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Hiren Jagdish PATEL

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

Hiren Jagdish PATEL,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

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

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

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

Respondents-Defendants.

Case No. 3:25-cv-7667

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION: HEARING REQUESTED

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner hereby moves this Court for an 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, from re-arresting Petitioner Mr. Hiren Jagdish Patel until he is afforded a hearing before a neutral adjudicator, as required by the Due Process clause of the Fifth Amendment, to determine whether his removal to India is reasonably foreseeable and otherwise whether circumstances have changed such that his re-detention would be justified—that is, whether he poses a danger or a flight risk.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the concurrently-filed Declaration of Avantika Shastri with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner Mr. Patel raises that he warrants a temporary restraining order due to his weighty liberty and life interests under the Due Process Clause of the Fifth Amendment in preventing his unlawful re-incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from re-incarcerating him unless and until he is afforded a hearing before a neutral decisionmaker on the question of whether his re-incarceration would be lawful. Petitioner Mr. Patel is currently scheduled to appear for an ICE check-in before the ICE San Francisco Field Office, as required by Respondents, on September 11, 2025, where Respondents likely intend to re-arrest and re-incarcerate him, even though his removal to India is not reasonably foreseeable and he is not otherwise a flight risk or danger to the community.

Dated: September 9, 2025

Respectfully Submitted

/s/Avantika Shastri
Attorney for Petitioner-Plaintiff

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I. INTRODUCTION

Petitioner-Plaintiff Mr. Hiren Jagdish Patel, by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") from re-arresting him unless and until he is afforded notice and a hearing before a neutral adjudicator on the questions of whether his removal to India is reasonably foreseeable and otherwise whether there are changed circumstances showing he is now a danger and a flight risk such his re-detention would be warranted.

Mr. Patel is a native and citizen of India who has lived in the United States for the past 25 years, since 1999 when he entered on an H1-B visa. He later adjusted to lawful permanent resident status through a petition filed by his wife on April 8, 2004. Mr. Patel was detained by ICE in March of 2012. He was subsequently issued a Notice to Appear, charging him removal under INA § 237(a)(2)(A)(iii) for having been convicted of an aggravated felony offense in 2007. He applied to readjust his status (i.e. apply for a second green card) with the Immigration Judge ("IJ") along with a waiver of inadmissibility pursuant to INA § 212(h) for his offense. The IJ granted his adjustment with the accompanying waiver on June 8, 2017. However, the DHS subsequently appealed this decision, and the Board of Immigration Appeals ("BIA") sustained the appeal. Mr. Patel appealed this decision to the Ninth Circuit Court of Appeals, which found it did not have jurisdiction to review the decision and therefore dismissed the petition for review. Mr. Patel also subsequently filed a motion to reopen with the BIA based on his deficient Notice to Appear. That motion and a subsequent appeal were denied as of February 2023. He has been under ICE supervision via an Order of Supervision or bond since 2012 when he was first put into removal proceedings. Mr. Patel's removal order became final in 2019, and he is currently on an OSUP.

Currently, Mr. Patel has a pending stay of removal before ICE. First, he sought a stay because he is litigating an appeal of his criminal court case based on legal errors made in respect to his prior conviction, before the California Court of Appeals. His criminal defense counsel anticipates the case to take approximately one year to resolve, and if he were to be removed

while the appeal was pending, the court may dismiss his appeal.

Mr. Patel also sought a stay in light of his serious health conditions. Subsequent to submitting the stay request, Mr. Patel underwent a Coronary Artery Bypass Grafting (CABG), a triple bypass, involving 3 to 4 grafts on March 12, 2025. He was admitted into the ICU for a full week and a full recovery can take up to a year according to his doctors. Mr. Patel is being cared for by his U.S. citizen family. Mr. Patel has cooperated with ICE in submitting documents, so that ICE can obtain a new passport from India on his behalf.

