

1 KEKER, VAN NEST & PETERS LLP  
2 KATIE LYNN JOYCE, #308263  
3 kjoyce@keker.com  
4 DANIKA L. KRITTER, #356499  
5 dkritter@keker.com  
6 RAISA M. CRAMER, #342390  
7 rcramer@keker.com  
8 633 Battery Street  
9 San Francisco, CA 94111-1809  
10 Telephone: 415 391 5400  
11 Facsimile: 415 397 7188

12 LAKIN & WILLE LLP  
13 JUDAH LAKIN, #307740  
14 judah@lakinwille.com  
15 AMALIA WILLE, #293342  
16 amalia@lakinwille.com  
17 1939 Harrison Street, Suite 420  
18 Oakland, CA 94612  
19 Telephone: 510 379 9216  
20 Facsimile: 510 397 9219

21 Attorneys for Petitioner Robert George Hogarth

22 UNITED STATES DISTRICT COURT  
23 CENTRAL DISTRICT OF CALIFORNIA

24 ROBERT GEORGE HOGARTH,

25 Petitioner,

v.

26 ERNESTO M. SANTACRUZ JR.,  
27 Acting Field Office Director of the Los  
28 Angeles Immigration and Customs  
Enforcement Office; TODD M.  
LYONS, Acting Director of United  
States Immigration and Customs  
Enforcement; KRISTI L. NOEM,  
Secretary of the United States  
Department of Homeland Security,  
PAMELA J. BONDI, Attorney General  
of the United States, acting in their  
official capacities,

29 Respondents.

Case No.

**EX PARTE APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER; POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION**

Date Filed: October 3, 2025

1 **TABLE OF CONTENTS**  
2

3	I. INTRODUCTION.....	2
4	II. STATEMENT OF FACTS AND CASE.....	2
5	III. LEGAL STANDARD .....	6
6	IV. JURISDICTION.....	7
7	V. LIKELIHOOD OF SUCCESS ON THE MERITS.....	7
8	A. The BIA's Decision Is Not In Accordance with Law.....	7
9	B. Mr. Hogarth is Entitled to Injunctive Relief Because His 10     Imminent Detention Without Due Process Violates the Fifth Amendment.....	10
11	1. The Due Process Clause Requires a Hearing Before Mr. 12     Hogarth May be Redetained.....	11
13	2. Mr. Hogarth Has a Protected Liberty Interest in His Conditional Release.....	12
14	3. Mr. Hogarth Has a Substantial Liberty Interest in Remaining Free.....	14
15	4. The Risk of Erroneous Deprivation Is Substantial, and the 16     Probable Value of a Hearing is High.....	16
17	5. The Government's Interest in Detention Without Process Is Minimal or Nonexistent.....	18
18	VI. IRREPARABLE HARM.....	19
19	VII. BALANCE OF THE EQUITIES AND PUBLIC INTEREST .....	20
20	VIII. CONCLUSION .....	20

1 **TABLE OF AUTHORITIES**

		Page(s)
2	3	1
3	4	2
4	5	3
5	6	4
6	7	5
7	8	6
8	9	7
9	10	8
10	11	9
11	12	10
12	13	11
13	14	12
14	15	13
15	16	14
16	17	15
17	18	16
18	19	17
19	20	18
20	21	19
21	22	20
22	23	21
23	24	22
24	25	23
25	26	24
26	27	25
27	28	26
28		

**Cases**

*All. for the Wild Rockies v. Cottrell*,  
632 F.3d 1127 (9th Cir. 2011).....6

*Avilez v. Garland*,  
69 F.4th 525 (9th Cir. 2023).....8, 9, 17

*Baez-Sanchez v. Barr*,  
947 F.3d 1033 (7th Cir. 2020).....10

*Bromfield v. Mukasey*,  
543 F.3d 1071 (9th Cir. 2008).....2

*Carey v. Piphus*,  
435 U.S. 247 (1978).....14

*Castaneda v. Garland*,  
562 F. Supp. 3d 545 (C.D. Cal. 2021).....8

*Castillo v. Barr*,  
980 F.3d 1278 (9th Cir. 2020).....10

*Chi Thon Ngo v. INS*,  
192 F.3d 390 (3d Cir. 1999).....17

*Demore v. Kim*,  
538 U.S. 510 (2003).....7

*Diaz v. Garland*,  
53 F.4th 1189 (9th Cir. 2022).....12

*Diaz v. Kaiser*,  
2025 WL 1676854 (N.D. Cal. June 14, 2025) .....13, 14

*Doe v. Becerra*,  
697 F. Supp. 3d 937 (N.D. Cal. 2023).....8

*Env't Prot. Info. Ctr. v. Carlson*,  
968 F.3d 985 (9th Cir. 2020).....20

1	<i>Gagnon v. Scarpelli</i> , <u>411 U.S. 778</u> (1973) .....	12
2		
3	<i>Garcia v. Andrews</i> , <u>2025 WL 1927596</u> (E.D. Cal. July 14, 2025) .....	13, 14
4		
5	<i>Garcia v. Bondi</i> , <u>2025 WL 1676855</u> (N.D. Cal. June 14, 2025) .....	14
6		
7	<i>Gonzalez-Fuentes v. Molina</i> , <u>607 F.3d 864</u> (1st Cir. 2010) .....	13
8		
9	<i>Guillermo M.R. v. Kaiser</i> , --- F. Supp. 3d --- <u>2025 WL 1983677</u> (N.D. Cal. July 17, 2025) .....	14, 17
10		
11	<i>Hernandez v. Sessions</i> , <u>872 F.3d 976</u> (9th Cir. 2017) .....	14, 19, 20
12		
13	<i>Jorge M. F. v. Wilkinson</i> , <u>2021 WL 783561</u> (N.D. Cal. Mar. 1, 2021) .....	13, 14
14		
15	<i>Maleng v. Cook</i> , <u>490 U.S. 488</u> (1989) .....	11
16		
17	<i>Marroquin Ambriz v. Barr</i> , <u>420 F. Supp. 3d 953</u> (N.D. Cal. 2019) .....	18
18		
19	<i>Mathews v. Eldridge</i> , <u>424 U.S. 319</u> (1976) .....	12, 19
20		
21	<i>Meza v. Bonnar</i> , <u>2018 WL 2554572</u> (N.D. Cal. June 4, 2018) .....	14
22		
23	<i>Obregon v. Sessions</i> , <u>2017 WL 1407889</u> (N.D. Cal. Apr. 20, 2017) .....	17
24		
25	<i>Ortega v. Bonnar</i> , <u>415 F. Supp. 3d 963</u> (N.D. Cal. 2019) .....	11, 13, 14
26		
27	<i>Ortega v. Kaiser</i> , <u>2025 WL 1771438</u> .....	13, 14
28		
	<i>Ortega v. Kaiser</i> , <u>2025 WL 2243616</u> (N.D. Cal. Aug. 6, 2025) .....	11

