

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,

26 v.

27 ERNESTO M. SANTACRUZ JR.,
28 Acting Field Office Director of the Los
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. 2:25-cv-09472-SPG-MAR

**PETITIONER'S OPENING BRIEF
IN SUPPORT OF PRELIMINARY
INJUNCTION; POINTS AND
AUTHORITIES IN SUPPORT**

Date Filed: October 3, 2025

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATEMENT OF FACTS AND CASE.....	2
	A. Petitioner's Background and Compliance with Bond Conditions.....	2
	B. Procedural History	3
III.	LEGAL STANDARD	7
IV.	JURISDICTION.....	8
V.	LIKELIHOOD OF SUCCESS ON THE MERITS.....	8
	A. Mr. Hogarth is Entitled to Injunctive Relief Because His Imminent Detention Without Due Process Violates the Fifth Amendment.....	9
	1. The Due Process Clause Requires a Hearing Before Mr. Hogarth May be Redetained.....	10
	2. Mr. Hogarth Has a Protected Liberty Interest in His Conditional Release.....	10
	3. Mr. Hogarth Has a Substantial Liberty Interest in Remaining Free.....	13
	4. The Risk of Erroneous Deprivation Is Substantial, and the Probable Value of a Hearing is High.....	14
	5. The Government's Interest in Detention Without Process Is Minimal or Nonexistent.....	16
	B. The BIA's Decision Is Not in Accordance with Law.....	18
VI.	IRREPARABLE HARM.....	20
VII.	BALANCE OF THE EQUITIES AND PUBLIC INTEREST	21
VIII.	CONCLUSION	22

1 **TABLE OF AUTHORITIES**

	Page(s)
2	1
3	Cases
4	
5	<i>All. for the Wild Rockies v. Cottrell</i> , <u>632 F.3d 1127</u> (9th Cir. 2011)..... 7, 8
6	
7	<i>Avilez v. Garland</i> , <u>69 F.4th 525</u> (9th Cir. 2023)..... 16, 18, 19
8	
9	<i>Baez-Sanchez v. Barr</i> , <u>947 F.3d 1033</u> (7th Cir. 2020)..... 20
10	
11	<i>Bromfield v. Mukasey</i> , <u>543 F.3d 1071</u> (9th Cir. 2008)..... 2
12	
13	<i>Carey v. Piphus</i> , <u>435 U.S. 247</u> (1978)
14	12
15	
16	<i>Castaneda v. Garland</i> , <u>562 F. Supp. 3d 545</u> (C.D. Cal. 2021)..... 19
17	
18	<i>Castillo v. Barr</i> , <u>980 F.3d 1278</u> (9th Cir. 2020)..... 20
19	
20	<i>Chi Thon Ngo v. INS</i> , <u>192 F.3d 390</u> (3d Cir. 1999)..... 15
21	
22	<i>Demore v. Kim</i> , <u>538 U.S. 510</u> (2003)
23	8
24	
25	<i>Diaz v. Garland</i> , <u>53 F.4th 1189</u> (9th Cir. 2022)..... 10
26	
27	<i>Diaz v. Kaiser</i> , <u>2025 WL 1676854</u> (N.D. Cal. June 14, 2025)
28	12, 13
25	
26	<i>Doe v. Becerra</i> , <u>697 F. Supp. 3d 937</u> (N.D. Cal. 2023)..... 19
27	
28	<i>Env't Prot. Info. Ctr. v. Carlson</i> , <u>968 F.3d 985</u> (9th Cir. 2020)..... 21, 22

1	<i>Gagnon v. Scarpelli</i> , <u>411 U.S. 778</u> (1973)	11
2		
3	<i>Garcia v. Andrews</i> , <u>2025 WL 1927596</u> (E.D. Cal. July 14, 2025)	12, 13
4		
5	<i>Garcia v. Bondi</i> , <u>2025 WL 1676855</u> (N.D. Cal. June 14, 2025)	13
6		
7	<i>Gonzalez-Fuentes v. Molina</i> , <u>607 F.3d 864</u> (1st Cir. 2010)	11
8		
9	<i>Guillermo M.R. v. Kaiser</i> , --- F. Supp. 3d --- <u>2025 WL 1983677</u> (N.D. Cal. July 17, 2025)	13, 16
10		
11	<i>Hernandez v. Sessions</i> , <u>872 F.3d 976</u> (9th Cir. 2017)	13, 21, 22
12		
13	<i>Jorge M. F. v. Wilkinson</i> , <u>2021 WL 783561</u> (N.D. Cal. Mar. 1, 2021)	12, 13
14		
15	<i>Maleng v. Cook</i> , <u>490 U.S. 488</u> (1989)	9
16		
17	<i>Marroquin Ambriz v. Barr</i> , <u>420 F. Supp. 3d 953</u> (N.D. Cal. 2019)	16
18		
19	<i>Mathews v. Eldridge</i> , <u>424 U.S. 319</u> (1976)	6, 10, 17
20		
21	<i>Meza v. Bonnar</i> , <u>2018 WL 2554572</u> (N.D. Cal. June 4, 2018)	12
22		
23	<i>Morrissey v. Brewer</i> , <u>408 U.S. 471</u> (1972)	10, 11, 12
24		
25	<i>Obregon v. Sessions</i> , <u>2017 WL 1407889</u> (N.D. Cal. Apr. 20, 2017)	15
26		
27	<i>Ortega v. Bonnar</i> , <u>415 F. Supp. 3d 963</u> (N.D. Cal. 2019)	9, 11, 12, 13
28		
	<i>Ortega v. Kaiser</i> , <u>2025 WL 1771438</u> (N.D. Cal. June 26, 2025)	12, 13