On September 11, 2025, Mr. Patel is scheduled to attend a check-in at the ICE San Francisco Field Office. *See* Declaration of Avantika Shastri ("Shastri Decl.") at Exhibit ("Ex.") * (OSUP). In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins[1]—including undersigned counsel's own experience with two similarly situated clients who were re-arrested and re-detained during routine check-in appointments at ICE's San Francisco Field Office—, it is highly likely that Mr. Patel will be arrested and detained at this appointment. *Id.* at Ex. E, *Hoac v. Becerra, et al.*, 2:25-cv-01740-DC-JDP (E.D.C.A. July 16, 2025) (ordering the immediate release of petitioner, who also has a final removal order and was released from ICE detention and had been complying with an ICE Order of Supervision for years—after he was unlawfully re-detained at a routine check in at the San Francisco ICE Office); *see also id.* at Ex. F, *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP (E.D.C.A. July 16, 2025) (same). This is particularly true given that ICE has received multiple directives to meet untenable daily arrest quotas that leave the agency no other option but to arrest noncitizens whose incarceration is not necessary.[2] If Mr. Patel is arrested, he faces the very real possibility of being transferred outside

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[1] *See, e.g.*, "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles, some overnight," CBS News (June 7, 2025), https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/; "They followed the government's rules. ICE held them anyway," LAist (June 11, 2025), https://laist.com/news/politics/ice-raids-los-angeles-family-detained.

[2] *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

of California with little or no notice, far away from his family and community. *Id.* at Ex. F, *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP (E.D.C.A. July 16, 2025) (where petitioner was transferred from California to Louisiana).

Once a noncitizen is released from ICE detention, as Mr. Patel has been, their re-detention is limited by regulation, statute and the constitution. By statute and regulation, only in specific circumstances (that do not apply here) does ICE have the authority to re-detain a noncitizen previously ordered removed. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). The ability of ICE to simply re-arrest someone following their release from detention, however, is further limited by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. Here, this means that, *prior to any re-detention*, Mr. Patel must be provided with notice and a hearing before a neutral adjudicator at which DHS bears the burden of justifying his re-detention.

That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where Mr. Patel has been at liberty throughout his removal case and after his final order of removal, based on findings that his removal was not reasonably foreseeable and that he need not be incarcerated to prevent flight or to protect the community, and no circumstances have changed that would justify his re-arrest.

Therefore, at a minimum, in order to lawfully re-arrest Mr. Patel, the government must first establish before a neutral adjudicator that his removal is reasonably foreseeable, and otherwise that he is a danger to the community or a flight risk, such that his re-incarceration is necessary.

Mr. Patel meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm given his serious medical condition, absent an order from this Court enjoining the government from arresting him at his ICE check-in on September 11, 2025, unless

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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.").

and until he first receives a hearing before a neutral adjudicator, as demanded by the Constitution. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Petitioner Mr. Patel's favor.

II. STATEMENT OF FACTS AND CASE

Mr. Patel is citizen and national of India who is the husband of a U.S. citizen and father of a U.S. citizen son, who is 24 years old and a graduate from University of California, Berkeley. He currently lives in the Bay Area and has recently undergone a Coronary Artery Bypass Grafting (CABG), a triple bypass, involving 3 to 4 grafts on March 12, 2025. He was admitted into the ICU for a full week and a full recovery can take up to a year according to his doctors. Mr. Patel is being cared for by his U.S. citizen family.

In 1999, Mr. Patel entered the United States on an H1-B visa and has resided in the United States for the past 25 years. He adjusted his status to lawful permanent resident through a petition filed by his wife on April 8, 2004. On July 5, 2000, Mr. Patel was convicted of California Penal Code (PC) § 484 (petty theft) and served one day of community service in lieu of county jail. He subsequently expunged his petty theft conviction with California PC § 1203.4 and adjusted to his lawful permanent resident status. On April 2, 2007, Mr. Patel was convicted of California PC §§ 664 and 288.2(b) and sentenced to three years of probation and four months in county jail. He completed his sentence and his probation on June 1, 2010, without incident. He has no other criminal convictions, and can show strong rehabilitation and good moral character.

