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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF
11 CALIFORNIA

12 J.O.L.R.,
13 Petitioner-Plaintiff,

14 v.

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

19 Sergio ALBARRAN, Acting Field Office Director
20 of the San Francisco Immigration and Customs
21 Enforcement Office

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

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

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

Respondents-Defendants.

Case No. 1:25-00849

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

**J.O.L.R. v Wofford at al; PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. Petitioner, J.O.L.R., by and through his undersigned counsel, hereby files this petition for
3 writ of habeas corpus and complaint for declaratory and injunctive relief to prevent the U.S.
4 Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE)
5 from continuing to detain him in an immigration jail pending resolution of his removal case
6 without first providing him a due process hearing where the government bears the burden to
7 demonstrate to a neutral adjudicator that he is a danger to the community or a flight risk by clear
8 and convincing evidence.

9 2. J.O.L.R. also seeks an order enjoining DHS from continuing to violate the undisturbed
10 release on recognizance that DHS issued on 08/31/2024.

11 3. J.O.L.R. seeks his immediate release from detention in Mesa Verde ICE Processing
12 Center where ICE unlawfully re-detained and continues to imprison him without a hearing and
13 without demonstrating that he is a flight risk or danger to the community, as required by the Due
14 Process clause of the Fifth Amendment.

15 4. This arrest is part of a new, nationwide DHS strategy of sweeping up people who attend
16 their immigration court hearings or their ICE appointments, detaining them, and seeking to re-
17 route them to fast-track deportations. Since mid-May, DHS has implemented a coordinated
18 practice of leveraging immigration detention to strip people like Petitioner of their substantive
19 and procedural rights and pressure them into deportation. Immigration detention is civil and thus
20 is permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings
21 and to prevent danger to the community. However, DHS did not arrest and detain J.O.L.R., who
22 demonstrably poses no risk of absconding from immigration proceedings or being a danger to the
23 community, for either of these reasons. Instead, as part of its broader enforcement campaign, DHS
24 detained J.O.L.R. to strip him of his procedural rights, force him to forfeit his applications for
25 relief, and pressure him into fast-track removal.

1 5. J.O.L.R. initially came into immigration custody immediately after crossing the border
2 into the United States on August 25, 2024. He was detained for approximately seven days in
3 Texas. While J.O.L.R. was detained, DHS asylum officers conducted a credible fear interview
4 with him, when J.O.L.R. had the opportunity to explain to DHS officers that he was afraid of
5 returning to his country of Guatemala. After the interview, an asylum officer found that J.O.L.R.
6 had demonstrated a credible fear of persecution and torture in Guatemala. J.O.L.R. fled
7 Guatemala after surviving lifelong physical and psychological abuse for being a member of the
8 LGBTQI community in Guatemala.

9 6. On August 31, 2024, DHS released J.O.L.R. on his recognizance with instructions for him
10 to report to the ICE office in San Francisco upon arrival in the Bay Area. DHS also gave him a
11 Notice to Appear (NTA) for removal proceedings in immigration court, pursuant to Section 240
12 of the Immigration and Nationality Act (INA) (section 240 proceedings). The NTA charged
13 J.O.L.R. with removability pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as “an alien present in the
14 United States without being admitted or paroled, or who arrives in the United States at any time
15 or place other than as designated by the Attorney General.” DHS did not require J.O.L.R. to post
16 a bond.¹

17 7. Following his release, J.O.L.R. appeared at the San Francisco local ICE office at 630
18 Sansome, San Francisco, CA, 94111. During his appointment, ICE offices instructed him to go
19 to the Intensive Supervision Appearance Program (ISAP) office at 478 Tehama St, San Francisco,
20 CA 94103. J.O.L.R. complied with the instructions, and ISAP placed a GPS electronic monitoring
21 device on J.O.L.R.’s ankle. After wearing the device for a few days and complying with all
22 requirements of the ISAP program, on or about September 15, 2024, ISAP removed the GPS
23 electronic monitoring device from J.O.L.R.’s ankle and enrolled him in a phone monitoring
24 system, where J.O.L.R. was required to take a photo every week, answer phone calls from ISAP
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26 ¹ A true and correct copy of Petitioner’s border release documentation is attached hereto as Exhibit 1.

1 officers every three months, and report periodically in-person at ISAP and ICE offices. J.O.L.R.
2 complied with every step and requirement of the ISAP program and his ICE;s order of
3 supervision.

4 8. After leaving detention in Texas, J.O.L.R. came to live with his aunt, Elvia, in South San
5 Francisco, California. He established a life in South San Francisco. He attends church, studies
6 English, enjoys time with his family, and assists his uncle with the upkeep of the house. His
7 grandmother has severe diabetes and recently had surgery for toe removal. J.O.L.R. is an attentive
8 grandson who helps with the care of his severely ill grandmother. J.O.L.R. accompanied his
9 grandmother to the hospital when she had her surgery and assisted her at home. J.O.L.R. has
10 recently become eligible for a work permit. When he was detained, he was working on his petition
11 with his immigration attorney so that he could obtain a social security number and start working.
12 J.O.L.R.'s grandparents and aunt have supported J.O.L.R. financially while he waited to qualify
13 for his work permit. J.O.L.R. has maintained a clean criminal record. ²

14 9. J.O.L.R. sought legal assistance for his immigration case and retained an immigration
15 lawyer. He timely filed his Form I-589 (Application for Asylum and Withholding of Removal)
16 and currently has an individual hearing (final) scheduled for November 9, 2027, at 8:30 AM at
17 the San Francisco Immigration Court at 100 Montgomery Street, Suite 800, San Francisco, CA.
18 J.O.L.R. never missed an immigration court hearing.

19 10. On September 2, 2025, J.O.L.R. appeared at a scheduled appointment at the local San
20 Francisco ISAP office. During that appointment, an ISAP worker told J.O.L.R. that he had to
21 present for a routine appointment at the local San Francisco ICE Office on September 15, 2025.