1	<i>Ortega v. Kaiser</i> , <u>2025 WL 2243616</u> (N.D. Cal. Aug. 6, 2025).....	9
2		
3	<i>Perez Perez v. Wolf</i> , <u>943 F.3d 853</u> (9th Cir. 2019).....	8
4		
5	<i>Pham v. Becerra</i> , <u>717 F. Supp. 3d 877</u> (N.D. Cal. 2024).....	14
6		
7	<i>Pinchi v. Noem</i> , <u>2025 WL 2084921</u> (N.D. Cal. July 24, 2025).....	17
8		
9	<i>Prieto-Romero v. Clark</i> , <u>534 F.3d 1053</u> (9th Cir. 2008).....	19
10		
11	<i>Rajnish v. Jennings</i> , <u>2020 WL 7626414</u> (N.D. Cal. Dec. 22, 2020)	17
12		
13	<i>Roman v. Wolf</i> , <u>977 F.3d 935</u> (9th Cir. 2020).....	8, 9
14		
15	<i>Rosales-Mireles v. United States</i> , <u>585 U.S. 129</u> (2018)	21
16		
17	<i>Saravia v. Sessions</i> , <u>280 F. Supp. 3d 1168</u> (N.D. Cal. 2017)	11
18		
19	<i>Singh v. Andrews</i> , <u>2025 WL 1918679</u> (E.D. Cal. July 11, 2025)	13, 16
20		
21	<i>Singh v. Clinton</i> , <u>618 F.3d 1085</u> (9th Cir. 2010).....	18
22		
23	<i>Singh v. Holder</i> , <u>638 F.3d 1196</u> (9th Cir. 2011).....	8, 16
24		
25	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.</i> , <u>240 F.3d 832</u> (9th Cir. 2001).....	8
26		
27	<i>Sun v. Santacruz Jr.</i> , <u>2025 WL 2730235</u> (C.D. Cal. Aug. 26, 2025).....	7, 9, 15
28		
	<i>Vargas v. Jennings</i> , <u>2020 WL 5074312</u> (N.D. Cal. Aug. 23, 2020).....	13

1	<i>Winter v. Nat. Res. Def. Council, Inc.</i> , <u>555 U.S. 7</u> (2008)	1, 6, 8
2		
3	<i>Young v. Harper</i> , <u>520 U.S. 143</u> (1997)	11, 13
4		
5	<i>Zadvydas v. Davis</i> , <u>533 U.S. 678</u> (2001)	13
6		
7	<i>Zinermon v. Burch</i> , <u>494 U.S. 113</u> (1990)	10
8		
9	Statutes	
10	<u>5 U.S.C. § 706</u>	1, 8, 18, 20
11	<u>8 U.S.C. § 1226(c)</u>	<i>passim</i>
12	<u>8 U.S.C. § 1231(a)(1)(B)</u>	20
13	<u>28 U.S.C. § 1331</u>	8, 9
14	<u>28 U.S.C. § 2241</u>	8, 9
15		

Court Rules

16	<u>Federal Rule of Civil Procedure 65(a)(1)</u>	vi
17		
18	<u>Local Rule 65-1</u>	vi
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

NOTICE OF MOTION

2 On October 9, 2025, this Court granted Petitioner-Plaintiff (“Petitioner”)
3 Robert Hogarth’s application for a temporary restraining order (“TRO”) and
4 enjoined Respondent-Defendants from detaining him pending further order. In
5 doing so, the Court correctly found that Mr. Hogarth is likely to succeed on the
6 merits of his Due Process claim and that a TRO was warranted to preserve the
7 status quo and prevent imminent and irreparable harm. The Court ordered
8 Respondents to show cause why a preliminary injunction should not issue, and
9 further ordered Petitioner to file an opening brief in support of a preliminary
10 injunction.

11 Petitioner now respectfully moves to convert the TRO into a preliminary
12 injunction while the Court adjudicates the merits of the claims in his Petition for
13 Habeas Corpus and Complaint for Declaratory and Injunctive Relief. Petitioner
14 readily satisfies the standard for a preliminary injunction, which mirrors the
15 standard that he already met for the TRO—and the government will be unable to
16 show otherwise. As outlined in the Declaration of Katie Lynn Joyce in Support of
17 Preliminary Injunction (“Joyce Decl.”), Respondents have received notice in
18 accordance with Federal Rule of Civil Procedure 65(a)(1) and Local Rule 65-1.
19 Joyce Decl. ¶ 4.

20 This motion is supported by the accompanying Memorandum of Points and
21 Authorities, the Declaration of Robert George Hogarth in Support of Preliminary
22 Injunction (“Hogarth Decl.”), and the Joyce Declaration and attached exhibits, all
23 of which are filed contemporaneously.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner, Mr. Hogarth, respectfully moves to convert the TRO issued by this Court into a preliminary injunction. In its thorough, well-reasoned Opinion, the Court has already enjoined Respondents from detaining Mr. Hogarth pending further order, finding that each *Winter* factor weighed decisively in his favor. Mr. Hogarth now seeks a preliminary injunction to maintain that protection while the Court considers his claims that the Board of Immigration Appeals' ("BIA's") order vacating his bond conditions is unlawful and must be set aside.