1	<i>Perez Perez v. Wolf</i> , <u>943 F.3d 853</u> (9th Cir. 2019).....	7
2		
3	<i>Pham v. Becerra</i> , <u>717 F. Supp. 3d 877</u> (N.D. Cal. 2024).....	15
4		
5	<i>Pinchi v. Noem</i> , <u>2025 WL 2084921</u> (N.D. Cal. July 24, 2025).....	18
6		
7	<i>Prieto-Romero v. Clark</i> , <u>534 F.3d 1053</u> (9th Cir. 2008).....	9
8		
9	<i>Rajnish v. Jennings</i> , <u>2020 WL 7626414</u> (N.D. Cal. Dec. 22, 2020) .....	18
10		
11	<i>Roman v. Wolf</i> , <u>977 F.3d 935</u> (9th Cir. 2020).....	7, 11
12		
13	<i>Rosales-Mireles v. United States</i> , <u>585 U.S. 129</u> (2018) .....	19
14		
15	<i>Saravia v. Sessions</i> , <u>280 F. Supp. 3d 1168</u> (N.D. Cal. 2017) .....	13
16		
17	<i>Singh v. Andrews</i> , <u>2025 WL 1918679</u> (E.D. Cal. July 11, 2025) .....	14, 18
18		
19	<i>Singh v. Clinton</i> , <u>618 F.3d 1085</u> (9th Cir. 2010).....	7
20		
21	<i>Singh v. Holder</i> , <u>638 F.3d 1196</u> (9th Cir. 2011).....	7, 17
22		
23	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush &amp; Co.</i> , <u>240 F.3d 832</u> (9th Cir. 2001).....	6
24		
25	<i>Sun v. Santacruz Jr. et al.</i> , <u>2025 WL 2730235</u> (C.D. Cal. Aug. 26, 2025) .....	11, 17
26		
27	<i>Vargas v. Jennings</i> , <u>2020 WL 5074312</u> (N.D. Cal. Aug. 23, 2020).....	14
28		
	<i>Young v. Harper</i> , <u>520 U.S. 143</u> (1997) .....	12, 15

1        *Zadvydas v. Davis*,  
2        533 U.S. 678 (2001) ..... 14, 15

3        *Zinermon v. Burch*,  
4        494 U.S. 113 (1990) ..... 11

5        **Constitutions**

6        Fifth Amendment ..... *passim*

7        **Statutes**

8        5 U.S.C. § 706(2)(A) ..... 10

9        8 U.S.C. § 1226(c) ..... 4, 8, 9, 17

10        8 U.S.C. § 1231(a)(1)(B) ..... 9

11        28 U.S.C. § 1331 ..... 7, 10, 11

12        28 U.S.C. § 2241 ..... 7, 10

13        Administrative Procedure Act ..... 2, 7, 10

14        **Court Rules**

15        Federal Rule of Civil Procedure 65 ..... 1

16        Local Civil Rule 7-19 ..... 1

17

18

19

20

21

22

23

24

25

26

27

28

1 **NOTICE OF MOTION**

2 Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 7-19,  
3 Petitioner-Plaintiff (“Petitioner”) Robert Hogarth hereby applies to this Court for a  
4 temporary restraining order (“TRO”) to be issued *ex parte*. Mr. Hogarth applies for  
5 an order enjoining Respondent-Defendant U.S. Immigration and Customs  
6 Enforcement (“ICE”) from redetaining him unless and until it is determined  
7 whether the decision and order of the Board of Immigration Appeals (“BIA”) that  
8 vacated the bond decision of the Immigration Judge (“IJ”) was lawful. As outlined  
9 below, and explained in the Declaration of Katie Lynn Joyce (“Joyce Decl.”), there  
10 is a substantial and immediate risk that, absent action from this Court, Mr. Hogarth  
11 will be redetained by ICE on October 9, 2025, when ICE is scheduled to appear at  
12 his house. Because that redetention will result in immediate irreparable injury, and  
13 notice to Respondent-Defendants (“Respondents”) of the filing of the application  
14 for a TRO may, in fact, trigger ICE to immediately redetain Mr. Hogarth earlier  
15 than October 9<sup>th</sup>, an *ex parte* TRO is necessary and appropriate in this case. *See*  
16 Fed. R. Civ. P. 65(b)(1); Joyce Decl. ¶ 4.

17 Should the Court decline to enter a TRO on an *ex parte* basis, Mr. Hogarth  
18 respectfully requests that the Court set a briefing schedule on the application and  
19 hear the matter as expeditiously as possible.

20 This application is supported by the following Memorandum of Points and  
21 Authorities, the declaration of Robert George Hogarth (“Hogarth Decl.”), the Joyce  
22 Declaration and attached exhibits, and the Petition for Writ of Habeas Corpus and  
23 Complaint for Declaratory and Injunctive Relief, all of which are filed  
24 contemporaneously.

25

26

27

28

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

Petitioner, Mr. Hogarth, brings this *ex parte* application for a temporary restraining order to enjoin his arrest and detention by ICE while this Court considers his claims that the BIA’s order vacating his bond conditions is unlawful, and that, regardless, he is entitled to a hearing before a neutral arbiter prior to any re-arrest and detention by ICE.

Mr. Hogarth satisfies all requirements for a temporary restraining order. First, he is likely to succeed on the merits of both claims. The BIA’s order is contrary to law under the Administrative Procedure Act (“APA”), and Mr. Hogarth’s detention without a pre-deprivation hearing would violate his Fifth Amendment due process rights. Second, Mr. Hogarth faces immediate and certain irreparable harm. He has a scheduled check-in with ICE at his home on October 9, 2025. Given the BIA’s revocation of his bond, detention by ICE is imminent. This will deprive Mr. Hogarth of his liberty, destroy the stable life he has rebuilt over two years of exemplary compliance, eliminate the income his family depends upon, and disrupt his ongoing rehabilitation. Third, the balance of equities and the public interest weigh decisively in Mr. Hogarth’s favor. His fundamental liberty interest and constitutional due process rights vastly outweigh any government interest in detaining him unjustly, and preventing an unconstitutional deprivation of liberty serves the public interest.