22 11. On September 15, 2025, in compliance with instructions from ICE, J.O.L.R. presented
23 himself for a scheduled check-in at the San Francisco ICE Field Office located at 630 Sansome
24 Street, San Francisco, California. J.O.L.R. arrived at the facility at approximately 8:00 a.m. and
25

26 ² A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 waited in line for over six hours before being admitted into the building at approximately 2:00
2 p.m.

3 12. Upon entry, J.O.L.R. was directed to the fifth floor. After a period of waiting, an ICE
4 officer called J.O.L.R.'s name and informed him that he was under arrest. J.O.L.R. inquired as to
5 the basis for his arrest. The ICE officer stated that Petitioner had "failed to follow an order."
6 Petitioner asked for clarification as to which order he had allegedly violated, saying that he had
7 been fully compliant with all ICE requirements, including regularly attending check-ins,
8 providing photo documentation, and participating in telephone monitoring. The officers provided
9 no further explanation.

10 13. J.O.L.R. did not resist arrest in any manner. He immediately complied with the officers'
11 commands and placed his hands behind his back to be handcuffed.

12 14. Following his arrest, ICE officers presented J.O.L.R. with several forms and instructed
13 him to sign them. Petitioner stated that he would not sign any document without first reading and
14 understanding its contents. After being permitted to read one page, which he determined was an
15 inventory of his personal belongings, he signed it.

16 15. J.O.L.R. was permitted one phone call, which he used to contact his immigration
17 attorney's office.

18 16. Following his arrest, J.O.L.R. was not transferred to a compliant detention facility.
19 Instead, he was held for the remainder of the day in a small room at the 630 Sansome Street
20 facility that resembled a jail cell. J.O.L.R. was held in this room with approximately five other
21 individuals.

22 17. At approximately 9:00 p.m., after J.O.L.R. and the other detainees had been held for
23 approximately seven hours, ICE officers informed them that there were no available beds at any
24 detention facility and that they would be forced to remain at the at the 630 Sansome Street facility
25 overnight.

1 18. For the overnight detention, Respondents provided J.O.L.R. with a thin mat, akin to a yoga
2 mat, and a Mylar emergency blanket, because the temperatures in the room were very cold. The
3 toilet was in the same room. There was a short wall, but the wall did not cover the toilet entirely.
4 There was no privacy. The toilet was dirty and smelled foul. There was no soap to wash hands,
5 nor toilet paper. J.O.L.R. and the other men who were detained had to ask for toilet paper when
6 they needed to use the toilet. They had to ask for water when they were thirsty. At approximately
7 9:00 p.m., J.O.L.R. was provided with a single small burrito. This was the only food provided to
8 him during his detention at the ICE office. Some of the lights were on the whole night.

9 19. J.O.L.R. could not sleep due to the cold and the lights being on for the entire night of
10 September 15-16, 2025.

11 20. J.O.L.R. remained detained in these substandard conditions through the morning of
12 Tuesday, September 16, 2025. At approximately 11:00 a.m., ICE officers provided a small burrito
13 to J.O.L.R. and the other men. Before J.O.L.R. had time to finish eating, the ICE officers ordered
14 him and the other detained man to form a line. Despite Petitioner's complete compliance and non-
15 violent demeanor, officers placed him in full restraints, including handcuffs and ankle shackles.
16 He could not raise his hands if his head or face itched. While fully restrained, J.O.L.R. was
17 escorted to the basement of the building and loaded into a transport van.

18 21. The transport van drove for approximately four to five hours, arriving in Fresno,
19 California, between 7:00 p.m. and 8:00 p.m. on September 16. Upon arrival, J.O.L.R. and other
20 detainees were informed that they would not be staying in Fresno but would be transferred again
21 to Bakersfield. J.O.L.R. and the other detainees were held in Fresno until approximately 11:00
22 p.m., at which point they were given another small burrito, after several hours of not eating. They
23 remained in full restraints, including hand and ankle shackles, for the entire duration of the
24 transfer and subsequent wait. They were then loaded onto a second van for transport to
25 Bakersfield.

1 22. J.O.L.R. arrived at the Mesa Verde ICE Processing Center in Bakersfield, California
2 (“Mesa Verde”) between 1:00 a.m. and 2:00 a.m. on Wednesday, September 17. By this time,
3 Petitioner had been deprived of sleep for over 24 hours since his unlawful arrest.

4 23. Upon arrival, J.O.L.R. and approximately nine other individuals were placed in a small
5 holding cell containing a single toilet. They had no privacy to urinate or defecate and could not
6 keep a distance from the toilet. The cell was so overcrowded that J.O.L.R. and the other detainees
7 could not lie down or sleep. They were held in this crowded cell from approximately 2:00 a.m.
8 until 6:30 a.m.

9 24. At approximately 3:30 a.m., while still in the overcrowded holding cell, J.O.L.R. was
10 provided with a small meal. He was also given an inmate manual explaining that detainee
11 uniforms are color-coded: blue for individuals with no criminal record, orange for those with a
12 “level 2” felony, and red for individuals deemed dangerous. Between approximately 4:00 a.m.
13 and 6:00 a.m., J.O.L.R. and other detainees were removed from the cell for medical examinations
14 and then returned to the same overcrowded conditions.

15 25. At approximately 6:30 a.m. on September 17, staff began calling detainees one by one to
16 issue them uniforms. J.O.L.R. was issued a blue uniform, consistent with the fact that he has no
17 criminal record.

18 26. J.O.L.R. again asked an officer why he had been arrested. The officer vaguely replied it
19 was because of an “application,” offering no further detail that J.O.L.R. could understand.

20 27. At approximately 8:00 a.m. on Wednesday, September 17, more than 40 hours after his
21 initial arrest, Petitioner was finally assigned to a cell where he had access to a bed. He was also
22 first able to shower and change his clothes at approximately 10:00 a.m. on Wednesday, September
23 17. J.O.L.R. was finally able to have some sleep on Wednesday, September 17, at around noon.