The government will be unable to carry its burden to show cause as to why the preliminary injunction should not issue at this stage. This is because Mr. Hogarth readily meets the standard for a preliminary injunction, which mirrors the TRO standard that he has already satisfied. First, the Court has already determined that Mr. Hogarth is likely to succeed on his claim that detention without a pre-deprivation hearing would violate the Fifth Amendment. Mr. Hogarth is also likely to prevail on his claim that the BIA’s vacatur of his bond conditions is not in accordance with law and violates the Administrative Procedure Act (“APA”).

Second, the Court has already concluded that Mr. Hogarth faces immediate and certain irreparable harm absent injunctive relief. Given the BIA’s revocation of his bond and his frequent mandatory check-ins with ICE, the risk of imminent detention by Immigration and Customs Enforcement (“ICE”) is imminent, real, and severe. The government cannot provide assurances that, absent a court order, Mr. Hogarth will not be detained. Joyce Decl. ¶¶ 5-6. Detention would strip Mr. Hogarth of his liberty, dismantle the stable life he has rebuilt over two years of exemplary compliance, eliminate the income and care his family depends upon, and disrupt his ongoing rehabilitation.

Third, the balance of equities and the public interest overwhelmingly favor a preliminary injunction. Mr. Hogarth's fundamental liberty interest and

1 constitutional due process rights vastly outweigh any government interest in
2 detaining him unjustly, and preventing an unconstitutional deprivation of liberty
3 serves the public interest.

4 **II. STATEMENT OF FACTS AND CASE**

5 **A. Petitioner's Background and Compliance with Bond Conditions**

6 Mr. Hogarth is a 55-year-old bisexual man who has lived in the United States
7 for most of his life. Hogarth Decl. ¶¶ 2-4. He was born in Jamaica, *id.* ¶ 2, a
8 country with a long and well-documented history of violence and persecution
9 against LGBTQIA individuals. *See Bromfield v. Mukasey*, 543 F.3d 1071, 1079
10 (9th Cir. 2008) (“The record here compels the conclusion that the Jamaican
11 government not only acquiesces in the torture of gay men, but is directly involved
12 in such torture.”). From a young age, Mr. Hogarth endured severe homophobic
13 abuse in Jamaica and was sexually and physically assaulted on multiple occasions.
14 Hogarth Decl. ¶ 3. In 1989, he fled Jamaica as a teenager and became a lawful
15 permanent resident of the United States. *Id.* ¶ 4.

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

1 was previously imprisoned and detained by ICE. *Id.* ¶¶ 22-24, 27-30. Since Mr.
2 Hogarth has been released from detention, his youngest son's grades have
3 improved. *Id.* ¶ 23.

4 Since his release from immigration detention on bond in April 2023, Mr.
5 Hogarth's compliance with bond conditions has been exemplary. He successfully
6 completed a 30-day residential rehabilitation program at the Los Angeles Mission,
7 regularly attends Alcoholics Anonymous meetings, has completely abstained from
8 alcohol and illicit drugs, maintained continuous employment as a contractor, and
9 has had no negative contact with law enforcement. *Id.* ¶¶ 7, 35. He also wears an
10 electronic monitor, submits to random drug testing administered by DHS, and
11 meets with ICE officers at his home two to four times monthly. *Id.* ¶¶ 35-36.

12 **B. Procedural History**

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

18 Mr. Hogarth applied for relief from removal under the Convention Against
19 Torture ("CAT") because he feared he would be tortured as a bisexual man were he
20 forced to return to Jamaica. Joyce Decl. ¶ 10. The Immigration Judge ("IJ") denied
21 relief, and the BIA affirmed Mr. Hogarth's removal to Jamaica. *Id.* ¶¶ 11-14. Mr.
22 Hogarth timely petitioned the Ninth Circuit for review. *Id.* ¶ 15. After pro bono
23 counsel filed an opening brief on his behalf, rather than defend the BIA's erroneous
24 decision, the government moved for a remand so that the agency could reconsider
25 several legal and factual issues in its reasoning. *Id.* ¶¶ 16-17. In December 2022,
26 the Ninth Circuit granted the remand. *Id.* ¶ 18.

27 In October 2022, while his first petition for review to the Ninth Circuit was
28 still pending, Mr. Hogarth petitioned this Court for a writ of habeas corpus. *Id.*

1 ¶ 19. Mr. Hogarth argued that his prolonged detention under 8 U.S.C. § 1226(c)
2 without a bond hearing violated his Fifth Amendment rights. *Id.* In a 26-page
3 report and recommendation, the Magistrate Judge agreed and found that Mr.
4 Hogarth’s two years of detention without any review by a neutral adjudicator
5 violated his Fifth Amendment Due Process rights. *Id.* ¶ 20. In February 2023, the
6 district court adopted the findings and recommendation of the Magistrate Judge and
7 ordered the government to provide Mr. Hogarth “with an individualized bond
8 hearing before an IJ with the required procedural protections” or else release him
9 from detention. *Id.* ¶¶ 21-23.