## II. STATEMENT OF FACTS AND CASE

Mr. Hogarth is a 55-year-old bisexual man who has lived in the United States for most of his life. Hogarth Decl. ¶¶ 2-4. He was born in Jamaica, *id.* ¶ 2, a country with a long and well-documented history of violence and persecution against LGBTQIA individuals. *See Bromfield v. Mukasey*, 543 F.3d 1071, 1079 (9th Cir. 2008) (“The record here compels the conclusion that the Jamaican government not only acquiesces in the torture of gay men, but is directly involved

1 in such torture.”). From a young age, Mr. Hogarth endured severe homophobic  
2 abuse in Jamaica and was sexually and physically assaulted on multiple occasions.  
3 Hogarth Decl. ¶ 3. In 1989, he fled Jamaica as a teenager and became a lawful  
4 permanent resident of the United States. *Id.* ¶ 4.

5 Today, Mr. Hogarth is married to a U.S. citizen and has six children, all of  
6 whom are U.S. citizens. *Id.* ¶ 6. He currently lives in Los Angeles, California,  
7 where he has resided for more than thirty years. *Id.* ¶¶ 4, 7. He works part-time as  
8 a contractor on construction, home repair, and demolition jobs, and dedicates  
9 roughly 65% of his income to supporting his family members. *Id.* ¶ 7. In addition  
10 to financial support, Mr. Hogarth also provides medical support to several members  
11 of his immediate family. *Id.* ¶¶ 8-9. He is the primary caregiver and medical  
12 advocate for his wife, who has required round-the-clock care since she was struck  
13 by a van in 2021 and sustained severe, permanent injuries. *Id.* ¶¶ 15-21. He also  
14 cares for his brother who suffered a debilitating stroke in 2014, *id.* ¶¶ 10-14, and for  
15 his sister who was recently diagnosed with cancer, *id.* ¶¶ 25-26. Mr. Hogarth also  
16 provides critical emotional support to his immediate family, especially for his  
17 youngest and eldest sons who struggled with behavioral and health issues while he  
18 was previously imprisoned and detained by ICE. *Id.* ¶¶ 22-24, 27-30.

19 After living in the United States for decades, Mr. Hogarth pleaded guilty to  
20 second-degree robbery for stealing a backpack that, unbeknownst to him, contained  
21 a firearm. *Id.* ¶ 31. Upon completing his prison sentence in 2020, Mr. Hogarth was  
22 immediately detained by Respondent-Defendant U.S. Department of Homeland  
23 Security (“DHS”) and placed in removal proceedings. *Id.* ¶ 32.

24 Mr. Hogarth applied for relief from removal under the Convention Against  
25 Torture (CAT) because he feared he would be tortured as a bisexual man were he  
26 forced to return to Jamaica. Joyce Decl. ¶ 8. The IJ denied relief, and the BIA  
27 affirmed Mr. Hogarth’s removal to Jamaica. *Id.* ¶¶ 9-12. Mr. Hogarth timely  
28 petitioned the Ninth Circuit for review. *Id.* ¶ 13. After pro bono counsel filed an

1 opening brief on his behalf, rather than defend the BIA’s erroneous decision, the  
2 government moved for a remand so that the agency could reconsider several legal  
3 and factual issues in its reasoning. *Id.* ¶¶ 13-15. In December 2022, the Ninth  
4 Circuit granted the remand. *Id.* ¶ 16.

5 In October 2022, while his first petition for review to the Ninth Circuit was  
6 still pending, Mr. Hogarth petitioned this Court for a writ of habeas corpus. *Id.*  
7 ¶ 17. Mr. Hogarth argued that his prolonged detention under 8 U.S.C. § 1226(c)  
8 without a bond hearing violated his Fifth Amendment rights. *Id.* In a 26-page  
9 report and recommendation, the Magistrate Judge agreed and found that Mr.  
10 Hogarth’s two years of detention without any review by a neutral adjudicator  
11 violated his Fifth Amendment Due Process rights. *Id.* ¶ 18. In February 2023, the  
12 district court adopted the findings and recommendation of the Magistrate Judge and  
13 ordered the government to provide Mr. Hogarth “with an individualized bond  
14 hearing before an IJ with the required procedural protections” or else release him  
15 from detention. *Id.* ¶¶ 19-20.

16 In April 2023, as authorized by the district court’s order, the IJ held a bond  
17 hearing and ordered Mr. Hogarth released from detention on bond. *Id.*, Ex. A  
18 (April 17, 2023, decision and order of the IJ setting bond). The IJ acknowledged  
19 that Mr. Hogarth’s bond hearing was conducted “pursuant to an order issued by the  
20 [district court.]” *Id.*, Ex. A at 2. The IJ determined that the government had not  
21 demonstrated that Mr. Hogarth’s release would pose a danger to the community,  
22 especially given that Mr. Hogarth “was exceptionally forthcoming in his testimony”  
23 and took responsibility for his criminal history. *Id.*, Ex. A at 5. The IJ also noted  
24 that a “significant amount of additional time” had passed since Mr. Hogarth’s most  
25 recent conviction, and that Mr. Hogarth had engaged in “significant rehabilitative  
26 efforts” and modeled “good behavior while detained.” *Id.* The IJ found that the  
27 government had failed to show that Mr. Hogarth’s release would present a flight  
28 risk because Mr. Hogarth has significant family ties to the United States, and there

1 was no evidence that he had ever evaded law enforcement or failed to appear as  
2 required. *Id.*, Ex. A at 5-6. DHS appealed the bond decision to the BIA. *Id.* ¶ 21.

3 The IJ also imposed several conditions on Mr. Hogarth’s release. Mr.  
4 Hogarth is required to have regular in-person reporting to ICE, electronic  
5 monitoring, and random drug testing. *Id.*, Ex. A at 3. He must refrain from using  
6 or possessing alcohol and illicit drugs, attend Alcoholics Anonymous meetings,  
7 maintain steady employment, and avoid any contact with law enforcement. *Id.*

8 In January 2025, on remand from the Ninth Circuit, the BIA again denied  
9 Mr. Hogarth’s application for CAT relief and ordered him removed. *Id.* ¶ 22. Mr.  
10 Hogarth timely filed a second petition for review, which remains pending at the  
11 Ninth Circuit and where pro bono counsel (undersigned) represent him. *Id.* ¶¶ 23,  
12 26. In June 2025, the Ninth Circuit granted Mr. Hogarth’s motion to stay removal  
13 after contested briefing. *Id.* ¶ 25.