24 28. On the evening of Thursday, September 18, 2025, an officer approached J.O.L.R. and
25 ordered him to change his uniform from blue to orange. The officer informed Petitioner that the
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1 change was because he had a “felony.” Petitioner immediately contested this, stating accurately
2 that he has no felony convictions and has never been arrested. The officer provided no evidence
3 or further explanation for the change in uniform.

4 29. As a direct result of being forced to wear an orange uniform, J.O.L.R. is now misclassified
5 and perceived by staff and other detainees as a dangerous felon. This misclassification has caused
6 J.O.L.R. severe emotional distress, anxiety, and fear for his safety, as others constantly question
7 him about a criminal past he does not have.

8 30. J.O.L.R.’s arrest and detention have caused him tremendous and ongoing harm. Since
9 being detained, J.O.L.R. has suffered from sleep deprivation, hygiene issues, and food
10 deprivation. J.O.L.R. is unable to practice his religion fully and to spend time with his family and
11 community. J.O.L.R. is suffering discrimination due to the incorrect color of his uniform. J.O.L.R.
12 feels he cannot sleep and does not feel well. Every additional day J.O.L.R. spends in unlawful
13 detention subjects him to further irreparable harm.

14 31. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
15 has the authority to re-arrest a noncitizen and revoke their bond where there has been a change in
16 circumstances since the individual’s release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter*
17 *of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation
18 that any change in circumstances must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197
19 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)
20 (emphasis added). That authority, however, is proscribed by the Due Process Clause because it is
21 well-established that individuals released from incarceration have a liberty interest in their
22 freedom. In turn, to protect that interest, on the particular facts of J.O.L.R.’s case, due process
23 requires notice and a hearing, *before any re-arrest*, at which he is afforded the opportunity to
24 advance his arguments as to why his release should not be revoked.

25 32. That basic principle—that individuals placed at liberty are entitled to process before the
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1 government imprisons them—has particular meaning here. A DHS officer previously found that
2 J.O.L.R. need not be incarcerated to prevent flight or to protect the community, and no
3 circumstances have changed that would justify re-arrest. Therefore, at a minimum, to lawfully re-
4 arrest J.O.L.R., the government must first establish, by clear and convincing evidence and before
5 a neutral decision maker, that he is a danger to the community or a flight risk, such that his
6 reincarceration is necessary. ICE’s re-arrest of J.O.L.R. on September 15, 2025, violated these
7 regulations, laws, and due process.

8 33. On September 21, 2025, the undersigned e-mailed the ICE San Francisco office requesting
9 the immediate release of J.O.L.R., explaining that J.O.L.R. prevailed on his credible fear
10 interview and was placed in section 240 proceedings, which are still pending. To date, the
11 undersigned has not received an answer.

12 34. J.O.L.R. respectfully seeks a writ of habeas corpus ordering the government to
13 immediately release him from his ongoing, unlawful detention, and prohibiting his re-arrest
14 without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve
15 this Court’s jurisdiction, Petitioner also requests that this Court order the government not to
16 transfer him outside of the District or deport him for the duration of this proceeding.

17 **CUSTODY**

18 35. J.O.L.R. is currently in the custody of ICE at the Mesa Verde ICE Processing Center in
19 Bakersfield, California. J.O.L.R. is therefore in “‘custody’ of [the DHS] within the meaning of
20 the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

21 **JURISDICTION AND VENUE**

22 36. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
23 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C.
24 § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the
25 Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative
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1 Procedure Act).

2 37. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C.
3 § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

4 **REQUIREMENTS OF 28 U.S.C. § 2243**

5 38. The Court must grant the petition for writ of habeas corpus or issue an order to show
6 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
7 § 2243. If an OSC is issued, the Court must require Respondents to file a return “within *three*
8 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis
9 added).

10 39. Courts have long recognized the significance of the habeas statute in protecting
11 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
12 important writ known to the constitutional law of England, affording as it does a *swift* and
13 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
14 400 (1963) (emphasis added).

15 40. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
16 courts to give petitions for habeas corpus ‘special, preferential consideration to ensure expeditious
17 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
18 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
19 more concerned with efficient trial management than with the vindication of constitutional
20 rights.” *Id.*

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 41. For habeas claims, exhaustion of administrative remedies is prudential, not
23 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion
24 requirement if “administrative remedies are inadequate or not efficacious, pursuit of
25 administrative remedies would be a futile gesture, irreparable injury will result, or the
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1 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000
2 (9th Cir. 2004) (citation and quotation marks omitted)). J.O.L.R. asserts that exhaustion should
3 be waived because administrative remedies are (1) futile and (2) his continued detention results
4 in irreparable harm.

5 42. It would be futile for J.O.L.R. to seek a bond hearing from an Immigration Judge. His
6 request would be summarily denied based on the current interpretation of the BIA’s recent
7 decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (B.I.A. 2025) and *Matter of YAJURE HURTADO*,
8 29 I&N Dec. 216 (BIA 2025).

9 43. Further, no statutory exhaustion requirements apply to J.O.L.R.’s claim of
10 unlawful custody in violation of his due process rights, and there are no administrative remedies
11 that he needs to exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936,
12 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not
13 have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d
14 1098, 1099 (C.D. Cal. 2000) (same).

15 **PARTIES**

16 44. J.O.L.R. is a citizen and national of Guatemala who entered the U.S. in 2024 and has
17 remained in the country since. The DHS has deemed J.O.L.R. neither a danger to his community
18 nor a flight risk and released him on his recognizance on August 31, 2024. ***Exhibit B***. He
19 established a life in South San Francisco. He attends church, studies English, enjoys time with his
20 family, cares for his ill grandmother, and assists his uncle with the upkeep of the house.

