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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

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

v.

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

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

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

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

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

Respondents-Defendants.

Case No. 1:25-00849

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

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

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

PETITIONER'S NOTICE OF MOTION AND EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER 1:25-00849

NOTICE OF MOTION

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

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

Dated: September 21, 2025

Respectfully submitted,

/s/ Natalia Vieira Santanna
Natalia Vieira Santanna
Attorney for Petitioner-Plaintiff J.O.R.L.

I. INTRODUCTION

Respondents unlawfully re-detained Petitioner-Plaintiff J.O.R.L. on September 15, 2025. J.O.L.R. initially came into immigration custody immediately after crossing the border into the United States on August 25, 2024. He was detained for approximately seven days in Texas. While J.O.L.R. was detained, DHS asylum officers conducted a credible fear interview with him, when J.O.L.R. had the opportunity to explain to DHS officers that he was afraid of returning to his country of Guatemala. After the interview, an asylum officer found that J.O.L.R. had demonstrated a credible fear of persecution and torture in Guatemala. J.O.L.R. fled Guatemala after surviving lifelong physical and psychological abuse for being a member of the LGBTQI community in Guatemala.

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

J.O.R.L. has lived in liberty for over one year, during which time he has established himself as an exemplary resident and an asset to his community. He established a life in South San Francisco. He attends church, studies English, enjoys time with his family, and assists his uncle with the upkeep of the house. His grandmother has severe diabetes and recently had surgery for toe removal. J.O.L.R. is an attentive grandson who helps with the care of his severely ill grandmother. J.O.L.R. accompanied his grandmother to the hospital when she had her surgery and assisted her at home. J.O.L.R. has recently become eligible for a work permit. When he was

[1] A true and correct copy of Petitioner's border release documentation is attached hereto as Exhibit 1.

detained, he was working on his petition with his immigration attorney so that he could obtain a social security number and start working. J.O.L.R.'s grandparents and aunt have supported J.O.L.R. financially while he waited to qualify for his work permit. J.O.L.R. has maintained a clean criminal record. [2]

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

On September 15, 2025, in compliance with instructions from ICE, J.O.L.R. presented himself for a scheduled check-in at the San Francisco ICE Field Office located at 630 Sansome Street, San Francisco, California. J.O.L.R. arrived at the facility at approximately 8:00 a.m. and waited in line for over six hours before being admitted into the building at approximately 2:00 p.m. After a period of waiting, an ICE officer called J.O.L.R.'s name and informed him that he was under arrest. J.O.L.R. inquired as to the basis for his arrest. The ICE officer stated that J.O.R.L. had "failed to follow an order." J.O.R.L. asked for clarification as to which order he had allegedly violated, saying that he had been fully compliant with all ICE requirements, including regularly attending check-ins, providing photo documentation, and participating in telephone monitoring. The officers provided no further explanation.

J.O.R.L.'s summary arrest and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment's Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining J.O.R.L. without making any affirmative showing of changed circumstances, the government violated Petitioner's procedural due process rights. At the very least, he was

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

constitutionally entitled to a hearing before a neutral decisionmaker at which the government should have justified his detention.

As a result of his arrest and detention, J.O.R.L. is suffering irreparable and ongoing harm. The unconstitutional deprivation of "physical liberty" "unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Since being detained, J.O.L.R. has suffered from sleep deprivation, hygiene issues, and food deprivation. J.O.L.R. is unable to practice his religion fully and to spend time with his family and community. J.O.L.R. is suffering discrimination due to the incorrect color of his uniform. J.O.L.R. feels he cannot sleep and does not feel well. Every additional day J.O.L.R. spends in unlawful detention subjects him to further irreparable harm.

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

II. STATEMENT OF FACTS AND CASE

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

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

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

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

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

J.O.L.R. initially came into immigration custody immediately after crossing the border into the United States on August 25, 2024. He was detained for approximately seven days in Texas. While J.O.L.R. was detained, DHS asylum officers conducted a credible fear interview with him, when J.O.L.R. had the opportunity to explain to DHS officers that he was afraid of

returning to his country of Guatemala. After the interview, an asylum officer found that J.O.L.R. had demonstrated a credible fear of persecution and torture in Guatemala. J.O.L.R. fled Guatemala after surviving lifelong physical and psychological abuse for being a member of the LGBTQI community in Guatemala.

