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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

Client RODRIGO A. PAZ HERNANDEZ,
Petitioner-Plaintiff,

v.

Minga WOFFORD, Field Office Director, Mesa
Verde, Office of Detention and Removal, U.S.
Immigrations and Customs Enforcement; U.S.
Department of Homeland Security;

POLLY KAISER, Acting Field Office Director of
the San Francisco Immigration and Customs
Enforcement Office

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

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

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

Respondents-Defendants.

Case No. 1:25-cv-00986

A 

**PETITIONER'S
NOTICE OF MOTION
AND EX PARTE
MOTION FOR
TEMPORARY
RESTRAINING ORDER**

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

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief

NOTICE OF MOTION

Petitioner Mr. Rodrigo Paz Hernandez applies to this Honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain him based on an unlawful action by ICE, (2) ordering his immediate release from immigration detention; and (3) from re-arresting Petitioner-Plaintiff Mr. Rodrigo Paz Hernandez until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: August 8, 2025

Respectfully submitted,

/s/ Natalia Vieira Santanna

Natalia Vieira Santanna

Attorney for Petitioner-Plaintiff Mr. Paz Hernandez

I. INTRODUCTION

Respondents unlawfully re-detained Petitioner-Plaintiff Mr. Paz Hernandez on July 8, 2025. ICE released Mr. Paz Hernandez from custody on May 6, 2024, on his recognizance.

Mr./Ms. Paz Hernandez has lived in liberty for the past fourteen months, during which time he has established himself as an exemplary resident and an asset to his community. He established a life in San Francisco. He is a devout Jehovah's Witness and is very involved in the activities of his church and community. He has paid taxes, obtained a California driver's license, found work, and is in a committed relationship with a U.S. citizen. Mr. Paz Hernandez has maintained a clean criminal record.

In March 2025, Mr. Paz Hernandez sought legal assistance for his immigration case from the Immigration Center for Women and Children (ICWC) in San Francisco. ICWC assisted him in preparing and filing his Form I-589, Application for Asylum and for Withholding of Removal. He fled El Salvador due to his fear of being wrongfully arrested and imprisoned without due process under the country's ongoing "state of exception," which targets suspected gang members, even though he has never been involved with a gang. He recounted being stopped by police on several occasions. For instance, around 2019 or 2020, the Salvadoran police stopped him, forced him against a wall, and threatened to detain him. He was held for 10-15 minutes and was only released after the officers searched him and saw he had no tattoos. In late 2022 or early 2023, he was again stopped by the Salvadoran police late at night in a rural area while returning from his job, still in his work uniform.

Mr. Paz Hernandez appeared for his Master Calendar Hearing on May 6, 2025. The Immigration Judge advised him of his rights and granted his request for a continuance to find an attorney. He called a few non-profits, but got waitlisted.

He appeared again before the Immigration Court on July 8, 2025. At that hearing, the Department of Homeland Security's counsel moved to dismiss his case, which the Immigration Judge denied. The Judge scheduled Mr. Paz Hernandez's final merits hearing for a date in 2026. Since then, a different Immigration Judge has terminated Mr. Paz Hernandez's removal proceedings. Mr. Paz Hernandez is currently awaiting a credible fear interview.

Petitioner's summary arrest and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining Petitioner without making any affirmative showing of changed circumstances, the government violated Petitioner's procedural due process rights. At the very least, he was constitutionally entitled to a hearing before a neutral decisionmaker at which the government should have justified his detention.

As a result of his arrest and detention, Petitioner is suffering irreparable and ongoing harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom 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). Petitioners also face numerous additional irreparable harms due to his detention, including [insert harms specific to client e.g., disrupting employment, separation from community, inability to practice religion, etc.].

In light of this irreparable harm, and because he is likely to succeed on the merits of his due process claims, Petitioner respectfully requests that this Court issue a temporary restraining order ("TRO") immediately releasing from him custody and enjoining the government from re-arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision maker. Confronted with substantially identical facts and legal issues, two courts in this circuit have recently granted the exact relief Petitioner seeks. *See Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025), *converted to preliminary injunction at* __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction). To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Petitioner out of this District and

removing him from the country until these proceedings have concluded.