14 Despite the stay of the removal order and the still pending judicial review of  
15 Mr. Hogarth’s claim for CAT relief, on September 16, 2025—over two years after  
16 the DHS appealed the bond decision—the BIA abruptly and unjustifiably vacated  
17 Mr. Hogarth’s bond in a cursory, five-sentence order that acknowledged his case  
18 was still at the Ninth Circuit. Joyce Decl., Ex. B (Sept. 16, 2025, decision and  
19 order of the BIA) at 3.

20 The BIA’s reasoning rested on two critical legal errors. First, it wrongly  
21 claimed that its jurisdiction over the bond proceedings derived from the IJ’s  
22 regulatory authority to set conditions of detention—entirely ignoring that the IJ’s  
23 authority to set bond in Mr. Hogarth’s case was based on the district court’s order,  
24 not governing regulations. *Id.* Second, the BIA asserted, without citing any legal  
25 authority, that the IJ’s bond authority had somehow expired once the BIA entered a  
26 final administrative order of removal in January 2025 (an order that is now  
27 stayed). *Id.* Relying on these flawed legal conclusions—and without briefing from  
28 either side on the issue—the BIA entered an order dismissing the government’s

1 bond appeal as moot and vacating the IJ order authorizing Mr. Hogarth's release on  
2 bond. *Id.* ¶ 27, Ex. B at 3.

3 With the vacatur of the IJ authorizing Mr. Hogarth's release on bond,  
4 Mr. Hogarth is at imminent risk of redetention—particularly given that he is subject  
5 to two to four check-ins with ICE each month. Hogarth Decl. ¶ 36. Indeed, ICE  
6 has scheduled a check-in at his home on October 9, 2025. *Id.*

7 Mr. Hogarth's compliance with bond conditions has been exemplary. He  
8 successfully completed a 30-day residential rehabilitation program at the Los  
9 Angeles Mission, regularly attends Alcoholics Anonymous meetings, has  
10 completely abstained from alcohol and illicit drugs, maintained continuous  
11 employment as a contractor, and has had no negative contact with law enforcement.  
12 *Id.* ¶¶ 7, 35. He also wears an electronic monitor, submits to random drug testing  
13 administered by DHS, and meets with ICE officers at his home two to four times  
14 monthly. *Id.* ¶¶ 35-36.

15 **III. LEGAL STANDARD**

16 A TRO is warranted if the movant shows (1) they are “likely to succeed on  
17 the merits,” (2) they are “likely to suffer irreparable harm in the absence of  
18 preliminary relief,” (3) “the balance of equities tips in [their] favor,” and that (4)  
19 “an injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, [632](#)  
20 [F.3d 1127, 1131](#) (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, [555](#)  
21 [U.S. 7, 20](#) (2008)); *see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, [240](#)  
22 [F.3d 832, 839](#) n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary  
23 restraining order and a preliminary injunction is substantially the same). Even if  
24 the movant raises only “serious questions” as to the merits of their claims, the court  
25 can grant relief if the balance of hardships tips “sharply” in their favor. *All. for the*  
26 *Wild Rockies*, [632 F.3d at 1135](#). Here, all four factors weigh decisively in Mr.  
27 Hogarth's favor, and Hogarth is entitled to relief under either test.

28

1 **IV. JURISDICTION**

2 This Court has jurisdiction to review bond proceedings under the federal  
3 habeas statute, 28 U.S.C. § 2241, for both constitutional claims and legal errors.  
4 *See Singh v. Holder*, 638 F.3d 1196, 1200-01 (9th Cir. 2011); *Demore v. Kim*, 538  
5 U.S. 510, 516-17 (2003). The APA provides independent jurisdiction and  
6 “reinforces this presumption of judicial reviewability” by conferring a cause of  
7 action upon anyone who is ““adversely affected or aggrieved by agency action  
8 within the meaning of a relevant statute.”” *Perez Perez v. Wolf*, 943 F.3d 853, 860  
9 (9th Cir. 2019) (quoting 5 U.S.C. § 702). The Court also has independent authority  
10 under 28 U.S.C. § 1331 to “entertain . . . constitutional challenges and to grant  
11 injunctive relief” based on Mr. Hogarth’s claims “irrespective of the accompanying  
12 habeas petition.” *Roman v. Wolf*, 977 F.3d 935, 942 (9th Cir. 2020).

13 **V. LIKELIHOOD OF SUCCESS ON THE MERITS**

14 Mr. Hogarth raises two independent claims for relief: first, that the BIA’s  
15 bond denial is contrary to law under the APA; and second, that his imminent  
16 redetention by ICE without a hearing before a neutral adjudicator would violate due  
17 process. He is likely to succeed on both, but either would warrant this Court  
18 granting his request for a temporary restraining order.

19 **A. The BIA’s Decision Is Not in Accordance with Law.**

20 Mr. Hogarth is likely to prevail on his APA claim. The APA requires  
21 reviewing courts to “hold unlawful and set aside agency action, findings, and  
22 conclusions” that are “not in accordance with law.” *Singh v. Clinton*, 618 F.3d  
23 1085, 1088 (9th Cir. 2010) (quoting 5 U.S.C. § 706(2)(A)). The BIA’s decision to  
24 vacate the IJ’s bond order is plainly not in accordance with law because its  
25 reasoning rests on fundamental legal errors.

26 The BIA reasoned that neither it nor the IJ has “regulatory authority to set  
27 bond conditions” because a final administrative order of removal was entered  
28 against Mr. Hogarth in January 2025. Joyce Decl., Ex. B at 3. That is plainly

1 wrong. The IJ’s authority to grant bond derived from the district court order, and  
2 the entry of a final administrative order of removal almost two years after the fact  
3 does not affect that authority.

4 First, the BIA erred in reasoning that the bond should be vacated because  
5 neither it, nor the IJ, has “regulatory authority to set bond conditions” when a final  
6 administrative order has issued. *Id.* The IJ’s authority to set bond for Mr. Hogarth  
7 derived entirely from the district court judgment that ordered the IJ to hold a bond  
8 hearing to comply with the Due Process Clause—in other words, the IJ’s authority  
9 was never dependent on regulations or statutes.<sup>1</sup> To the contrary, the IJ had no  
10 statutory or independent regulatory authority to set Mr. Hogarth’s bond conditions  
11 because he was detained under 8 U.S.C. § 1226(c), which expressly prohibits bond  
12 hearings.<sup>2</sup> *See Avilez v. Garland*, 69 F.4th 525, 530 (9th Cir. 2023) (holding that a  
13 noncitizen detained under Section 1226(c) “is not statutorily entitled to a bond  
14 hearing”); *see also Castaneda v. Garland*, 562 F. Supp. 3d 545, 560 (C.D. Cal.  
15 2021) (explaining that an “immigration judge lacks jurisdiction to conduct a bond  
16 hearing for a noncitizen,” who, like Mr. Hogarth, is “detained under 8 U.S.C.  
17 § 1226(c)”).