10 In April 2023, as authorized by the district court’s order, the IJ held a bond
11 hearing and ordered Mr. Hogarth released from detention on bond. *Id.*, Ex. A
12 (April 17, 2023, decision and order of the IJ setting bond). The IJ acknowledged
13 that Mr. Hogarth’s bond hearing was conducted “pursuant to an order issued by the
14 [district court.]” *Id.*, Ex. A at 2. The IJ determined that the government had not
15 demonstrated that Mr. Hogarth’s release would pose a danger to the community,
16 especially given that Mr. Hogarth “was exceptionally forthcoming in his testimony”
17 and took responsibility for his criminal history. *Id.*, Ex. A at 5. The IJ also noted
18 that a “significant amount of additional time” had passed since Mr. Hogarth’s most
19 recent conviction, and that Mr. Hogarth had engaged in “significant rehabilitative
20 efforts” and modeled “good behavior while detained.” *Id.* The IJ found that the
21 government had failed to show that Mr. Hogarth’s release would present a flight
22 risk because Mr. Hogarth has significant family ties to the United States, and there
23 was no evidence that he had ever evaded law enforcement or failed to appear as
24 required. *Id.*, Ex. A at 5-6. DHS appealed the bond decision to the BIA. *Id.* ¶ 23.

25 The IJ also imposed several conditions on Mr. Hogarth’s release. Mr.
26 Hogarth is required to have regular in-person reporting to ICE, electronic
27 monitoring, and random drug testing. *Id.*, Ex. A at 3. He must refrain from using
28

1 or possessing alcohol and illicit drugs, attend Alcoholics Anonymous meetings,
2 maintain steady employment, and avoid any contact with law enforcement. *Id.*

3 In January 2025, on remand from the Ninth Circuit, the BIA again denied
4 Mr. Hogarth’s application for CAT relief and ordered him removed. *Id.* ¶ 24. Mr.
5 Hogarth timely filed a second petition for review, which remains pending at the
6 Ninth Circuit and where pro bono counsel (undersigned) represent him. *Id.* ¶¶ 25,
7 28. In June 2025, the Ninth Circuit granted Mr. Hogarth’s motion to stay removal
8 after contested briefing. *Id.* ¶¶ 26-27.

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

15 The BIA’s reasoning rested on two critical legal errors. First, it wrongly
16 claimed that its jurisdiction over the bond proceedings derived from the IJ’s
17 regulatory authority to set conditions of detention—entirely ignoring that the IJ’s
18 authority to set bond in Mr. Hogarth’s case was based on the district court’s order,
19 not governing regulations. *Id.* Second, the BIA asserted, without citing any legal
20 authority, that the IJ’s bond authority had somehow expired once the BIA entered a
21 final administrative order of removal in January 2025 (an order that is now
22 stayed). *Id.* ¶ 27, Ex. B at 3. Relying on these flawed legal conclusions—and
23 without briefing from either side on the issue—the BIA entered an order dismissing
24 the government’s bond appeal as moot and vacating the IJ order authorizing Mr.
25 Hogarth’s release on bond. *Id.*, Ex. B at 3.

26 The BIA’s baseless vacatur of the IJ order authorizing Mr. Hogarth’s release
27 on bond places Mr. Hogarth in imminent risk of redetention. The risk is severe and
28 real given his frequent and mandatory check-ins with ICE. Hogarth Decl. ¶ 36. His

1 next check-in with ICE is scheduled for November 5, 2025, at ICE's offices. *Id.*
2 Mr. Hogarth fears that he will face detention at his check-ins without a court order
3 to protect him, *id.*, and the government cannot give assurances that it would not
4 detain Mr. Hogarth in the absence of a court order, Joyce Decl. ¶¶ 5-6.

5 On October 3, 2025, Mr. Hogarth filed a Petition for a Writ of Habeas
6 Corpus and an *ex parte* application for a TRO to enjoin Respondents from detaining
7 him while the Court considers his claims that the BIA's order vacating his bond
8 conditions is unlawful and that he is entitled to a hearing before a neutral arbiter
9 prior to any re-arrest and detention by ICE. Dkt. Nos. 1, 2. On October 6, 2025,
10 the Court set a hearing on the TRO application and ordered Respondents to file a
11 response by October 7, 2025. Dkt. No. 9. Respondents filed a five-page opposition
12 and objection. Dkt. No. 10. The Court subsequently vacated the hearing. Dkt. No.
13 11. Mr. Hogarth then filed a reply. Dkt. No. 12.

14 On October 9, 2025, the Court granted Mr. Hogarth's TRO application,
15 determining that each *Winter* factor weighed in his favor. Dkt. No. 13. The Court
16 methodically applied the three-part test from *Mathews v. Eldridge*, 424 U.S. 319
17 (1976), and concluded that Mr. Hogarth "is likely to succeed on the merits of his
18 Fifth Amendment claim" that "the Due Process Clause requires a pre-deprivation
19 hearing before his re-detention." Dkt. No. 13 at 10-12.

20 First, the Court determined that Mr. Hogarth "has a protected liberty interest
21 in remaining out of custody" because "there is no indication that he has violated his
22 bond conditions or immigration requirements." *Id.* at 10-11. The Court cited Mr.
23 Hogarth's sworn declaration that he has complied with all of his bond requirements,
24 completed a rehabilitation program, and "had no negative contact with law
25 enforcement since his bond release" more than two years ago. *Id.* at 10-11. The
26 Court held that Mr. Hogarth is entitled to seek habeas relief even while not
27 currently detained. *Id.* at 11-12.