II. STATEMENT OF FACTS AND CASE

Mr. Paz Hernandez is a citizen and national of El Salvador. He fled El Salvador due to his fear of being wrongfully arrested and imprisoned without due process under the country's ongoing "state of exception," which targets suspected gang members, even though he has never been involved with a gang. He recounted being stopped by police on several occasions. For instance, around 2019 or 2020, the Salvadoran police stopped him, forced him against a wall, and threatened to detain him. He was held for 10-15 minutes and was only released after the officers searched him and saw he had no tattoos. In late 2022 or early 2023, he was again stopped by the Salvadoran police late at night in a rural area while returning from his job, still in his work uniform.

He entered the United States on or about May 6, 2024. Upon crossing the border into the United States, Mr. Paz Hernandez encountered U.S. immigration officials. He was detained for approximately two days. He explained to the officers that he was afraid of returning to his country of El Salvador. He provided officials with contact information for a friend who would receive him. He was processed and released from custody on his recognizance on 05/06/2024.

Following his release, Mr. Paz Hernandez came to live with his friend, Dinora, in San Francisco, California. He established a life in San Francisco. He is a devout Jehovah's Witness and is very involved in the activities of his church and community. He has paid taxes, obtained a California driver's license, found work, and is in a committed relationship with a U.S. citizen. Mr. Paz Hernandez has maintained a clean criminal record.

In March 2025, Mr. Paz Hernandez sought legal assistance for his immigration case from the Immigration Center for Women and Children (ICWC) in San Francisco. ICWC assisted him in preparing and filing his Form I-589, Application for Asylum and for Withholding of Removal.

Mr. Paz Hernandez appeared for his Master Calendar Hearing on May 6, 2025. The Immigration Judge advised him of his rights and granted his request for a continuance to find an attorney. He called a few non-profits, but got waitlisted.

He appeared again before the Immigration Court on July 8, 2025. At that hearing, the Department of Homeland Security's counsel moved to dismiss his case, which the Immigration Judge denied. The Judge scheduled Mr. Paz Hernandez's final merits hearing for a date in 2026.

Since then, a different Immigration Judge has terminated Mr. Paz Hernandez's removal proceedings. Mr. Paz Hernandez is currently awaiting a credible fear interview.

Mr. Paz Hernandez stated that immediately following his court hearing on July 8, 2025, he was arrested by several men as he left the courthouse. The men, who were masked, grabbed him, confirmed his identity, and handcuffed him without offering any explanation.

He reported that the arresting agents never identified themselves, did not state which agency they represented, and never showed him any badges, credentials, or an arrest warrant. When he asked why he was being arrested, they told him could not ask questions. The arresting ICE officers did not and have not articulated why Mr. Paz Hernandez was now a flight risk, a danger to the community, or how he had violated any conditions of his 2024 release.

At the time of the arrest, a protest was occurring outside the building. The agents dragged Mr. Paz Hernandez into a basement or emergency exit hallway, where he was held for approximately ninety minutes. He remained handcuffed with his arms bent painfully behind his back.

He described being forcibly moved through another exit, where agents pushed through protestors. Mr. Paz Hernandez stated he felt he was being pulled and pushed by both the agents and the crowd, which was a traumatic experience and caused injury to his wrists from the tight handcuffs. He was then forced into a van.

He was first transported to the ICE facility at 630 Sansome Street in San Francisco for fingerprinting, then placed back in the van with other detainees for transport to Fresno. He remained shackled at his hands and feet for the entire multi-hour journey, arriving at the detention facility at approximately 4:00 a.m. the following morning.

Since being detained, Mr. Paz Hernandez reports suffering from nightmares. He has described the conditions of his confinement as poor, stating that meals are sometimes withheld

and the staff are rude. He is unable to fully practice his religion as there are no meetings for Jehovah's Witnesses in the detention center.