On March 24, 2012, Mr. Patel was detained by Immigration and Customs Enforcement ("ICE") and subsequently issued a Notice to Appear, charging him removal under INA § 237(a)(2)(A)(iii) for having been convicted of an aggravated felony. He applied to readjust his status with the IJ along with a waiver of inadmissibility pursuant to INA § 212(h). On June 8, 2017, the IJ granted his adjustment with the accompanying waiver. However, DHS subsequently appealed this decision, and the BIA sustained the appeal. Mr. Patel appealed this decision to the Ninth Circuit Court of Appeals, which found it did not have jurisdiction to review the decision and therefore dismissed the petition for review. Mr. Patel also subsequently

filed a motion to reopen with the BIA based on his deficient Notice to Appear. That motion and a subsequent appeal were denied as of February 2023. He has been under ICE supervision via an Order of Supervision or bond since 2012 when he was first put into removal proceedings. Mr. Patel's removal order became final in 2019, and he is currently on an OSUP. *See* Shastri Decl. at Ex. D (OSUP and bond documents).

Currently, Mr. Patel is litigating an appeal of his criminal court case based on legal errors made in respect to his prior conviction, before the California Court of Appeals. His criminal defense counsel anticipates the case to take approximately one year to resolve, and if he were to be removed while the appeal was pending, the court may dismiss his appeal. *Id.* at Ex. A (ICE Stay of Deportation of Removal filed January 6, 2025, Tab B Evidence of Pending Criminal Court Appeal); *see also id.* at Ex. C (Request to reschedule ICE appointment filed June 11, 2025, Tab F 'Additional Documentation,' California Court of Appeal Docket, dated June 10, 2025).

Since 2012, Mr. Patel has exercised his right to liberty. He continues to live and work part-time in the United States while recovering from his triple bypass surgery. *Id.* at Ex. B (Request to reschedule ICE appointment filed March 12, 2025, Tab E 'Additional Documentation'); *see also id.* at Ex. C (Request to reschedule ICE appointment filed June 11, 2025, Tab F 'Additional Documentation'). Mr. Patel has been under ICE supervision via an Order of Supervision or bond since 2012 when he was first put into removal proceedings. Mr. Patel's removal order became final in 2019, and he is currently on an OSUP. OSUP permits Mr. Patel to remain free from custody following his exclusion proceedings because his removal to India was not reasonably foreseeable and he is otherwise neither a flight risk nor a danger to the community. The OSUP also requires him to attend regular check in appointments at the ICE San Francisco Office and permits him to apply for work authorization. 8 C.F.R. § 241.5. For the past thirteen years, Mr. Patel has complied with the terms of his OSUP or bond, attending his appointments. *See* Shastri Decl. at Ex. D (OSUP and bond documents). Mr. Patel applied for and received a work authorization document, and he began working to help provide for his family.

He has also reintegrated into the community in other ways, including supporting his U.S. citizen family.

Despite his medical emergency and recovery, Mr. Patel has sought to comply with his ICE check in-appointments. He last physically appeared at his ICE check in on January 6, 2025. After his March 2025 surgery, he sought to reschedule his April 8, 2025 and June 12, 2025 ICE check-in appointments in advance, and when no response was received from ICE, his wife went on his behalf to the appointments and obtained rescheduled dates. On June 12, 2025, ICE scheduled him to appear again on September 11, 2025. *See* Shastri Decl. at Ex. D (OSUP and bond documents).

Undersigned counsel has two similarly situated clients who were ordered removed but subsequently released from ICE detention on OSUPs for the past several years. *See* Shastri Decl. Both clients were re-detained by ICE—without notice or an opportunity to be heard—at their check-ins at the San Francisco ICE Office in early September 2025. *Id.* They have since been ordered released by preliminary injunction orders in connection with petitions for writ of habeas corpus because their re-detention was unlawful. *Id.* at Ex. E , *Hoac v. Becerra, et al.*, 2:25-cv-01740-DC-JDP (E.D.C.A. July 16, 2025); *see also id.* at Ex. F, *Phan v. Becerra, et al.*, 2:25-CV-01757-DC-JDP (E.D.C.A. July 16, 2025) (same). Additionally, multiple credible reports demonstrate that, in recent weeks, numerous noncitizens in the San Francisco Bay Area, Sacramento Area, Los Angeles, and across the country who have appeared as instructed at ICE check-ins have been incarcerated or re-incarcerated by ICE.[3]