28

1 Second, the Court found that Mr. Hogarth had established a risk of erroneous
2 re-detention because of the likelihood that ICE would re-arrest and re-incarcerate
3 him at his check-in scheduled for October 9, 2025. *Id.* at 12. (citing and quoting
4 *Sun v. Santacruz Jr.*, [2025 WL 2730235](#), at *6 (C.D. Cal. Aug. 26, 2025) (“The risk
5 of erroneous deprivation of this interest is high, as ICE takes the position that it
6 may revoke a release determination at any time without either a hearing before or
7 additional oversight from a neutral adjudicator.”)). Third, the Court found that “the
8 government’s interest in re-detaining Petitioner without a hearing is low,
9 particularly as Petitioner has complied with all terms of his bond release and has
10 check in with ICE two to four times a month since his release.” *Id.*

11 The Court next determined that Mr. Hogarth had shown that, absent
12 injunctive relief, he would suffer irreparable injury if he is arrested again and
13 detained. *Id.* Moreover, the members of Mr. Hogarth’s family who depend on his
14 income and emotional support would suffer. *Id.* Lastly, the Court determined that
15 the balance of the equities and the public interest favored Mr. Hogarth because any
16 potential harm to the government was “minimal.” *Id.* at 13.

17 Accordingly, the Court granted Mr. Hogarth’s TRO application and enjoined
18 Respondents from detaining him pending further order. *Id.* at 14. The Court
19 ordered Respondents to show cause why a preliminary injunction should not issue
20 at a hearing set for October 15, 2025. *Id.* at 15. The Court further ordered Mr.
21 Hogarth to file an opening brief in support of a preliminary injunction. *Id.*

22 **III. LEGAL STANDARD**

23 Under this Court’s Order, the Government must show cause as to why a
24 preliminary injunction should not issue. [Dkt. No. 13 at 15](#). A preliminary
25 injunction is warranted if the movant shows (1) they are “likely to succeed on the
26 merits,” (2) they are “likely to suffer irreparable harm in the absence of preliminary
27 relief,” (3) “the balance of equities tips in [their] favor,” and that (4) “an injunction
28 is in the public interest.” *All. for the Wild Rockies v. Cottrell*, [632 F.3d 1127, 1131](#)

1 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
2 (2008)); *see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
3 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary restraining
4 order and a preliminary injunction is substantially the same). Even if the movant
5 raises only “serious questions” as to the merits of their claims, the court can grant
6 relief if the balance of hardships tips “sharply” in their favor. *All. for the Wild*
7 *Rockies*, 632 F.3d at 1135. Here, all four factors weigh decisively in Mr. Hogarth’s
8 favor, and Hogarth is entitled to relief under either test—particularly given that the
9 government will be unable to show otherwise.

10 **IV. JURISDICTION**

11 This Court has jurisdiction to review bond proceedings under the federal
12 habeas statute, 28 U.S.C. § 2241, for both constitutional claims and legal errors.
13 *See Singh v. Holder*, 638 F.3d 1196, 1200-01 (9th Cir. 2011); *Demore v. Kim*, 538
14 U.S. 510, 516-17 (2003). The APA “reinforces this presumption of judicial
15 reviewability” by conferring a cause of action upon anyone who is ““adversely
16 affected or aggrieved by agency action within the meaning of a relevant
17 statute.”” *Perez Perez v. Wolf*, 943 F.3d 853, 860 (9th Cir. 2019) (quoting 5 U.S.C.
18 § 702).

19 The Court also has independent authority under 28 U.S.C. § 1331 to
20 “entertain . . . constitutional challenges and to grant injunctive relief” based on Mr.
21 Hogarth’s claims “irrespective of the accompanying habeas petition.” *Roman v.*
22 *Wolf*, 977 F.3d 935, 942 (9th Cir. 2020).

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

24 Mr. Hogarth raises two independent claims for relief: first, that his imminent
25 redetention by ICE without a hearing before a neutral adjudicator would violate due
26 process; and second, that the BIA’s bond denial is contrary to law under the APA.
27 He is likely to succeed on both, but either would warrant this Court granting his
28 request for a preliminary injunction. The Court has already found a likelihood of

1 success regarding Mr. Hogarth's due process claim, and there has been no
2 intervening change that would impact the Court's thorough analysis.

3 **A. Mr. Hogarth is Entitled to Injunctive Relief Because His Imminent
4 Detention Without Due Process Violates the Fifth Amendment.**

5 Mr. Hogarth brings a petition for habeas corpus under 28 U.S.C. § 2241 and
6 a claim for injunctive relief pursuant to Section 1331 to challenge his imminent
7 unlawful redetention without a pre-deprivation hearing required by the Fifth
8 Amendment's Due Process Clause.

9 A court may grant habeas relief to any individual "in custody in violation of
10 the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3).

11 Mr. Hogarth satisfies the jurisdictional requirements for habeas relief and is likely
12 to succeed on the merits of his constitutional claim. Although not presently
13 detained, Mr. Hogarth undoubtedly meets the "in custody requirement" of the
14 habeas statute as he is subject to restraints not shared by the public generally.

15 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019) (quoting *Jones v.*
16 *Cunningham*, 371 U.S. 236, 240 (1963)); *see also* *Maleng v. Cook*, 490 U.S. 488,
17 492 (1989) (noting the custody requirement "very liberally construed"). The
18 conditions imposed on Mr. Hogarth constitute precisely such restraints. His release
19 requires regular in-person reporting to ICE, electronic monitoring, and random drug
20 testing. Joyce Decl., Ex. A at 3. He must also refrain from using or possessing
21 alcohol and illicit drugs, attend Alcoholics Anonymous meetings, maintain steady
22 employment, and avoid any contact with law enforcement. *Id.* These restrictions
23 suffice for the in-custody requirement of jurisdiction. *See Sun*, 2025 WL 2730235,
24 at *3; Dkt. No. 13 at 11-12.