21 45. Respondent Minga WOFFORD is the Field Office Director of ICE, Mesa Verde,
22 Bakersfield, CA, and is named in her official capacity. ICE is the component of the DHS that is
23 responsible for detaining and removing noncitizens according to immigration law and oversees
24 custody determinations. In her official capacity, she is the legal custodian of J.O.L.R.

25 46. Respondent Sergio ALBARRAN is the Acting Field Office Director of the San Francisco
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1 ICE Field Office. In this capacity, he is responsible for the administration of immigration laws and
2 the execution of immigration enforcement and detention policy within ICE's San Francisco Area
3 of Responsibility, including the detention of Petitioner. Respondent Albarran maintains an office
4 and regularly conducts business in this district. Respondent Albarran is sued in his official
5 capacity.

6 47. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
7 capacity. Among other things, ICE is responsible for the administration and enforcement of the
8 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
9 he is the legal custodian of J.O.L.R.

10 48. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.
11 DHS is the federal agency that encompasses ICE, which is responsible for administering and
12 enforcing the INA and all other laws related to the immigration of noncitizens. In her capacity as
13 Secretary, Respondent Noem has responsibility for the administration and enforcement of the
14 immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of
15 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a).
16 Respondent Noem is the ultimate legal custodian of J.O.L.R.

17 49. Respondent Pam BONDI is the Attorney General of the United States and the most senior
18 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the
19 authority to interpret immigration laws and adjudicate removal cases. The Attorney General
20 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which
21 administers the immigration courts and the BIA.

22 **STATEMENT OF FACTS**

23 50. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
24 targeting people who are in regular removal proceedings in immigration court, many of whom
25 have pending applications for asylum or other relief. This "coordinated operation" is "aimed at
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1 dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office
2 and placing them into expedited removal.³ The Trump administration implemented a policy to
3 drastically increase immigration arrests to a target of at least 3,000 per day. According to White
4 House officials like Stephen Miller, this directive prioritized arrest numbers over the individuals'
5 criminal history, encouraging agents to conduct mass round-ups in public spaces rather than
6 targeted investigations.

7 51. As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-
8 thirds of those deported had no criminal history. This focus on quantity over public safety led to
9 a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE
10 appointments, regardless of the status of their legal cases. This has created a climate of fear,
11 discouraging people from attending their mandatory hearings or ICE appointments.

12 52. In addition, individuals are now held for extended periods, sometimes days, in temporary
13 holding cells that are not designed for overnight or prolonged detention, often under inhumane
14 conditions. Government officials have justified these harsh conditions not as a matter of
15 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
16 detention.

17 53. The government’s new campaign is also a significant shift from the previous DHS practice
18 of re-detaining noncitizens only after a material change in circumstances. *See Saravia v. Sessions*,
19 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
20 F.3d 1137 (9th Cir. 2018) (describing prior practice).

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23
24 ³ Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump’s*
25 *Deportation Push*, Wash. Post, May 23, 2025, <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>; *see also* Hamed
26 Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse*
Arrests, N.Y. Times, May 30, 2025, <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

1 54. J.O.L.R. initially came into immigration custody immediately after crossing the border
2 into the United States on August 25, 2024. He was detained for approximately seven days in
3 Texas. While J.O.L.R. was detained, DHS asylum officers conducted a credible fear interview
4 with him, when J.O.L.R. had the opportunity to explain to DHS officers that he was afraid of
5 returning to his country of Guatemala. After the interview, an asylum officer found that J.O.L.R.
6 had demonstrated a credible fear of persecution and torture in Guatemala. J.O.L.R. fled
7 Guatemala after surviving lifelong physical and psychological abuse for being a member of the
8 LGBTQI community in Guatemala.

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24 system, where J.O.L.R. was required to take a photo every week, answer phone calls from ISAP
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1 officers every three months, and still report periodically at ISAP and ICE offices. J.O.L.R.
2 complied with every step and requirement for the ISAP program and ICE's order of supervision.

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4 Francisco, California. He established a life in South San Francisco. He attends church, studies
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6 grandmother has severe diabetes and recently had surgery for toe removal. J.O.L.R. is an attentive
7 grandson who helps with the care of his severely ill grandmother. J.O.L.R. accompanied his
8 grandmother to the hospital when she had surgery and assisted her at home. J.O.L.R. has recently
9 become eligible for a work permit. When he was detained, he was working on his petition with
10 his immigration attorney so that he could obtain a social security number and start working.
11 J.O.L.R.'s grandparents and aunt have supported J.O.L.R. financially while he waited to qualify
12 for his work permit. J.O.L.R. has maintained a clean criminal record.⁵

13 58. J.O.L.R. sought legal assistance for his immigration case and retained an immigration
14 lawyer. He timely filed his Form I-589 (Application for Asylum and Withholding of Removal)
15 and currently has an individual hearing (final) scheduled for November 9, 2027, at 8:30 AM at
16 the San Francisco Immigration Court at 100 Montgomery Street, Suite 800, San Francisco, CA.
17 J.O.L.R. never missed an immigration court hearing.

18 59. On September 2, 2025, J.O.L.R. appeared at a scheduled appointment at the local San
19 Francisco ISAP office. During that appointment, an ISAP worker told J.O.L.R. that he had to
20 present for a routine appointment at the local San Francisco ICE Office on September 15, 2025.

21 60. On September 15, 2025, in compliance with instructions from ICE, J.O.L.R. presented
22 himself for a scheduled check-in at the San Francisco ICE Field Office located at 630 Sansome
23 Street, San Francisco, California. J.O.L.R. arrived at the facility at approximately 8:00 a.m. and
24

25
26 ⁵ A declaration is attached hereto, and support letters are attached hereto as Exhibit 2.

1 waited in line for over six hours before being admitted into the building at approximately 2:00
2 p.m.