18 Second, the entry of a final order of removal by the agency has *no effect* on  
19 the authority conferred by the district court. That is especially true here, given that  
20 the January 2025 order of removal entered against Mr. Hogarth has been *stayed* by  
21 the Ninth Circuit. Joyce Decl. ¶ 25. The district court’s holding was grounded in  
22 the Due Process Clause and so the particular statute that authorizes Mr. Hogarth’s  
23 detention largely irrelevant. *See Doe v. Becerra*, 697 F. Supp. 3d 937, 943 (N.D.  
24 Cal. 2023) (finding that “the shift in the statutory basis governing Doe’s detention  
25

<sup>1</sup> In fact, Mr. Hogarth brought his October 2022 petition, and corresponding Due Process claim, when he was in the same situation that he is in right now—at the Ninth Circuit with a stay of removal. Joyce Decl. ¶¶ 13-17.

<sup>2</sup> The IJ and the government expressly acknowledged that, but for the district court order, the IJ would lack jurisdiction to set Mr. Hogarth’s bond. Joyce Decl. ¶ 21, Ex. A at 2.

1 does not negate his constitutional rights nor substantively change the applicable due  
2 process analysis”). Indeed, IJs often hold bond proceedings after a final  
3 administrative order of removal is entered and while judicial review is  
4 pending. *See, e.g., Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008)  
5 (describing bond proceedings that were held after the administrative removal phase  
6 had concluded and while a petition for judicial review was pending).

7 Moreover, the entry of the final order of removal changes nothing about Mr.  
8 Hogarth’s legal status under 8 U.S.C. § 1226(c). As the Ninth Circuit has  
9 explained, where an individual has a stay of removal, the government’s authority to  
10 detain a noncitizen under Section 1226(c) “applies throughout the administrative  
11 *and judicial phase* of removal proceedings.” *Avilez*, 69 F.4th at 535 (emphasis  
12 added). Mr. Hogarth was detained under Section 1226(c) for nearly two years after  
13 the BIA ordered him removed in August 2021, and he was detained for the entire  
14 pendency of his first petition for review before the Ninth Circuit. Joyce Decl.  
15 ¶¶ 12-16, 20. And, but for the district court ordering a constitutionally mandated  
16 hearing, and the IJ granting him bond at that hearing, he would remain detained  
17 pursuant to Section 1226(c) today because his second petition for review before the  
18 Ninth Circuit is pending with a stay of removal in place. *Id.* ¶¶ 25-26; *see also* 8  
19 U.S.C. § 1231(a)(1)(B) (providing that, if a court reviews the removal order and  
20 stays the removal, the removal period does not begin until “the date of the court’s  
21 final order”).

22 Lastly, the fact that the BIA completely failed to mention that the IJ’s bond  
23 hearing granting him release was pursuant to a federal court order is another  
24 example of the order not being in accordance with law. Not only did the BIA  
25 ignore the existence of the district court order; the BIA failed to acknowledge that,  
26 by vacating the IJ’s bond decision, it was functionally nullifying the Due Process  
27  
28

1 protections ordered by the district court.<sup>3</sup> The BIA is not free to “disregard” the  
2 mandate of a federal court. *Baez-Sanchez v. Barr*, 947 F.3d 1033, 1036 (7th Cir.  
3 2020); *see also Castillo v. Barr*, 980 F.3d 1278, 1283 (9th Cir. 2020) (“Once we  
4 reached [our] conclusion, both the Constitution and the statute required the Board to  
5 implement it.”).

6 Here the BIA cited nothing—not a case, a statute, or a regulation—to support  
7 its flawed reasoning that the administrative order of removal entered against  
8 Hogarth somehow retroactively unauthorized the bond conditions that the IJ set  
9 pursuant to a district court order that granted the hearing on due process  
10 grounds. Joyce Decl., Ex. B at 3. The BIA’s order vacating the IJ’s bond decision  
11 was plainly “not in accordance with law” under the APA. 5 U.S.C.  
12 § 706(2)(A). Consequently, Mr. Hogarth is likely to succeed, or at a minimum has  
13 raised serious questions, on his claim that this Court must set aside the order and  
14 reinstate the bond conditions ordered by the IJ.

15 **B. Mr. Hogarth is Entitled to Injunctive Relief Because His Imminent  
16 Detention Without Due Process Violates the Fifth Amendment.**

17 In addition to his APA claim, Mr. Hogarth brings a petition for habeas corpus  
18 under 28 U.S.C. § 2241 and a claim for injunctive relief pursuant to Section 1331 to  
19 challenge his imminent unlawful redetention without a pre-deprivation hearing  
20 required by the Fifth Amendment’s Due Process Clause.

21 A court may grant habeas relief to any individual “in custody in violation of  
22 the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3).  
23 Mr. Hogarth satisfies the jurisdictional requirements for habeas relief and is likely  
24 to succeed on the merits of his constitutional claim. Although not presently

25  
26 <sup>3</sup> Although the district court’s order only mandated a procedural protection in the  
27 form of a bond hearing—and not the IJ’s decision to release Mr. Hogarth on bond  
28 after the hearing—the BIA’s erroneous vacatur of the IJ order based on a purported  
lack of jurisdiction functionally nullifies the district court’s order because it  
eliminates the protection that the order provided and the outcome that stemmed  
from the protections the order provided.

1 detained, Mr. Hogarth undoubtedly meets the “in custody requirement” of the  
2 habeas statute as he is subject to restraints not shared by the public generally.  
3 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019) (quoting *Jones v.*  
4 *Cunningham*, 371 U.S. 236, 240 (1963)); *see also Maleng v. Cook*, 490 U.S. 488,  
5 492 (1989) (noting the custody requirement “very liberally construed”). The  
6 conditions imposed on Mr. Hogarth constitute precisely such restraints. His release  
7 requires regular in-person reporting to ICE, electronic monitoring, and random drug  
8 testing. Joyce Decl., Ex. A at 3. He must also refrain from using or possessing  
9 alcohol and illicit drugs, attend Alcoholics Anonymous meetings, maintain steady  
10 employment, and avoid any contact with law enforcement. *Id.* These restrictions  
11 suffice for the in-custody requirement of jurisdiction. *See Sun v. Santacruz Jr. et*  
12 *al.*, 2025 WL 2730235, at \*3 (C.D. Cal. Aug. 26, 2025).