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[3] "ICE arrests at Sacramento immigration courts raises fear among immigrant community," KCRA (June 3, 2025), https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405; "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025), https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/ ("The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people, including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5, 2025), https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php; "Cincinnati high school graduate faces deportation after

In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.[4]

In light of credible reports of ICE re-incarcerating individuals at their ICE check-ins and undersigned counsel's own experiences, it is highly likely that Mr. Patel will be arrested and detained at his upcoming ICE check-in. This is true despite the fact that his removal to India is not reasonably foreseeable, and he is neither a flight risk nor a danger to the community. He faces the very real possibility of being re-detained and transferred out of California, far away from his doctors, hospital, family and community.

III. 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 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*

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routine ICE check-in," ABC News (June 9, 2025), https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262.

[4] *See, e.g.*, McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), *available at* https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), *available at* https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754 (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

A. 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).

Without intervention by this Court, Petitioner Mr. Patel is likely to be re-arrested absent notice or a hearing before a neutral adjudicator—even though his removal is not reasonably foreseeable and there is no change in circumstances—in violation of his due process rights. Mr. Patel will continue suffer irreparable injury if he is arrested and detained without due process, and if he is detained for an indefinite period due to his health conditions—far away from his doctors, hospital, family and his community.

1. Petitioner 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. Patel 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 must demonstrate that his removal is reasonably foreseeable and otherwise that there has been a change in circumstances such that he is now a danger or a flight risk.

Following a final order of removal, ICE is directed by statute to detain an individual for ninety (90) days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety (90) day period, also known as "the removal period," generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B).

Post-final order detention is only authorized for a "period reasonably necessary to secure removal," a period that the Court determined to be presumptively six months. *Id.* at 699-701.[5] After this six month period, if a detainee provides "good reason" to believe that his or her removal is not significantly likely in the reasonably foreseeable future, "the Government must respond with evidence sufficient to rebut that showing." *Id.* at 701. If the government cannot do so, the individual must be released.

By regulation, noncitizens with final removal orders who are released from detention after a post-order custody review are subject to an OSUP, which is documented on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an OSUP, the regulations further specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3).

Under the regulations, ICE has the authority to re-detain a noncitizen previously ordered removed *only* in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i).

However, ICE's power to re-arrest a noncitizen who is at liberty following release 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 regulations which specify that ICE may only re-detain a noncitizen on an OSUP in limited circumstances are insufficient to protect Mr. Patel's weighty interest in his freedom from detention.

Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to re-detain noncitizens require notice and a pre-

[5] Even where detention meets the *Zadvydas* standard for reasonable foreseeability, detention violates the Due Process Clause unless it is "reasonably related" to the government's purpose, which is to prevent danger or flight risk. *See Zadvydas*, 533 U.S. at 700 ("[I]f removal is reasonably foreseeable, the habeas court should consider the risk of the alien's committing further crimes as a factor potentially justifying confinement within that reasonable removal period") (emphasis added); *Id.* at 699 (purpose of detention is "assuring the alien's presence at the moment of removal"); *Id.* at 690-91 (discussing twin justifications of detention as preventing flight and protecting the community).

deprivation hearing *before* re-detention by ICE. *See* Shastri Decl. at Ex. G, *M.R. v. Kaiser*, et al., 25-cv-05436-RFL (N.D. Cal. July 17, 2025) (TRO prohibiting government from re-detaining the petitioner without notice and a hearing before a neutral adjudicator); *see also id.* at Ex. H, *Rodriguez Diaz v. Kaiser*, et al., 3:25-cv-05071 (N.D. Cal. June 14, 2025) (same); *see also id.* at Ex. I, *T.P.S. v. Kaiser*, et al., 3:25-cv-05428 (N.D. Cal. June 30, 2025) (same); *see also id.* at Ex. J, *Soto Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR (E.D.C.A. July 14, 2025) (same); *see also id.* at Ex. K, *Singh v. Andrews, et al.,* 1:25-cv-00801-KES-SKO (HC) (E.D.C.A. July 11, 2025) (same); *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); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *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); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

Thus, it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated"). In turn, to protect that interest, on the particular facts of Mr. Patel's case, due process requires notice and a hearing, *prior to any re-arrest*.