3 61. Upon entry, J.O.L.R. was directed to the fifth floor. After a period of waiting, an ICE
4 officer called J.O.L.R.'s name and informed him that he was under arrest. J.O.L.R. inquired as to
5 the basis for his arrest. The ICE officer stated that Petitioner had "failed to follow an order."
6 Petitioner asked for clarification as to which order he had allegedly violated, saying that he had
7 been fully compliant with all ICE requirements, including regularly attending check-ins,
8 providing photo documentation, and participating in telephone monitoring. The officers provided
9 no further explanation.

10 62. J.O.L.R. did not resist arrest in any manner. He immediately complied with the officers'
11 commands and placed his hands behind his back to be handcuffed.

12 63. Following his arrest, ICE officers presented J.O.L.R. with several forms and instructed
13 him to sign them. Petitioner stated that he would not sign any document without first reading and
14 understanding its contents. After being permitted to read one page, which he determined was an
15 inventory of his personal belongings, he signed it.

16 64. J.O.L.R. was permitted one phone call, which he used to contact his immigration
17 attorney's office.

18 65. Following his arrest, J.O.L.R. was not transferred to a complaint detention facility.
19 Instead, he was held for the remainder of the day in a small room at the 630 Sansome Street
20 facility that resembled a jail cell. J.O.L.R. was held in this room with approximately five other
21 individuals.

22 66. At approximately 9:00 p.m., after J.O.L.R. and the other detainees had been held for
23 approximately seven hours, ICE officers informed them that there were no available beds at any
24 detention facility and that they would be forced to remain at the office overnight.

1 67. For the overnight detention, Respondents provided J.O.L.R. with a thin mat, akin to a yoga
2 mat, and a Mylar emergency blanket, because the temperatures in the room were very cold. The
3 toilet was in the same room. There was a short wall, but the wall did not cover the toilet. There
4 was no private. The toilet was dirty and smelled foul. There was no soap to wash hands, nor toilet
5 paper. J.O.L.R. and the other men who were detained had to ask for toilet paper when they needed
6 to use the toilet or ask for water when they were thirsty. At approximately 9:00 p.m., J.O.L.R.
7 was provided with a single small burrito. This was the only food provided to him during his
8 detention at the ICE office. Some of the lights were on the whole night.

9 68. J.O.L.R. could not sleep due to the cold and the lights being on for the entire night of
10 September 15-16, 2025.

11 69. J.O.L.R. remained detained in these substandard conditions through the morning of
12 Tuesday, September 16, 2025. At approximately 11:00 a.m., ICE officers provided a small burrito
13 to J.O.L.R. and the other men. Before J.O.L.R. had time to finish eating, the ICE officers ordered
14 him and the other detained man to form a line. Despite Petitioner's complete compliance and non-
15 violent demeanor, officers placed him in full restraints, including handcuffs and ankle shackles.
16 He could not raise his hands if his head or face itched. While fully restrained, J.O.L.R. was
17 escorted to the basement of the building and loaded into a transport van.

18 70. The transport van drove for approximately four to five hours, arriving in Fresno,
19 California, between 7:00 p.m. and 8:00 p.m. on September 16. Upon arrival, J.O.L.R. and other
20 detainees were informed they were not staying in Fresno but would be transferred again to
21 Bakersfield. J.O.L.R. and the other detainees were held in Fresno until approximately 11:00 p.m.,
22 at which point they were given another small burrito, after several hours of not eating. They
23 remained in full restraints, including hand and ankle shackles, for the entire duration of the
24 transfer and subsequent wait. They were then loaded onto a second van for transport to
25 Bakersfield.

1 71. J.O.L.R. arrived at the Mesa Verde ICE Processing Center in Bakersfield, California
2 (“Mesa Verde”) between 1:00 a.m. and 2:00 a.m. on Wednesday, September 17. By this time,
3 Petitioner had been deprived of sleep for over 24 hours since his unlawful arrest.

4 72. Upon arrival, J.O.L.R. and approximately nine other individuals were placed in a small
5 holding cell containing a single toilet. They had no privacy to urinate or defecate and could not
6 keep a distance from the toilet. The cell was so overcrowded that J.O.L.R. and the other detainees
7 couldn't lie down or sleep. They were held in this crowded cell from approximately 2:00 a.m.
8 until 6:30 a.m.

9 73. At approximately 3:30 a.m., while still in the overcrowded holding cell, J.O.L.R. was
10 provided with a small meal. He was also given an inmate manual explaining that detainee
11 uniforms are color-coded: blue for individuals with no criminal record, orange for those with a
12 "level 2" felony, and red for individuals deemed dangerous. Between approximately 4:00 a.m.
13 and 6:00 a.m., J.O.L.R. and other detainees were removed from the cell for medical examinations
14 and then returned to the same overcrowded conditions.

15 74. At approximately 6:30 a.m. on September 17, staff began calling detainees one by one to
16 issue them uniforms. J.O.L.R. was issued a blue uniform, consistent with the fact that he has no
17 criminal record.

18 75. J.O.L.R. again asked an officer why he had been arrested. The officer vaguely replied
19 that it was because of an “application,” offering no further detail that J.O.L.R. could understand.

20 76. At approximately 8:00 a.m. on Wednesday, September 17, more than 40 hours after his
21 initial arrest, Petitioner was finally assigned to a cell where he had access to a bed. He was also
22 first able to shower and change his clothes at approximately 10:00 a.m. on Wednesday, September
23 17. J.O.L.R. was finally able to have some sleep on Wednesday, September 17, at around noon.

24 77. On the evening of Thursday, September 18, 2025, an officer approached J.O.L.R. and
25 ordered him to change his uniform from blue to orange. The officer informed Petitioner that the
26

1 change was because he had a “felony.” Petitioner immediately contested this, stating accurately
2 that he has no felony convictions and has never been arrested. The officer provided no evidence
3 or further explanation for the change in uniform.

4 78. As a direct result of being forced to wear an orange uniform, J.O.L.R. is now misclassified
5 and perceived by staff and other detainees as a dangerous felon. This misclassification has caused
6 J.O.L.R. severe emotional distress, anxiety, and fear for his safety, as others constantly question
7 him about a criminal past he does not have.