13 Apart from the habeas statute, this Court *also* has jurisdiction under 28  
14 U.S.C. § 1331 to address Mr. Hogarth’s constitutional claims. *Roman*, 977 F.3d at  
15 941; *see also Ortega v. Kaiser*, 2025 WL 2243616, at \*3 (N.D. Cal. Aug. 6, 2025).  
16 Mr. Hogarth’s due process claim arises directly under the Fifth Amendment,  
17 independently supporting this Court’s jurisdiction to grant the requested relief.

18 **1. The Due Process Clause Requires a Hearing Before Mr.  
19 Hogarth May be Redetained.**

20 The right to be free from incarceration lies at the heart of the Due Process  
21 Clause. The Supreme Court has therefore required, as a general rule, “a hearing  
22 *before* the State deprives a person of liberty.” *Zinermon v. Burch*, 494 U.S. 113,  
23 127 (1990) (emphasis in original). Having been released on bond, Mr. Hogarth  
24 should not be redetained without a hearing before a neutral decision-maker at which  
25 the government proves by clear and convincing evidence that circumstances have  
26 changed sufficiently to justify a change in the conditions of release. Even assuming  
27 the BIA’s order vacating the Immigration Judge’s bond determination was  
28

1 substantively valid—which, as argued *infra* it is not—any detention by Mr. Hogarth  
2 without such a hearing would be a denial of his constitutional rights.

3 In assessing whether procedures provided prior to immigration detention  
4 satisfy due process, courts in the Ninth Circuit apply the test outlined in *Mathews v.*  
5 *Eldridge*, 424 U.S. 319, 335 (1976). *See Diaz v. Garland*, 53 F.4th 1189, 1206 (9th  
6 Cir. 2022). *Mathews* requires consideration of three factors: (i) the private interest  
7 at stake; (ii) the risk of erroneous deprivation and the value of additional  
8 procedures; and (iii) the government’s interest, including administrative burdens.  
9 424 U.S. at 335. Each factor weighs decisively in Mr. Hogarth’s favor.

10 **2. Mr. Hogarth Has a Protected Liberty Interest in His  
11 Conditional Release.**

12 The Supreme Court has long recognized that individuals released under  
13 supervision possess a protected liberty interest requiring due process before  
14 redetention. In *Morrissey v. Brewer*, the Court examined the “nature of the  
15 interest” a parolee has in “his continued liberty,” noting that “subject to the  
16 conditions of his parole, [a parolee] can be gainfully employed and is free to be  
17 with family and friends and to form the other enduring attachments of normal life.”  
18 408 U.S. 471, 481-82 (1972). Critically, “the parolee has relied on at least an  
19 implicit promise that parole will be revoked only if he fails to live up to the parole  
20 conditions.” *Id.* The Court explained that “the liberty of a parolee, although  
21 indeterminate, includes many of the core values of unqualified liberty and its  
22 termination inflicts a grievous loss on the parolee and often on others.” *Id.*  
23 Accordingly, “[b]y whatever name, the liberty is valuable and must be seen as  
24 within the protection of the [Fifth] Amendment.” *Id.*

25 This foundational principle has been repeatedly affirmed. *See, e.g., Young v.*  
26 *Harper*, 520 U.S. 143, 152 (1997) (holding that individuals in a pre-parole program  
27 have a protected liberty interest requiring pre-deprivation process); *Gagnon v.*  
28 *Scarpelli*, 411 U.S. 778, 781-82 (1973) (same for felony probation). Courts

1 determine whether a specific conditional release constitutes a protected liberty  
2 interest “by comparing the specific conditional release in the case before them with  
3 the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v.*  
4 *Molina*, 607 F.3d 864, 887 (1st Cir. 2010).

5 Mr. Hogarth’s situation exemplifies this protected interest. Like the parolee  
6 in *Morrissey*, he has relied on the implicit promise that his bond could only  
7 possibly be revoked for violating its conditions—conditions he has honored without  
8 exception. *See Ortega*, 415 F. Supp. 3d at 968 (“[W]here a previous bond  
9 determination has been made by an immigration judge, no change should be made  
10 by [the DHS] absent a change of circumstance.”) (quoting *Matter of Sugay*, 17 I. &  
11 N. Dec. 637, 640 (BIA 1981)); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168,  
12 1196-97 (N.D. Cal. 2017) (noting that DHS represented that there must be a  
13 “material change in circumstances” to warrant re-arrest after a prior bond  
14 determination). He has adjusted to life in the Los Angeles community, working as  
15 a contractor and supporting his wife, children, and family. Hogarth Decl. ¶¶ 7-9.  
16 He has completed intensive rehabilitation, and demonstrated consistent compliance  
17 with strict supervision requirements. *Id.* ¶¶ 35-36. His liberty, though subject to  
18 conditions, “includes many of the core values of unqualified liberty,” and its  
19 termination would inflict the same “grievous loss” the *Morrissey* Court recognized.  
20 408 U.S. at 482.

21 Furthermore, courts have consistently recognized that noncitizens released on  
22 immigration bond possess this same protected liberty interest. *See, e.g., Ortega v.*  
23 *Bonnar*, 415 F. Supp. 3d at 969-70; *Ortega v. Kaiser*, 2025 WL 1771438, at \*3  
24 (collecting cases recognizing noncitizens on bond have a strong liberty interest);  
25 *Garcia v. Andrews*, 2025 WL 1927596, at \*5 (E.D. Cal. July 14, 2025); *Diaz v.*  
26 *Kaiser*, 2025 WL 1676854, at \*2 (N.D. Cal. June 14, 2025) (“Courts have  
27 previously found that individuals released from immigration custody on bond have  
28 a protectable liberty interest in remaining out of custody on bond.”); *see also Jorge*

1 *M. F. v. Wilkinson*, 2021 WL 783561, at \*3 (N.D. Cal. Mar. 1, 2021) (holding that a  
2 Mexican citizen with pending removal proceedings who had been released on bond  
3 had “a substantial private interest in remaining on bond”). Here, too, Hogarth’s  
4 release on bond endows him with a protected liberty interest that entitles him to due  
5 process.

