intervention, the necessity
18 of Mr. Carballo's re-detention would evade review by the IJ or any other neutral arbiter.

19 Due process also requires consideration of alternatives to detention and ability to pay at
20 any custody redetermination hearing that may occur. *See e.g., Hernandez v. Sessions*, 872 F.3d
21 976, 997 (9th Cir. 2017) ("Plaintiffs are likely to succeed on their challenge under the Due
22 Process Clause to the government's policy of allowing ICE and IJs to set immigration bond
23 amounts without considering the detainees' financial circumstances or alternative conditions of
24 release."); *Walter A.T. v. Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL
25 1744133, at *10 (E.D. Cal. June 24, 2025). The primary purpose of immigration detention is to
26

1 ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.

2 Detention is not reasonably related to this purpose if there are alternatives to detention that could
3 mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
4 detention and ability to pay must be considered in determining whether Mr. Carballo's re-
5 incarceration is warranted.
6

7 * * *

8 As the above-cited authorities show, Mr. Carballo is likely to succeed on his claim that
9 the Due Process Clause requires required notice and a hearing before a neutral adjudicator *prior*
10 *to any* re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions
11 regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at
12 1135. *See Doe* at *8.
13

14 **B. MR. CARBALLO WILL SUFFER IRREPARABLE HARM ABSENT**
15 **INJUNCTIVE RELIEF.**

16 Mr. Carballo will suffer irreparable harm were he to remain deprived of his liberty and
17 subjected to continue incarceration by immigration authorities without being immediately
18 released and provided the constitutionally adequate process that this motion for a temporary
19 restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v.*
20 *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time
21 spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job;
22 it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972);
23 *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984).
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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 v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

Finally, the government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).⁶

Mr. Carballo had been out of ICE custody for five years. During that time, he met his life partner, moved in with her, and got engaged. *See* Friedman Decl. at ¶ 19. He worked consistently in the agriculture industry. *Id.* at ¶ 22. If he remains incarcerated, he will lose out on the chance to earn money during this agricultural season to help support himself and his family. *Id.*

Finally, as detailed *supra*, Mr. Carballo contends that his re-arrest absent a hearing before a neutral adjudicator violated his due process rights under the Constitution. It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*

⁶ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed August 5, 2025).

1 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

2 As this Court put it in *Doe*:

3
4 Despite Petitioner previously remaining out of custody for many years prior
5 to his rearrest, he is now in ICE custody and has not been afforded the
6 opportunity to be heard by a neutral decisionmaker on whether detention is
7 warranted. Absent such review, it appears that Petitioner will indefinitely
8 remain in custody until final adjudication is reached on his asylum
9 application. This violation of Petitioner's due process rights is sufficient to
10 satisfy the irreparable harm requirement.

11 2025 WL 691664, at *6. That same reasoning applies here. Thus, a temporary restraining order is
12 necessary to prevent Mr. Carballo from suffering irreparable harm by remaining in unlawful and
13 unjust detention.

14
15 **C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR**
16 **GRANTING THE TEMPORARY RESTRAINING ORDER.**

17 Where the government is the opposing party, balancing the harm and the public interest
18 merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The balance of equities and the public
19 interest undoubtedly favor granting this temporary restraining order.

20 First, the balance of hardships strongly favors Mr. Carballo. The government cannot
21 suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See*
22 *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is
23 harmed in any legally cognizable sense by being enjoined from constitutional violations.”); *see*
24 *also Doe*, 2025 WL 691664, at *6 (concluding that the balance and equities weigh in favor of
25 noncitizen seeking a post-deprivation bond hearings, as the noncitizen “has a strong likelihood of
26 success on the merits based on his constitutional claims”). Therefore, the government cannot
27 allege harm arising from a temporary restraining order or preliminary injunction ordering it to

28 EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER; POINTS AND
AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY INJUNCTION

1 comply with the Constitution.

2 Further, any burden imposed by requiring the DHS to release Mr. Carballo from custody
3 until he is provided notice and a hearing before a neutral decisionmaker is both *de minimis* and
4 clearly outweighed by the substantial harm he will suffer as long as he continues to be detained.
5 See *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of
6 affording fair procedures to all persons, even though the expenditure of governmental funds is
7 required.”).

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

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

23 EX-PARTE MOTION FOR TEMPORARY RESTRAINING ORDER; POINTS AND
24 AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER
25 AND MOTION FOR PRELIMINARY INJUNCTION
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1 **CONCLUSION**

2 For all the above reasons, this Court should find that Mr. Carballo warrants a temporary
3 restraining order and a preliminary injunction ordering that Respondents release him from
4 custody and refrain from re-arresting him until he is afforded a hearing that complies with due
5 process, before a neutral adjudicator, on whether his redctention is justified. At this hearing, the
6 government must bear the burden of proof by clear and convincing evidence, the adjudicator
7 meaningfully consider ATDs as well as Mr. Carballo's ability to pay a new bond.
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11 Dated: August 6, 2025

Respectfully submitted,

12 /s/ Genna Beier

13 Genna Beier
14 Attorney for Petitioner
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