8 79. J.O.L.R.’s arrest and detention have caused him tremendous and ongoing harm. Since
9 being detained, J.O.L.R. has suffered from sleep deprivation, hygiene issues, and food
10 deprivation. J.O.L.R. is unable to practice his religion fully and to spend time with his family and
11 community. J.O.L.R. is suffering discrimination due to the incorrect color of his uniform. J.O.L.R.
12 feels he cannot sleep and does not feel well. Every additional day J.O.L.R. spends in unlawful
13 detention subjects him to further irreparable harm.

14 80. This case has substantial factual and legal support to be granted, resulting in J.O.L.R.’s
15 release from custody, and enjoining DHS from detaining J.O.L.R. pending a hearing before a
16 neutral adjudicator, to substantiate a material change in circumstances indicating that J.O.L.R. is
17 either a flight risk or a danger to the community.

18 81. Intervention from this Court is therefore required to ensure that J.O.L.R. is released from
19 his current custody based on his unlawful arrest, returned to his home in South San Francisco,
20 California, where ICE can then provide him with a hearing before determining to re-arrest him
21 pursuant to the Due Process Clause of the Fifth Amendment.

22 LEGAL BACKGROUND

23 **Statutory Framework**

24 82. J.O.L.R.’s removal proceedings before the San Francisco Immigration Judge are
25 governed by section 240 of the Immigration and Nationality Act (“section 240 proceedings”).
26

1 Section 240 proceedings provide important statutory protections, including hearings before an
2 Immigration Judge. See 8 U.S.C. § 1229a(a)(1), (a)(4).

3 **Right to a Hearing Prior to Re-incarceration**

4 83. In J.O.L.R.’s particular circumstances, the Due Process Clause of the Constitution makes
5 it unlawful for Respondents to re-arrest him without first providing a pre-deprivation hearing
6 before a neutral decision maker to determine whether circumstances have materially changed
7 since his release from custody in August of 2024, such that detention would now be warranted on
8 the basis that he is a danger or a flight risk by clear and convincing evidence.

9 84. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s
10 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
11 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
12 revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at
13 640, the BIA has recognized an implicit limitation on ICE’s authority to re-arrest noncitizens.
14 There, the BIA held that “where a previous bond determination has been made by an immigration
15 judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice,
16 DHS “requires a showing of changed circumstances both where the prior bond determination was
17 made by an immigration judge *and* where the previous release decision was made by a DHS
18 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed
19 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
20 circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent
21 changed circumstances ... ICE cannot redetain Panosyan.”).

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

3 86. ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is
4 also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981
5 (9th Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by
6 the requirements of due process"). *See also Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (Due
7 Process requires pre-deprivation hearing before revocation of probation); *Morrissey v. Brewer*,
8 408 U.S. 471, 482 (1972) (same, in parole context). Petitioner's release from custody in August
9 of 2024 and ties to his family and community provide him with a protected liberty interest. *See*
10 *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. Nov. 22, 2019)

11 87. Federal district courts in California have repeatedly recognized that the demands of due
12 process and the limitations on DHS's authority to revoke a noncitizen's release from custody set
13 out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a
14 noncitizen on ICE's supervision, like J.O.L.R. before ICE re-detains him. *See, e.g., Meza v.*
15 *Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963
16 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal.
17 Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D.
18 Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D.
19 Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice
20 and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL
21 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at
22 plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v.*
23 *Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding
24 the Constitution requires a hearing before any re-arrest).

25 **J.O.L.R.'s Protected Liberty Interest in His Conditional Release**

1 88. The Due Process Clause protects J.O.L.R.’s liberty from immigration custody: “Freedom
2 from imprisonment—from government custody, detention, or other forms of physical restraint—
3 lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S.
4 678, 690 (2001).

5 89. Since August 31, 2024, J.O.L.R. exercised that freedom under ICE’s order
6 releasing him from custody. *See Exhibit B*. As he was released from custody, he retains a
7 weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding
8 unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v.*
9 *Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483. Respondents created a
10 reasonable expectation that J.O.L.R. would be permitted to live and work in the United States
11 without being subject to arbitrary arrest and removal.

12 90. This reasonable expectation creates constitutionally-protected liberty and property
13 interests. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972) (reliance on policies and practices
14 may establish a legitimate claim of entitlement to a constitutionally-protected interest); *see also*
15 *Texas v. United States*, 809 F.3d 134, 174 (2015), affirmed by an equally divided court, 136 S.
16 Ct. 2271 (2016) (explaining that “DACA involve[s] issuing benefits” to certain applicants). These
17 benefits are entitled to constitutional protections no matter how they may be characterized by
18 Respondents. *See, e.g., Newman v. Sathyavaglswaran*, 287 F.3d 786, 797 (9th Cir. 2002) (“[T]he
19 identification of property interests under constitutional law turns on the substance of the interest
20 recognized, not the name given that interest by the state or other independent source.”) (internal
21 quotations omitted).

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

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

22 93. In fact, it is well-established that an individual maintains a protectable liberty interest even
23 where the individual obtains liberty through a mistake of law or fact. *See id.; Gonzalez-Fuentes*,
24 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
25 considerations support the notion that an inmate released on parole by mistake, because he was
26

1 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
2 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
3 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
4 (internal quotation marks and citation omitted).

5 94. Here, when this Court ““compar[es] the specific release in [J.O.L.R.’s case], with
6 the liberty interest in parole as characterized by *Morrissey*,”” it is clear that they are strikingly
7 similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, J.O.L.R.’s release “enables
8 him to do a wide range of things open to persons”” who have never been in custody or convicted
9 of any crime, including to live at home, practice his faith, care for his grandmother, and “be with
10 family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408
11 U.S. at 482.