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

Following his release, J.O.L.R. appeared at the San Francisco local ICE office at 630 Sansome, San Francisco, CA, 94111. During his appointment, ICE offices instructed him to go to the Intensive Supervision Appearance Program (ISAP) office at 478 Tehama St, San Francisco, CA 94103. J.O.L.R. complied with the instructions, and ISAP placed a GPS electronic monitoring device on J.O.L.R.'s ankle. After wearing the device for a few days and complying with all requirements of the ISAP program, on or about September 15, 2024, ISAP removed the GPS electronic monitoring device from J.O.L.R.'s ankle and enrolled him in a phone monitoring system, where J.O.L.R. was required to take a photo every week, answer phone calls from ISAP officers every three months, and still report periodically at ISAP and ICE offices. J.O.L.R. complied with every step and requirement for the ISAP program and ICE's order of supervision.

After leaving detention in Texas, J.O.L.R. came to live with his aunt, Elvia, in South San Francisco, California. He established a life in South San Francisco. He attends church, studies English, enjoys time with his family, and assists his uncle with the upkeep of the house. His grandmother has severe diabetes and recently had surgery for toe removal. J.O.L.R. is an attentive

grandson who helps with the care of his severely ill grandmother. J.O.L.R. accompanied his grandmother to the hospital when she had surgery and assisted her at home. J.O.L.R. has recently become eligible for a work permit. When he was detained, he was working on his petition with his immigration attorney so that he could obtain a social security number and start working. J.O.L.R.'s grandparents and aunt have supported J.O.L.R. financially while he waited to qualify for his work permit. J.O.L.R. has maintained a clean criminal record.

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

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

On September 15, 2025, in compliance with instructions from ICE, J.O.L.R. presented himself for a scheduled check-in at the San Francisco ICE Field Office located at 630 Sansome Street, San Francisco, California. J.O.L.R. arrived at the facility at approximately 8:00 a.m. and waited in line for over six hours before being admitted into the building at approximately 2:00 p.m.

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

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

J.O.L.R. did not resist arrest in any manner. He immediately complied with the officers' commands and placed his hands behind his back to be handcuffed. Following his arrest, ICE officers presented J.O.L.R. with several forms and instructed him to sign them. Petitioner stated that he would not sign any document without first reading and understanding its contents. After being permitted to read one page, which he determined was an inventory of his personal belongings, he signed it. J.O.L.R. was permitted one phone call, which he used to contact his immigration attorney's office.

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

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

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

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

J.O.L.R. remained detained in these substandard conditions through the morning of Tuesday, September 16, 2025. At approximately 11:00 a.m., ICE officers provided a small burrito

to J.O.L.R. and the other men. Before J.O.L.R. had time to finish eating, the ICE officers ordered him and the other detained man to form a line. Despite Petitioner's complete compliance and non-violent demeanor, officers placed him in full restraints, including handcuffs and ankle shackles. He could not raise his hands if his head or face itched. While fully restrained, J.O.L.R. was escorted to the basement of the building and loaded into a transport van.

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

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

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

At approximately 3:30 a.m., while still in the overcrowded holding cell, J.O.L.R. was provided with a small meal. He was also given an inmate manual explaining that detainee uniforms are color-coded: blue for individuals with no criminal record, orange for those with a "level 2" felony, and red for individuals deemed dangerous. Between approximately 4:00 a.m.

and 6:00 a.m., J.O.L.R. and other detainees were removed from the cell for medical examinations and then returned to the same overcrowded conditions.

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

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

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

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

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

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

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

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

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

III. LEGAL STANDARD

J.O.L.R. 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 J.O.L.R.does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, J.O.L.R. overwhelmingly satisfies both standards.

Furthermore, the requirements for issuing a temporary restraining order without notice are met here. *See* Fed. R. Civ. P. 65(b). J.O.R.L. notified respondents' counsel on September 21, 2025, that he would be filing the motion by email to the U.S. Attorney's Office email address for habeas petition filings. J.O.R.L. also set out specific facts demonstrating that immediate and irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See*

Pinchi v. Noem, No. 25-cv-05632-RML, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025) (granting ex parte temporary restraining order in similar circumstances).

IV. ARGUMENT

A. J.O.R.L. 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). J.O.R.L. is likely to remain in unlawful custody in violation of his due process rights without intervention by this Court. J.O.R.L. will continue to suffer irreparable injury if he continues to be detained without due process.

1. J.O.R.L.'s detention violates substantive due process because he is neither a flight risk nor a danger to the community.

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

To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either

(1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him").