This case has substantial factual and legal support to be granted, resulting in Mr. Paz Hernandez's release from custody, and enjoining DHS from detaining Mr. Paz Hernandez pending a hearing before a neutral adjudicator, to substantiate a material change in circumstances indicating that Mr. Paz Hernandez is either a flight risk or a danger to the community.

Intervention from this Court is therefore required to ensure that Mr. Paz Hernandez is released from his current custody based his unlawful arrest, returned to his home in San Francisco, California, where ICE can then provide him with a hearing before determining to re-arrest him pursuant to the Due Process Clause of the Fifth Amendment.

III. LEGAL STANDARD

Mr. Paz Hernandez 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); *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Mr. Paz Hernandez does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Paz Hernandez overwhelmingly satisfies both standards.

ARGUMENT

A. MR. PAZ HERNANDEZ WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a

preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Paz Hernandez is likely to remain in unlawful custody in violation of his due process rights without intervention by this Court. Mr. Paz Hernandez will continue to suffer irreparable injury if he continues to be detained without due process.

1. Mr. Paz Hernandez's detention violates substantive due process because he is neither a flight risk nor a danger to the community.

The Due Process Clause applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government’s deprivation of an individual’s liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 (“[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-

CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him”).

The Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute as we have now read it.”).

Petitioner, who has no criminal record and who is diligently pursuing his immigration case with the assistance of an attorney, is neither a danger nor a flight risk. Therefore, his detention is both punitive and not justified by a legitimate purpose, violating his substantive due process rights. Indeed, when Respondents chose to release Petitioner from custody in 2024, that decision represented their finding that he was neither dangerous nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”). Nothing has transpired since to disturb that finding.

First, because Petitioner had no criminal history, and has had no intervening criminal history or arrests since his release, there is no credible argument that he is a danger to the community.

Second, as to flight risk, the question is whether custody is reasonably necessary to secure a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. There is no basis to argue that Petitioner, who was arrested by

Respondents *while appearing in immigration court* for a master calendar hearing, is a flight risk. Moreover, Petitioner has a viable path toward immigration relief and a pathway to lawful permanent residence, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). At the time of his arrest, Petitioner had filed his form I-589, Application for Asylum and Withholding of Removal, and he has every intention of continuing to pursue his applications for immigration relief. And, until his unlawful arrest and detention.

In sum, Petitioner's actions since Respondents first released him confirm that he is neither a danger nor flight risk. Indeed, his ongoing compliance and community ties compel the conclusion that he is even *less* of a danger or flight risk than when he was originally released. Accordingly, Petitioner's ongoing detention is unconstitutional, and substantive due process principles require his immediate release.

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

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

The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens.

There, the BIA held that “where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice, DHS “requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances ... ICE cannot redetain Panosyan.”).

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

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

Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Mr./Ms. Paz Hernandez, *before* ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,

2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

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

a. Mr. Paz Hernandez Has a Protected Liberty Interest in His Conditional Release

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

Since May 6, 2025, Mr. Paz Hernandez exercised that freedom under the IJ's order granting him release from custody. Accordingly, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the

parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

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

be inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal quotation marks and citation omitted).

Here, when this Court “‘compar[es] the release in [Mr. Paz Hernandez ’s case], with the liberty interest in parole as characterized by *Morrissey*,” they bear similar features in liberty interests. See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Paz Hernandez’s release “enables him to do a wide range of things open to persons,” including to live at home, work, care for his family, for whom he is the financial provider, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

Mr. Paz Hernandez established a life in San Francisco. He is a devout Jehovah’s Witness and is very involved in the activities of his church and community. He has paid taxes, obtained a California driver’s license, found work, and is in a committed relationship with a U.S. citizen. He has maintained a clean criminal record.

b. Mr. Paz Hernandez ’s Liberty Interest Mandates His Release from Unlawful Custody And A Hearing Before any Re-Arrest

Mr. Paz Hernandez asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for fourteen months, during which time he has appeared at all of his immigration court hearings; (3) where he has a viable asylum claim (4) where no change in circumstances exist that would justify his lawful detention; and (5) where the only circumstance that has changed was ICE’s move to arrest as many people as possible under the new administration’s initiative, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of his custody release.

“Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Mr./Ms. Paz Hernandez ’s] liberty interest against the [government’s] interest in the efficient administration of” its immigration laws to determine what process he is owed to ensure

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

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

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

i. Mr. Paz Hernandez's Private Interest in His Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Mr. Paz Hernandez, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Paz Hernandez retains a truly weighty liberty interest even though he is under conditional release.

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

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

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

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

As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Mr. Paz Hernandez when he was released after a DHS' determination in 2024, and since has lived at liberty with his community, without any criminal or civil traffic infractions. Furthermore, there is no court hearing scheduled for Mr. Paz Hernandez's case at this time.

On May 6, 2024, DHS officers determined that Mr./Ms. Paz Hernandez was not a flight risk or a danger to the community and Mr. Paz Hernandez has done nothing to undermine that determination. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance

to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'" (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)).

It is difficult to see how the government's interest in detaining Mr. Paz Hernandez has materially changed since he was released in May of 2024, absent any circumstances indicating he is a danger to the community or a flight risk. The government's interest in detaining Mr. Paz Hernandez at this time is extremely low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.¹

Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful pre-detention hearing would impose is nonexistent in this case. See *Mathews*, 424 U.S. at 334-35. Mr. Paz Hernandez does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated.

As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996.

In the alternative, providing Mr. Paz Hernandez with a hearing before this Court (or a neutral decisionmaker) regarding release from custody is a routine procedure that the government provides to those in immigration jails on a daily basis. At that hearing, the Court would have the opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest. But there is no justifiable reason to re-incarcerate Mr. Paz Hernandez prior to such a hearing

¹ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," *Forbes* (June 9, 2025), <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

taking place. As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

Releasing Mr. Paz Hernandez from unlawful custody and enjoining Mr. Paz Hernandez’s re-arrest until ICE (1) moves for a bond re-determination before an IJ and (2) demonstrates by clear and convincing evidence that Mr. Paz Hernandez is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. g to a total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

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

Releasing Mr. Paz Hernandez from unlawful custody and providing Mr. Paz Hernandez a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Paz Hernandez can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances; such circumstances that ICE’s May 2024 release should be altered or revoked because clear and convincing evidence exists to establish that Mr. Paz Hernandez is a danger to the community or a flight risk.

The procedure Mr. Paz Hernandez seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a “changed circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when “delicate judgments depending on credibility of witnesses and assessment of conditions

not subject to measurement” are at issue, the “risk of error is considerable when just determinations are made after hearing only one side”). “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

As the above-cited authorities show, Mr. Paz Hernandez is likely to succeed on his claim that the current arrest and detention that ICE effectuated on June 27, 2025, is unlawful. The Due Process Clause require notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

3. Mr. Paz Hernandez Will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Paz Hernandez will suffer irreparable harm were he to remain detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat’l*

Ctr. for Immigrants Rights, Inc. v. I.N.S., 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).²

Mr. Paz Hernandez has been out of ICE custody for more than fourteen months. During that time, he established a life in San Francisco. He is a devout Jehovah's Witness and is very involved in the activities of his church and community. He has paid taxes, obtained a California driver's license, found work, and is in a committed relationship with a U.S. citizen. Continued detention is bound to result in irreversible harm not only to Mr. Paz Hernandez but will also significantly affect his community.

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

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

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

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

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

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

A temporary restraining order is in the public interest. First and most importantly, “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Mr./Ms. Paz Hernandez in violation of the requirements of Due Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”).

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

IV. CONCLUSION

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

Dated: August 8, 2025

Respectfully submitted,

/s/ Natalia Santanna

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