12 **J.O.L.R.’s Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of**
13 **Release from Custody**

14 95. J.O.L.R. asserts that, here, (1) where his detention would be civil; (2) where he has been
15 at liberty for over 12 months; (3) where no change in circumstances exist that would justify his
16 lawful detention; and (4) where the only circumstance was ICE’s move to arrest as many people
17 as possible because of the new administration, due process mandates that he be released from his
18 unlawful custody and receive notice and a hearing before a neutral adjudicator *prior* to any re-
19 arrest or revocation of his custody release.

20 96. “Adequate, or due, process depends upon the nature of the interest affected. The more
21 important the interest and the greater the effect of its impairment, the greater the procedural
22 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
23 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
24 “balance [J.O.L.R.’s] liberty interest against the [government’s] interest in the efficient
25 administration of” its immigration laws in order to determine what process he is owed to ensure
26

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

9 97. The Supreme Court “usually has held that the Constitution requires some kind of a hearing
10 *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127
11 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies are “the
12 only remedies the State could be expected to provide” can post-deprivation process satisfy the
13 requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one of the
14 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
15 preventing the kind of deprivation at issue” such that “the State cannot be required constitutionally
16 to do the impossible by providing predeprivation process,” can the government avoid providing
17 pre-deprivation process. *Id.*

18 98. Because, in this case, ICE is required to release J.O.L.R. from his unlawful custody and
19 provide J.O.L.R. with notice and a hearing *prior* to any re-incarceration and revocation of his
20 liberty. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at
21 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982);
22 *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary
23 civil commitment proceedings may not constitutionally be held in jail pending the determination
24 as to whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily
25 in favor of [J.O.L.R.’s] liberty” and requires a pre-deprivation hearing before a neutral
26

1 adjudicator.

2 **J.O.L.R.’s Private Interest in His Liberty is Profound**

3 99. Under *Morrissey* and its progeny, individuals conditionally released from serving
4 a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
5 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
6 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles
7 him to constitutional due process before he is re-incarcerated—apply with even greater force to
8 individuals like J.O.L.R., who have been released pending civil removal proceedings, rather than
9 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
10 conviction. Parolees and probationers have a diminished liberty interest given their underlying
11 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
12 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
13 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
14 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
15 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, J.O.L.R. retains a truly weighty liberty interest
16 even though he is under conditional release.

17 100. What is at stake in this case for J.O.L.R. is one of the most profound
18 individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior
19 decision releasing him from custody and to take away—without a lawful basis—his physical
20 freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v.*
21 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily
22 restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha*
23 *v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from
24 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
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1 the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S.
2 348 (1996).

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

6
7 **The Government’s Interest in Re-Incarcerating J.O.L.R. Without a Hearing is Low and the**
8 **Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is**
9 **Provided a Hearing That Comports with Due Process is Minimal**

10 102. The government’s interest in detaining J.O.L.R. without a due process hearing is
11 low, and when weighed against J.O.L.R.’s significant private interest in his liberty, the scale tips
12 sharply in favor of enjoining Respondents to release J.O.L.R. from his unlawful custody and
13 refrain from re-arresting J.O.L.R. unless and until the government demonstrates by clear and
14 convincing evidence that he is a flight risk or danger to the community. It becomes abundantly
15 clear that the *Mathews* test favors J.O.L.R. when the Court considers that the process he seeks—
16 notice and a hearing regarding whether he has violated any conditions of his release, and, if so,
17 providing J.O.L.R. with a hearing before this Court (or a neutral decisionmaker) to determine
18 whether there is clear and convincing evidence that J.O.L.R. is a flight risk or danger to the
19 community would impose only a *de minimis* burden on the government, because the government
20 routinely provides this sort of hearing to individuals like J.O.L.R.

21 103. As immigration detention is civil, it can have no punitive purpose. The
22 government’s only interests in holding an individual in immigration detention can be to prevent
23 danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. *See*
24 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
25 lawful basis for detaining J.O.L.R.. J.O.L.R. has lived at liberty complying with the conditions of
26 his release since August of 2024.

1 104. ICE determined J.O.L.R. not to be a danger to the community or a flight risk in
2 August of 2024 and has done nothing to undermine that determination. To the contrary, he
3 complied with every term of his release. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to
4 attach greater importance to a person’s justifiable reliance in maintaining his conditional freedom
5 so long as he abides by the conditions on his release, than to his mere anticipation or hope of
6 freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079,
7 1086 (2d Cir. 1971)).

8 105. It is difficult to see how the government’s interest in ensuring his presence at the
9 moment of removal has materially changed since he was released in August of 2024, when he has
10 complied with all conditions of release. The government’s interest in detaining J.O.L.R. at this
11 time is therefore low. That ICE has a new policy to make a minimum number of arrests each day
12 under the new administration does not constitute a material change in circumstances or increase
13 the government’s interest in detaining him.⁶

14 106. Moreover, the “fiscal and administrative burdens” that his immediate release and
15 a lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S.
16 at 334-35. J.O.L.R. does not seek a unique or expensive form of process, but rather a routine
17 hearing regarding whether his order of release should be revoked and whether he should be re-
18 incarcerated.

19 107. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the
20 public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total
21 daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. ICE’s unlawful action of placing him in

22 _____
23 ⁶ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
24 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
25 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
26 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-
and-protests/](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.”).

1 custody is more of a financial burden than releasing him and providing a pre-custody hearing
2 before any future re-arrest occurs.

3 108. In the alternative, providing J.O.L.R. with a hearing before this Court (or a neutral
4 decisionmaker) regarding release from custody is a routine procedure that the government
5 provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
6 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
7 But there is no justifiable reason to re-incarcerate J.O.L.R. prior to such a hearing taking place.
8 As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest
9 in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
10 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
11 revoking parole without some informal procedural guarantees.” *Morrissey*, 408 U.S. at 483.