25 Apart from the habeas statute, this Court *also* has jurisdiction under 28
26 U.S.C. § 1331 to address Mr. Hogarth's constitutional claims. *Roman*, 977 F.3d at
27 941; *see also* *Ortega v. Kaiser*, 2025 WL 2243616, at *3 (N.D. Cal. Aug. 6, 2025).

28

1 Mr. Hogarth's due process claim arises directly under the Fifth Amendment,
2 independently supporting this Court's jurisdiction to grant the requested relief.

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

5 The right to be free from incarceration lies at the heart of the Due Process
6 Clause. The Supreme Court has therefore required, as a general rule, "a hearing
7 before the State deprives a person of liberty." *Zinermon v. Burch*, 494 U.S. 113,
8 127 (1990) (emphasis in original). Having been released on bond, Mr. Hogarth
9 should not be redetained without a hearing before a neutral decision-maker at which
10 the government proves by clear and convincing evidence that circumstances have
11 changed sufficiently to justify a change in the conditions of release. Even assuming
12 the BIA's order vacating the Immigration Judge's bond determination was
13 substantively valid—which, as argued *infra* it is not—any detention by Mr. Hogarth
14 without such a hearing would be a denial of his constitutional rights.

15 In assessing whether procedures provided prior to immigration detention
16 satisfy due process, courts in the Ninth Circuit apply the test outlined in *Mathews v.*
17 *Eldridge*, 424 U.S. 319, 335 (1976). *See Diaz v. Garland*, 53 F.4th 1189, 1206 (9th
18 Cir. 2022). *Mathews* requires consideration of three factors: (i) the private interest
19 at stake; (ii) the risk of erroneous deprivation and the value of additional
20 procedures; and (iii) the government's interest, including administrative burdens.
21 424 U.S. at 335. As this Court correctly concluded when it granted the TRO, each
22 factor weighs decisively in Mr. Hogarth's favor. Dkt. No. 13 at 10-12.

23 **2. Mr. Hogarth Has a Protected Liberty Interest in His
24 Conditional Release.**

25 The Supreme Court has long recognized that individuals released under
26 supervision possess a protected liberty interest requiring due process before
27 redetention. In *Morrissey v. Brewer*, the Court examined the "nature of the
28 interest" a parolee has in "his continued liberty," noting that "subject to the

1 conditions of his parole, [a parolee] can be gainfully employed and is free to be
2 with family and friends and to form the other enduring attachments of normal life.”
3 408 U.S. 471, 481-82 (1972); *see also* Dkt. No. 13 at 10. Critically, “the parolee
4 has relied on at least an implicit promise that parole will be revoked only if he fails
5 to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a
6 parolee, although indeterminate, includes many of the core values of unqualified
7 liberty and its termination inflicts a grievous loss on the parolee and often on
8 others.” *Id.* Accordingly, “[b]y whatever name, the liberty is valuable and must be
9 seen as within the protection of the [Fifth] Amendment.” *Id.*

10 This foundational principle has been repeatedly affirmed. *See, e.g., Young v.*
11 *Harper*, 520 U.S. 143, 152 (1997) (holding that individuals in a pre-parole program
12 have a protected liberty interest requiring pre-deprivation process); *Gagnon v.*
13 *Scarpelli*, 411 U.S. 778, 781-82 (1973) (same for felony probation). Courts
14 determine whether a specific conditional release constitutes a protected liberty
15 interest “by comparing the specific conditional release in the case before them with
16 the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v.*
17 *Molina*, 607 F.3d 864, 887 (1st Cir. 2010).

18 Mr. Hogarth’s situation exemplifies this protected interest. Like the parolee
19 in *Morrissey*, he has relied on the implicit promise that his bond could only
20 possibly be revoked for violating its conditions—conditions he has honored without
21 exception. *See Ortega*, 415 F. Supp. 3d at 968 (“[W]here a previous bond
22 determination has been made by an immigration judge, no change should be made
23 by [the DHS] absent a change of circumstance.”) (quoting *Matter of Sugay*, 17 I. &
24 N. Dec. 637, 640 (BIA 1981)); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168,
25 1196-97 (N.D. Cal. 2017) (noting that DHS represented that there must be a
26 “material change in circumstances” to warrant re-arrest after a prior bond
27 determination). He has adjusted to life in the Los Angeles community, working as
28 a contractor and supporting his wife, children, and family. Hogarth Decl. ¶¶ 7-9.

1 He has completed intensive rehabilitation, and demonstrated consistent compliance
2 with strict supervision requirements. *Id.* ¶¶ 35-36. His liberty, though subject to
3 conditions, “includes many of the core values of unqualified liberty,” and its
4 termination would inflict the same “grievous loss” the *Morrissey* Court recognized.
5 408 U.S. at 482.