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Petitioner Has a Protected Liberty Interest in His Release

Mr. Patel's liberty from immigration custody, a form of civil detention, 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 2019, Mr. Patel exercised that freedom from bond or under his OSUP following his removal order. Although he was released under supervision (and thus under government custody, as further demonstrated by his requirement to attend ICE check-ins), he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-detention. *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).

Moreover, the Supreme Court has recognized that post-removal order detention is potentially indefinite and thus unconstitutional without some limitation. *Zadvydas*, 533 U.S. at 701. *see also Clark v. Martinez*, 543 U.S. 371, 372 (2005) (for the same reasons, the "same [six]–month presumptive detention period applies" to noncitizens found inadmissible, or excludable). In this case, in the absence of proof of travel documents that actually permits Mr. Patel's removal to India, his removal is not foreseeable at all, let alone reasonably. And he has already been detained for years when detained by ICE in 2012, which means any additional detention is by definition prolonged to the point of being indefinite. Therefore, his re-detention would be unconstitutional.

Individuals—*including noncitizens*—released from incarceration have a liberty interest in their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841, 845 (9th Cir. 1994) (noting that "[i]t is well-established that the due process clause applies to protect immigrants"). This is further reinforced by *Morrissey*, in which the Supreme Court recognized the protected liberty rights under the Due Process Clause of a *criminal* detainee who was released on parole from incarceration. 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"—thus, those released on parole have a protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482. *See also 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).

In fact, so fundamental to due process is the concept of liberty that it is even well-established that an individual maintains a protectable liberty interest where the individual obtains liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would be inconsistent with fundamental principles of liberty and justice" to return him to prison) (internal quotation marks and citation omitted).

Here, when this Court "'compar[es] the specific conditional release in [Petitioner's case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Patel's release "enables him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work with his community, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Moreover, Mr. Patel is not a criminal detainee, but a civil detainee, and thus the due process considerations of his liberty should be even weightier than the courts have already found apply in the criminal context.

Mr. Patel has complied with all conditions of his supervised release for the past thirteen years since his initial arrest in 2012 and after his removal order in 2019. During this thirteen year time period he has spent at liberty, Mr. Patel has been focused on rebuilding his life, including by

reconnecting with family and securing employment. Unfortunately he has also had health problems that led to his triple bypass surgery on March 12, 2025 that needs constant medical supervision. Precedent from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his continued release from detention.

b. Petitioner's Liberty Interest Mandated a Due Process Hearing Before any Re-Detention, and Once Released, Mandates Such a Hearing Prior to Any Re-Detention

Mr. Patel asserts that, here, (1) where his detention would be civil, (2) where he has been at liberty for thirteen years, during which time he has diligently complied with ICE's reporting requirements on a regular basis, (3) where his removal is not reasonably foreseeable, (4) where no change in circumstances exist that would justify his detention, and (5) where the only circumstance that has changed is ICE's move to arrest as many people as possible because of the new administration, due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest.

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

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

Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Patel with notice and a hearing *prior* to any re-detention and revocation of his release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *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 [Petitioner's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

i. Petitioner's 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. Patel, who have also been released from prior ICE custody and are facing civil (not criminal) detention. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g.*, *United States 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. Patel retains a truly weighty liberty interest even though he is under supervised release.

What is at stake in this case for Mr. Patel 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). "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, 366 (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-Detaining Petitioner 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 detaining Mr. Patel without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting him unless and until he is provided a pre-deprivation hearing. It becomes abundantly clear that the *Mathews* test favors Mr. Patel when the Court considers that the process Petitioner seeks—notice and a hearing regarding whether his he should be re-detained—is a standard course of action for the government. Providing Mr. Patel with a future hearing before a neutral adjudication to determine whether his removal is reasonably foreseeable and if there is otherwise evidence that he is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government

routinely conducts these reviews for individuals in Petitioner's same circumstances, 8 C.F.R. § 241.4(e)-(f), and routinely conducts bond hearings.