12 109. Releasing J.O.L.R. from unlawful custody and enjoining his re-arrest until ICE (1)
13 moves for a pre-deprivation bond hearing before an Immigration Judge and (2) demonstrates by
14 clear and convincing evidence that J.O.L.R. is a flight risk or danger to the community is far *less*
15 costly and burdensome for the government than keeping him detained goes to a total daily cost of
16 \$6.5 million.” *Hernandez*, 872 F.3d at 996.

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

20 110. Releasing J.O.L.R. from unlawful custody and providing J.O.L.R. a pre-
21 deprivation hearing would decrease the risk of J.O.L.R. being erroneously deprived of his liberty.
22 Before J.O.L.R. can be lawfully detained, he must be provided with a hearing before a neutral
23 adjudicator at which the government is held to show that there has been sufficiently changed
24 circumstances such that ICE’s August of 2024 release from custody determination should be
25 altered or revoked because clear and convincing evidence exists to establish that J.O.L.R. is a
26 danger to the community or a flight risk.

1 111. On September 15, 2025, J.O.L.R. did not receive this protection. Instead, he was
2 detained by ICE, without notice, as he walked out of his immigration court hearing, and there
3 have been no material changes in his circumstances.

4 112. By contrast, the procedure J.O.L.R. seeks—a hearing in front of a neutral
5 adjudicator at which the government must prove by clear and convincing evidence that
6 circumstances have changed to justify his detention *before* any re-arrest—is much more likely to
7 produce accurate determinations regarding factual disputes, such as whether a certain occurrence
8 constitutes a “changed circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th
9 Cir. 1989) (when “delicate judgments depending on credibility of witnesses and assessment of
10 conditions not subject to measurement” are at issue, the “risk of error is considerable when just
11 determinations are made after hearing only one side”). “A neutral judge is one of the most basic
12 due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
13 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has
14 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
15 a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
16 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

17 113. Due process also requires consideration of alternatives to detention at any custody
18 determination hearing that may occur. The primary purpose of immigration detention is to ensure
19 a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is
20 not reasonably related to this purpose if there are alternatives to detention that could mitigate risk
21 of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention
22 must be considered in determining whether J.O.L.R.’s re-incarceration is warranted.

23 **FIRST CAUSE OF ACTION**

24 **Procedural Due Process**

25 **U.S. Const. amend. V**

1 114. J.O.L.R. re-alleges and incorporates herein by reference, as is set forth fully herein,
2 the allegations in all the preceding paragraphs.

3 115. The Due Process Clause of the Fifth Amendment forbids the government from
4 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

5 116. J.O.L.R. has a vested liberty interest in his lawful conditional release. Due Process
6 does not permit the government to strip him of that liberty without a hearing before this Court.
7 *See Morrissey*, 408 U.S. at 487-488.

8 117. The Court must therefore order that ICE release J.O.L.R. from his current unlawful
9 custody.

10 118. Prior to any re-arrest, the government must provide him with a hearing before a
11 neutral adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether
12 clear and convincing evidence demonstrates, taking into consideration alternatives to detention,
13 that J.O.L.R. is a danger to the community or a flight risk, such that his re-incarceration is
14 warranted. During any custody determination hearing that occurs, this Court or, in the alternative,
15 a neutral adjudicator must consider alternatives to detention when determining whether J.O.L.R.’s
16 re-incarceration is warranted.

17 **SECOND CAUSE OF ACTION**

18 **Substantive Due Process**

19 **U.S. Const. amend. V**

20 119. J.O.L.R. re-alleges and incorporates herein by reference, as is set
21 forth fully herein, the allegations in all the preceding paragraphs.

22 120. The Due Process Clause of the Fifth Amendment forbids the government from
23 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.
24 amend. V.

25 121. J.O.L.R. has a vested liberty interest in his conditional release. Due Process does
26

1 not permit the government to strip him of that liberty without it being tethered to one of the two
2 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
3 community from danger. Since August of 2024, J.O.L.R. has attended all of his court hearings
4 and appointments, thus demonstrating that he is neither a flight risk nor a danger. Re-arresting
5 him now would be punitive and violate his constitutional right to be free from the unjustified
6 deprivation of his liberty.

7 122. For these reasons, J.O.L.R.'s continued unlawful custody and any
8 subsequent re-arrest without first being provided a pre-deprivation hearing would violate the
9 Constitution.

10 123. The Court must therefore order that he be released from custody.

11 124. The Court must order the government to not re-arrest him in any subsequent action
12 without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
13 evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into
14 consideration alternatives to detention, that J.O.L.R. is a danger to the community or a flight risk,
15 such that his re-incarceration is warranted. During any custody determination hearing that occurs,
16 this Court or, in the alternative, a neutral adjudicator must consider alternatives to detention when
17 determining whether J.O.L.R.'s re-incarceration is warranted.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, J.O.L.R. prays that this Court grant the following relief:

- 20 (1) Assume jurisdiction over this matter;
- 21 (2) Declare that ICE's September 15, 2025, apprehension and detention of
22 J.O.L.R. was an unlawful exercise of authority because the ICE officer
23 provided no reason that he presents a danger to the community or is flight risk;
- 24 (3) Order ICE to immediately release J.O.L.R. from his unlawful detention;
- 25
- 26

1 (4) Enjoin re-arresting J.O.L.R. unless and until a hearing can be held before a
2 neutral adjudicator to determine whether his re-incarceration would be lawful
3 because the government has shown that he is a danger or a flight risk by clear
4 and convincing evidence;

5 (5) Declare that J.O.L.R. cannot be re-arrested unless and until he is afforded a
6 hearing on the question of whether his re-incarceration would be lawful—i.e.,
7 whether the government has demonstrated to a neutral adjudicator that he is a
8 danger or a flight risk by clear and convincing evidence;

9 (6) Award reasonable costs and attorney fees; and

10 (7) Grant such further relief as the Court deems just and proper.

11
12 Dated: September 21, 2025

Respectfully submitted,

13 /s/ Natalia Santanna

14 Natalia Santanna
15 Attorney for J.O.L.R.