6 Furthermore, courts have consistently recognized that noncitizens released on
7 immigration bond possess this same protected liberty interest. *See, e.g., Ortega v.*
8 *Bonnar*, 415 F. Supp. 3d at 969-70; *Ortega v. Kaiser*, 2025 WL 1771438, at *3
9 (N.D. Cal. June 26, 2025) (collecting cases recognizing noncitizens on bond have a
10 strong liberty interest); *Garcia v. Andrews*, 2025 WL 1927596, at *5 (E.D. Cal.
11 July 14, 2025); *Diaz v. Kaiser*, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025)
12 (“Courts have previously found that individuals released from immigration custody
13 on bond have a protectable liberty interest in remaining out of custody on bond.”);
14 *see also Jorge M. F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021)
15 (holding that a Mexican citizen with pending removal proceedings who had been
16 released on bond had “a substantial private interest in remaining on bond”). Here,
17 too, Hogarth’s release on bond endows him with a protected liberty interest that
18 entitles him to due process. *See Dkt. No. 13 at 12* (“Though Petitioner not
19 detained, he may seek habeas relief.”).

20 Critically, Mr. Hogarth’s liberty interest exists regardless of whether the
21 BIA’s order was legally correct in vacating Mr. Hogarth’s bond order. “[T]he right
22 to procedural due process is ‘absolute’ in the sense that it does not depend upon the
23 merits of a claimant’s substantive assertions.” *Carey v. Piphus*, 435 U.S. 247, 266
24 (1978). Courts have recognized that individuals possess “a vested liberty interest in
25 [their] current conditional release” that cannot be terminated without due process,
26 even when the underlying basis for release is challenged. *Meza v. Bonnar*, 2018
27 WL 2554572, at *1 (N.D. Cal. June 4, 2018) (granting TRO where individual
28 released on bond faced redetention without hearing). Indeed, many federal courts

1 throughout the state have held that due process requires a hearing before a
2 noncitizen is redetained after being released on bond. *See, e.g., Ortega v. Bonnar,*
3 *415 F. Supp. 3d 963; Vargas v. Jennings*, *2020 WL 5074312*, at *3 (N.D. Cal. Aug.

4 23, 2020); *Jorge M. F. v. Wilkinson*, *2021 WL 783561*, at *2 (N.D. Cal. Mar. 1,

5 2021); *Garcia v. Bondi*, *2025 WL 1676855*, at *4 (N.D. Cal. June 14, 2025); *Diaz*
6 *v. Kaiser*, *2025 WL 1676854*, at *4; *Guillermo M.R. v. Kaiser*, --- F. Supp. 3d ---
7 *2025 WL 1983677*, at *5 (N.D. Cal. July 17, 2025); *Ortega v. Kaiser*, *2025 WL*
8 *1771438*, at *3 (collecting cases); *Garcia v. Andrews*, *2025 WL 1927596*, at *3;
9 *Singh v. Andrews*, *2025 WL 1918679*, at *8 (E.D. Cal. July 11, 2025) (collecting
10 cases).

11 **3. Mr. Hogarth Has a Substantial Liberty Interest in
12 Remaining Free.**

13 The Due Process Clause protects “all ‘persons’ within the United States,
14 including [noncitizens], whether their presence here is lawful, unlawful, temporary,
15 or permanent.” *Zadvydas v. Davis*, *533 U.S. 678, 693* (2001); *see also Hernandez*
16 *v. Sessions*, *872 F.3d 976, 990* (9th Cir. 2017) (quoting *Zadvydas*, *533 U.S. at 693*).
17 “Freedom from imprisonment—from government custody, detention, or other
18 forms of physical restraint—lies at the heart of the liberty that the [Due Process]
19 Clause protects.” *Zadvydas*, *533 U.S. at 690*.

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

26 Mr. Hogarth is 56-years-old and has lived in the Los Angeles area for most
27 of his life. *Id.* ¶¶ 2, 4. He works part-time as a contractor on construction, home
28 repair, and demolition jobs, dedicating the majority of his income to supporting his

1 family. *Id.* ¶ 7. Most significantly, Mr. Hogarth serves as the primary caregiver and
2 medical advocate for his U.S. citizen wife, who has permanent and severe
3 disabilities as a result of being struck by a car in 2021. *Id.* ¶¶ 15-21. His wife
4 depends on him to attend medical appointments, assist with daily activities, and
5 provide essential financial support. *Id.* ¶¶ 7, 19-21. Mr. Hogarth’s care has become
6 even more critical since his mother-in-law, his wife’s other primary caregiver,
7 passed away earlier this month. *Id.* ¶ 21. Many of Mr. Hogarth’s other family
8 members, including his youngest son, also suffer from serious health problems. *Id.*
9 ¶¶ 10-14, 24-26. Mr. Hogarth provides critical financial and emotional support that
10 his family cannot do without. *Id.* ¶¶ 8-9. His substantial liberty interest in
11 remaining free to care for his disabled wife and other family members is
12 constitutionally protected. *See Pham v. Becerra*, 717 F. Supp. 3d 877, 886 (N.D.
13 Cal. 2024) (recognizing an “independent liberty interest in being free from physical
14 restraint”).

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

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

1 Moreover, Mr. Hogarth has deep ties to the United States. He has lived here
2 for most of his life, became a lawful permanent resident in 1989, is married to a
3 U.S. citizen, has six U.S. citizen children, and faces persecution if returned to
4 Jamaica due to his sexual orientation. Hogarth Decl. ¶¶ 2-6. He has doggedly
5 pursued his removal case and is back at the Ninth Circuit having won a stay of
6 removal after contested litigation, meaning he is likely to prevail on his petition for
7 review. Joyce Decl. ¶¶ 26-28. These factors, in addition to the \$25,000 Mr.
8 Hogarth would lose, make flight extraordinarily unlikely.