6 Critically, Mr. Hogarth’s liberty interest exists regardless of whether the  
7 BIA’s order was legally correct in vacating Mr. Hogarth’s bond order. “[T]he right  
8 to procedural due process is ‘absolute’ in the sense that it does not depend upon the  
9 merits of a claimant’s substantive assertions.” *Carey v. Piphus*, 435 U.S. 247, 266  
10 (1978). Courts have recognized that individuals possess “a vested liberty interest in  
11 [their] current conditional release” that cannot be terminated without due process,  
12 even when the underlying basis for release is challenged. *Meza v. Bonnar*, 2018  
13 WL 2554572, at \*1 (N.D. Cal. June 4, 2018) (granting TRO where individual  
14 released on bond faced redetention without hearing). Indeed, many federal courts  
15 throughout the state have held that due process requires a hearing before a  
16 noncitizen is redetained after being released on bond. *See, e.g., Ortega v. Bonnar*,  
17 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, 2020 WL 5074312, at  
18 \*3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, 2021 WL 783561, at \*2  
19 (N.D. Cal. Mar. 1, 2021); *Garcia v. Bondi*, 2025 WL 1676855, at \*4 (N.D. Cal.  
20 June 14, 2025); *Diaz v. Kaiser*, 2025 WL 1676854, at \*4; *Guillermo M.R. v. Kaiser*,  
21 --- F. Supp. 3d --- 2025 WL 1983677, at \*5 (N.D. Cal. July 17, 2025); *Ortega v.*  
22 *Kaiser*, 2025 WL 1771438, at \*3 (N.D. Cal. June 26, 2025) (collecting cases);  
23 *Garcia v. Andrews*, 2025 WL 1927596, at \*3; *Singh v. Andrews*, 2025 WL  
24 1918679, at \*8 (E.D. Cal. July 11, 2025) (collecting cases).

25 **3. Mr. Hogarth Has a Substantial Liberty Interest in  
26 Remaining Free.**

27 The Due Process Clause protects “all ‘persons’ within the United States,  
28 including [noncitizens], whether their presence here is lawful, unlawful, temporary,

1 or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see also Hernandez*  
2 *v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).  
3 “Freedom from imprisonment—from government custody, detention, or other  
4 forms of physical restraint—lies at the heart of the liberty that the [Due Process]  
5 Clause protects.” *Zadvydas*, 533 U.S. at 690.

6 Individuals conditionally released from detention possess a protected liberty  
7 interest in their “continued liberty,” even when subject to extensive release  
8 conditions. *Young*, 520 U.S. at 147. This principle applies with particular force  
9 here: Mr. Hogarth was granted release by an Immigration Judge after a full hearing  
10 in April 2023 and has lived freely in the community for over two and a half years.  
11 Hogarth Decl. ¶ 32.

12 Mr. Hogarth is 56-years-old and has lived in the Los Angeles area for most  
13 of his life. *Id.* ¶¶ 2, 4. He works part-time as a contractor on construction, home  
14 repair, and demolition jobs, dedicating the majority of his income to supporting his  
15 family. *Id.* ¶ 7. Most significantly, Mr. Hogarth serves as the primary caregiver and  
16 medical advocate for his U.S. citizen wife, who has permanent and severe  
17 disabilities as a result of being struck by a car in 2021. *Id.* ¶¶ 15-21. His wife  
18 depends on him to attend medical appointments, assist with daily activities, and  
19 provide essential financial support. *Id.* ¶¶ 7, 19-21. Many of Mr. Hogarth’s other  
20 family members, including his wife’s mother and his youngest son, also suffer from  
21 serious health problems. *Id.* ¶¶ 10-14, 21, 24-26. Mr. Hogarth provides critical  
22 financial and emotional support that his family cannot do without. *Id.* ¶¶ 8-9. His  
23 substantial liberty interest in remaining free to care for his disabled wife and other  
24 family members is constitutionally protected. *See Pham v. Becerra*, 717 F. Supp.  
25 3d 877, 886 (N.D. Cal. 2024) (recognizing an “independent liberty interest in being  
26 free from physical restraint”).

27

28

**4. The Risk of Erroneous Deprivation Is Substantial, and the Probable Value of a Hearing is High.**

3 The risk that Mr. Hogarth will be erroneously deprived of his liberty absent a  
4 pre-detention hearing is high. An IJ already conducted a full hearing, reviewed the  
5 evidence, and determined that Mr. Hogarth is not a danger and not such a flight risk  
6 that that no conditions could mitigate it. Joyce Decl., Ex. A at 5-6. Mr. Hogarth  
7 has also paid a \$25,000 bond—a significant sum—to secure his release. *Id.* at 3.  
8 Mr. Hogarth’s conduct since April 2023 has vindicated that determination: he has  
9 remained compliant with all release conditions for over two and a half years,  
10 maintained employment, supported his family, and served as an indispensable  
11 caregiver to his disabled wife and other family members with serious health  
12 conditions. Hogarth Decl. ¶¶ 7-30, 35-36. And the Board’s decision did not  
13 undermine any of this as it simply concluded it was devoid of authority to review  
14 the IJ’s decision. Joyce Decl., Ex. B at 3.

Moreover, Mr. Hogarth has deep ties to the United States. He has lived here for most of his life, became a lawful permanent resident in 1989, is married to a U.S. citizen, has six U.S. citizen children, and faces persecution if returned to Jamaica due to his sexual orientation. Hogarth Decl. ¶¶ 2-6. He has doggedly pursued his removal case and is back at the Ninth Circuit having won a stay of removal after contested litigation, meaning he is likely to prevail on his petition for review. Joyce Decl. ¶¶ 25-26. These factors, in addition to the \$25,000 Mr. Hogarth would lose, make flight extraordinarily unlikely.

23 ICE has scheduled a check-in with Mr. Hogarth at his home on October 9,  
24 2025. Hogarth Decl. ¶ 36. The well-documented practice of ICE detaining  
25 individuals at immigration check-in appointments absent notice and a hearing, in  
26 combination with the vacatur of the order granting him release, further substantiates  
27 the tangible risk that ICE will re-arrest and re-incarcerate Mr. Hogarth at this

1 appointment. *See Sun*, 2025 WL 2730235, at \*2 (recognizing ICE's routine  
2 practice of detaining individuals at check-in appointments without prior hearing).

3 Redetaining Mr. Hogarth without reassessing the individualized findings that  
4 led to his release, and without allowing him to present evidence of his continued  
5 compliance and conduct over the past two plus years, and without permitting him to  
6 challenge the basis for detention, creates a substantial probability of wrongful  
7 confinement. *See Chi Thon Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) ("The  
8 process due [a noncitizen] requires an opportunity for an evaluation of the  
9 individual's *current* threat to the community.") (emphasis added); *Obregon v.*  
10 *Sessions*, 2017 WL 1407889, at \*2 (N.D. Cal. Apr. 20, 2017) (explaining that due  
11 process requires consideration of the "remoteness" of any convictions and  
12 "intervening events that might undermine a finding of dangerousness"). Moreover,  
13 his detention would cause devastating harm to his family, particularly his disabled  
14 wife who depends on him for essential care. Hogarth Decl. ¶¶ 15-21.