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

J.O.R.L., who has no criminal record and who is diligently pursuing his immigration case with the assistance of an attorney, is neither a danger nor a flight risk. Therefore, his detention is both punitive and not justified by a legitimate purpose, violating his substantive due process rights. Indeed, when Respondents chose to release J.O.R.L. from custody in August 2024, that decision represented their finding that he was neither a danger nor a flight risk. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d

1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Nothing has transpired since to disturb that finding.

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

Second, as to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. There is no basis to argue that J.O.R.L., who was arrested by Respondents *while appearing at an schedule ICE appointment*, is a flight risk. Moreover, J.O.R.L. has a viable path toward immigration relief and a pathway to lawful permanent residence, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). At the time of his arrest, J.O.R.L. had filed his Form I-589, Application for Asylum and Withholding of Removal, and he has every intention of continuing to pursue his applications for immigration relief.

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

2. J.O.R.L. 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

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

The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

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

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

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

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

a. J.O.R.L. Has a Protected Liberty Interest in His Conditional Release

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

Since August 31, 2024, J.O.R.L. exercised that freedom under the IJ's order granting him release from custody. Accordingly, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

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

rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

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

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

J.O.R.L. established a life in established a life in South San Francisco. He attends church, studies English, enjoys time with his family, and assists his uncle with the upkeep of the house. His grandmother has severe diabetes and recently had surgery for toe removal. J.O.L.R. is an attentive grandson who helps with the care of his severely ill grandmother. J.O.L.R. accompanied

his grandmother to the hospital when she had her surgery and assisted her at home. J.O.L.R. has recently become eligible for a work permit. When he was detained, he was working on his petition with his immigration attorney so that he could obtain a social security number and start working. J.O.L.R.'s grandparents and aunt have supported J.O.L.R. financially while he waited to qualify for his work permit. J.O.L.R. has maintained a clean criminal record.

b. J.O.R.L.'s Liberty Interest Mandates His Release from Unlawful Custody And A Hearing Before any Re-Arrest

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

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [J.O.R.L.'s] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including

the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

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

i. J.O.R.L.'s Private Interest in His Liberty is Profound

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to

constitutional due process before he is re-incarcerated—apply with even greater force to individuals like J.O.R.L., who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, J.O.R.L. retains a truly weighty liberty interest even though he is under conditional release.

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

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

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

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

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

On August 31, 2024, DHS officers determined that J.O.R.L. was not a flight risk or a danger to the community and J.O.R.L. has done nothing to undermine that determination. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

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It is difficult to see how the government's interest in detaining J.O.R.L. has materially changed since he was released in August of 2024, absent any circumstances indicating he is a danger to the community or a flight risk. The government's interest in detaining J.O.R.L. at this time is extremely low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him.[3]

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

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

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

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

trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

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

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

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

The procedure J.O.R.L. seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to justify his detention *before* any re-arrest—is much more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side"). "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other*

grounds by Fernandez-Vargas v. Gonzales, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

As the above-cited authorities show, J.O.R.L.is likely to succeed on his claim that the current arrest and detention that ICE effectuated on September 15, 2025, is unlawful. The Due Process Clause require notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

3. J.O.R.L. Will Suffer Irreparable Harm Absent Injunctive Relief

J.O.R.L. will suffer irreparable harm were he to remain detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities,

the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[4]

J.O.R.L. has been out of ICE custody for more than one year. During that time, J.O.R.L. established a life in established a life in South San Francisco. He attends church, studies English, enjoys time with his family, and assists his uncle with the upkeep of the house. His grandmother has severe diabetes and recently had surgery for toe removal. J.O.L.R. is an attentive grandson who helps with the care of his severely ill grandmother. J.O.L.R. accompanied his grandmother to the hospital when she had her surgery and assisted her at home. J.O.L.R. has recently become eligible for a work permit. When he was detained, he was working on his petition with his immigration attorney so that he could obtain a social security number and start working. J.O.L.R.'s grandparents and aunt have supported J.O.L.R. financially while he waited to qualify for his work permit. J.O.L.R. has maintained a clean criminal record. Continued detention is bound to result in irreversible harm not only to J.O.L.R. but will also significantly affect his family and community.

As detailed *supra*, J.O.L.R. contends that his re-arrest absent a hearing before a neutral adjudicator violates his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a

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

temporary restraining order is necessary to prevent J.O.L.R. from suffering irreparable harm by being subject to unlawful and unjust detention.

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

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

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

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

A temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain J.O.R.L. in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an

injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

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

IV. CONCLUSION

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

Dated: September 21, 2025

Respectfully submitted,

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