As immigration detention is civil, it can have no punitive purpose. The government's only interests in holding an individual in immigration detention can be to prevent danger to the community or to effectuate removal *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order is unconstitutional. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. Patel due to alleged dangerousness, or due to a change in the foreseeability of his removal to India, as his circumstances have not changed since his removal order.

Moreover, Mr. Patel is not a flight risk because he has continued to appear before ICE on a regular basis for each and every appointment that has been scheduled. *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).

Thus, as to the factor of flight risk, Mr. Patel's post-release conduct in the form of full compliance with his check-in requirements further confirms that he is not a flight risk and that he remains likely to present himself at any future ICE appearances, as he always has done. What has changed, however, is that ICE has a new policy to make a minimum number of arrests each day under the new administration – but that does not constitute a change in circumstances or increase the government's interest in detaining him.[6] Moreover, as discussed previously, nothing has changed regarding the lack of foreseeability of his removal to India.

Moreover, the "fiscal and administrative burdens" that a pre-deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Patel does not seek a unique or expensive form of process, but rather a routine hearing regarding whether his

[6] *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/.

release should be revoked and whether he should be re-detained. Providing Mr. Patel with a hearing before a neutral adjudicator regarding his detention is a routine procedure that the government provides to those in immigration detention on a daily basis. At that hearing, the neutral adjudicator would have the opportunity to determine whether his removal is reasonably foreseeable and whether circumstances have changed sufficiently to warrant re-detention. But there is no justifiable reason to re-detain Mr. Patel prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

Enjoining Mr. Patel's re-arrest until ICE demonstrates at a hearing before a neutral adjudicator that his removal is reasonably foreseeable and that he is a flight risk or danger to the community is far *less* costly and burdensome for the government than detaining and keeping him detained. 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. For Mr. Patel, who has serious health conditions, the cost of his care and to prevent irreparable harm to him would be even more.

iii. Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of 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

Providing Mr. Patel with a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty.

Under the process that ICE maintains is lawful—which affords Mr. Patel no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that Mr. Patel will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations are actually insufficient to protect his due process rights, as

they permit ICE to unilaterally re-detain individuals, even for an accidental error in complying with the conditions of supervision, for example. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-(f).

By contrast, the procedure Mr. Patel seeks—a pre-deprivation hearing to assess whether his removal is reasonably foreseeable and otherwise whether he is a danger or a flight risk—is much more likely to produce accurate determinations regarding these factual disputes. *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 adjudicator, 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 removal *if* reasonably foreseeable. *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. Patel's re-incarceration is warranted.

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

2. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Patel will suffer irreparable harm were he to be deprived of his liberty and subjected to unlawful detention by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in civil ICE custody are held in "prison-like conditions" which have real consequences for their lives. *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. INS*, 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. 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).[7] Mr. Patel's recovery after his triple bypass surgery will put Mr. Patel's health at great risk if he were detained by ICE. Any further arrest or detention would likely be lethal.

Mr. Patel has been out of ICE custody for thirteen years. During that time, he has been reconnecting with his family and community and recovering from triple bypass surgery. He has been gainfully employed and continues to support his U.S. citizen wife and son. *See* Shastri Decl. If he were detained, he would likely lose his job, as he could not work from detention.

[7] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed June 27, 2025).

Detention would irreparably harm not only him, but also his family and community members who rely on him. *Id.*

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

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

First, the balance of hardships strongly favors Mr. Patel. 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 DHS to refrain from re-arresting Mr. Patel unless and until he is provided a hearing before a neutral adjudicator 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.").

Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Mr. Patel, 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.

V. CONCLUSION

For all the above reasons, this Court should find that Mr. Patel warrants a temporary restraining order and preliminary injunction ordering that Respondents refrain from re-arresting him unless and until he is afforded a hearing before a neutral adjudicator on whether his removal is reasonably foreseeable and further whether it is justified by evidence that he is a danger to the community or a flight risk without first providing him with constitutionally-compliant procedures.

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Respectfully submitted,

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