15 Correspondingly, a hearing before a neutral arbiter at which the government  
16 bears the burden of proving by clear and convincing evidence that some change in  
17 the conditions of his release is warranted would substantially reduce this risk of  
18 erroneous deprivation. *Guillermo M.R.*, 2025 WL 1983677, at \*8 ("allowing a  
19 neutral arbiter to review the facts would significantly reduce the risk of erroneous  
20 deprivation."); *See Singh v. Holder*, 638 F.3d at 1203. And here, there are no  
21 procedures provided by statute or regulation that would allow Mr. Hogarth to  
22 challenge his detention once he is redetained. As explained *infra*, Mr. Hogarth's  
23 detention is governed by 8 U.S.C. § 1226(c) which mandates his ongoing detention  
24 without any review. *See Avilez*, 69 F.4th at 536 (holding that Section 1226(c) does  
25 not entitle a detained noncitizen to a bond hearing).

26

27

28

## 5. The Government's Interest in Detention Without Process Is Minimal or Nonexistent.

The government has no legitimate interest in denying Mr. Hogarth a pre-detention hearing. The specific interest at stake here is not the government's ultimate ability to detain Mr. Hogarth, but rather the government's ability to detain him *without any individualized review*. *See Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019).

Immigration custody hearings are “routine and impose a ‘minimal’ cost.” *Singh v. Andrews*, 2025 WL 1918679, at \*8. Mr. Hogarth has lived freely without incident for over two and a half years while diligently pursuing his appeal of the removal order in the Ninth Circuit. Hogarth Decl. ¶ 35. An IJ has already determined his risk of flight is mitigatable—a determination supported by Mr. Hogarth’s deep ties to Los Angeles, his posting of a \$25K bond, and the Ninth Circuit granting his stay of removal. Joyce Decl. ¶ 25, Ex. A at 5-6. The government has no interest in detaining Mr. Hogarth unjustly. Any effort to remove Mr. Hogarth from the community in accordance with law would be amply served by a hearing before a neutral arbiter where the government can demonstrate its burden by clear and convincing evidence. *See Rajnish v. Jennings*, 2020 WL 7626414, at \*10 (N.D. Cal. Dec. 22, 2020).

“Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.” *Pinchi v. Noem*, 2025 WL 2084921, at \*5 (N.D. Cal. July 24, 2025). Requiring the government to provide a custody hearing before a neutral decision-maker and to meet its burden of proof by clear and convincing evidence would impose no meaningful burden and would not obstruct or delay the removal process. To the contrary, it would ensure any detention is justified.

1 \* \* \*

2 All three *Mathews* factors weigh decisively in Mr. Hogarth's favor. He  
3 possesses a substantial liberty interest in remaining free to care for his family. The  
4 risk of erroneous deprivation is exceptionally high where he has been afforded no  
5 hearing before a neutral adjudicator and the government has not been required to  
6 prove by clear and convincing evidence that changed circumstances warrant any  
7 alteration in his conditions of release. Finally, the government bears minimal  
8 burden in providing a hearing with these basic procedural safeguards. Mr. Hogarth  
9 is therefore likely to succeed on the merits of his procedural due process claim.

10 **VI. IRREPARABLE HARM**

11 Effectively denying Mr. Hogarth bond and revoking his liberty constitutes  
12 irreparable harm. "It is well established that the deprivation of constitutional rights  
13 'unquestionably constitutes irreparable injury.'" *Hernandez*, 872 F.3d at 994-95  
14 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

15 The unlawful deprivation of physical liberty is the quintessential irreparable  
16 harm. *See Hernandez*, 872 F.3d at 994 (holding that plaintiffs were irreparably  
17 harmed "by virtue of the fact that they [we]re likely to be unconstitutionally  
18 detained for an indeterminate period of time"); *see also, e.g., Rosales-Mireles v.*  
19 *United States*, 585 U.S. 129, 139 (2018) (recognizing that "[a]ny amount of actual  
20 jail time is significant, and has exceptionally severe consequences for the  
21 incarcerated individual" (cleaned up)).

22 Beyond the deprivation of liberty itself, redetention would destroy the stable  
23 life Mr. Hogarth has built. He would immediately lose his employment as a  
24 contractor, eliminating the income on which he and his family depend. Hogarth  
25 Decl. ¶ 7. His rehabilitation would be severely disrupted—he successfully  
26 completed a 30-day residential program and now regularly attends Alcoholics  
27 Anonymous, progress that would be jeopardized by incarceration. *Id.* ¶ 35.  
28 Moreover, the harm would extend to his family as his redetention will impose

1 severe economic and emotional burdens on his wife and children who rely on his  
2 presence and support. *Id.* ¶¶ 10-30; *see Hernandez*, 872 F.3d at 995 (recognizing  
3 that detention inflicts economic and collateral harms on a detainee's family that  
4 constitute irreparable harm). None of these losses would be able to be remedied  
5 after the fact.

6 **VII. BALANCE OF THE EQUITIES AND PUBLIC INTEREST**

7 When the government is the party opposing the request for emergency relief,  
8 the balance of the equities and the public interest merge. *Env't Prot. Info. Ctr. v.*  
9 *Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558,  
10 581 (9th Cir. 2018)).

11 Here, the balance of equities overwhelmingly favors Hogarth, who faces  
12 irreparable injury in the form of indefinite detention, deprivation of his fifth  
13 amendment right to due process, and threats to his life and livelihood if the BIA's  
14 final order is carried out. *Hernandez*, 872 F.3d at 996 (when "[f]aced with ...  
15 preventable human suffering, ... the balance of hardships tips decidedly in  
16 plaintiffs' favor") (internal citation omitted).

17 **VIII. CONCLUSION**

18 For the foregoing reasons, Mr. Hogarth respectfully requests that the Court  
19 enter a TRO enjoining ICE from redetaining him pending further order of this  
20 Court.

21 Respectfully Submitted,

22 Dated: October 3, 2025

23 KEKER, VAN NEST & PETERS  
24 LLP

25 By

26 :

/s/ Katie Lynn Joyce  
Katie Lynn Joyce  
Danika L. Kritter  
Raisa M. Cramer

27 Attorneys for Petitioner Robert  
28 George Hogarth

1 Dated: October 3, 2025  
2

LAKIN & WILLE LLP

3 By  
4 :

*/s/ Judah Lakin*  
5 Judah Lakin  
6 Amalia Wille

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Attorneys for Petitioner Robert  
George Hogarth