9 ICE schedules two to four check-ins each month with Mr. Hogarth. Hogarth
10 Decl. ¶ 36. His next appointment is scheduled for November 5, 2025, at ICE's
11 offices. *Id.* The well-documented practice of ICE detaining individuals at
12 immigration check-in appointments absent notice and a hearing, the vacatur of the
13 order granting him release, and the government's inability to state whether or not
14 Mr. Hogarth will be detained by ICE absent a court order substantiates the tangible
15 risk that ICE will re-arrest and re-incarcerate Mr. Hogarth at this appointment. *See*
16 *id.*; Joyce Decl. ¶¶ 5-6; *Sun, 2025 WL 2730235*, at *2 (recognizing ICE's routine
17 practice of detaining individuals at check-in appointments without prior hearing).

18 Redetaining Mr. Hogarth without reassessing the individualized findings that
19 led to his release, and without allowing him to present evidence of his continued
20 compliance and conduct over the past two plus years, and without permitting him to
21 challenge the basis for detention, creates a substantial probability of wrongful
22 confinement. *See Dkt. No. 13 at 12* (Mr. Hogarth faces “a risk of erroneous re-
23 detention”); *Chi Thon Ngo v. INS, 192 F.3d 390, 398* (3d Cir. 1999) (“The process
24 due [a noncitizen] requires an opportunity for an evaluation of the individual’s
25 *current* threat to the community.”) (emphasis added); *Obregon v. Sessions, 2017*
26 *WL 1407889*, at *2 (N.D. Cal. Apr. 20, 2017) (explaining that due process requires
27 consideration of the “remoteness” of any convictions and “intervening events that
28 might undermine a finding of dangerousness”). Moreover, his detention would

1 cause devastating harm to his family, particularly his disabled wife who depends on
2 him for essential care. Hogarth Decl. ¶¶ 15-21; *see also* Dkt. No. 13 at 12-13 (“Not
3 only would Petitioner be deprived of due process under the Fifth Amendment
4 absent injunctive relief, but the members of his family would also suffer from the
5 loss of his income and emotional support.”).

6 Correspondingly, a hearing before a neutral arbiter at which the government
7 bears the burden of proving by clear and convincing evidence that some change in
8 the conditions of his release is warranted would substantially reduce this risk of
9 erroneous deprivation. *Guillermo M.R.*, 2025 WL 1983677, at *8 (“allowing a
10 neutral arbiter to review the facts would significantly reduce the risk of erroneous
11 deprivation.”); *see also Singh v. Holder*, 638 F.3d at 1203. And here, there are no
12 procedures provided by statute or regulation that would allow Mr. Hogarth to
13 challenge his detention once he is redetained. As explained *infra*, Mr. Hogarth’s
14 detention is governed by 8 U.S.C. § 1226(c) which mandates his ongoing detention
15 without any review. *See Avilez v. Garland*, 69 F.4th 525, 536 (9th Cir. 2023)
16 (holding that Section 1226(c) does not entitle a detained noncitizen to a bond
17 hearing).

18 **5. The Government’s Interest in Detention Without Process Is
19 Minimal or Nonexistent.**

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

25 Immigration custody hearings are “routine and impose a ‘minimal’ cost.”
26 *Singh v. Andrews*, 2025 WL 1918679, at *8. Mr. Hogarth has lived freely without
27 incident for over two and a half years while diligently pursuing his appeal of the
28 removal order in the Ninth Circuit. Hogarth Decl. ¶ 35. An IJ has already

1 determined his risk of flight is mitigatable—a determination supported by Mr.
2 Hogarth’s deep ties to Los Angeles, his posting of a \$25K bond, and the Ninth
3 Circuit granting his stay of removal. Joyce Decl. ¶¶ 22, 27, Ex. A at 5-6. The
4 government has no interest in detaining Mr. Hogarth unjustly. *See Dkt. No. 13*
5 (finding “the government’s interest in re-detaining” Mr. Hogarth is low because he
6 has complied with bond release conditions). Any effort to remove Mr. Hogarth
7 from the community in accordance with law would be amply served by a hearing
8 before a neutral arbiter where the government can demonstrate its burden by clear
9 and convincing evidence. *See Rajnish v. Jennings*, 2020 WL 7626414, at *10
10 (N.D. Cal. Dec. 22, 2020).

11 “Detention for its own sake, to meet an administrative quota, or because the
12 government has not yet established constitutionally required pre-detention
13 procedures is not a legitimate government interest.” *Pinchi v. Noem*, 2025 WL
14 2084921, at *5 (N.D. Cal. July 24, 2025). Requiring the government to provide a
15 custody hearing before a neutral decision-maker and to meet its burden of proof by
16 clear and convincing evidence would impose no meaningful burden and would not
17 obstruct or delay the removal process. To the contrary, it would ensure any
18 detention is justified.

19 * * *

20 All three *Mathews* factors weigh decisively in Mr. Hogarth’s favor. *See Dkt.*
21 No. 13 at 10-12. He possesses a substantial liberty interest in remaining free to care
22 for his family. The risk of erroneous deprivation is exceptionally high where he has
23 been afforded no hearing before a neutral adjudicator and the government has not
24 been required to prove by clear and convincing evidence that changed
25 circumstances warrant any alteration in his conditions of release. Finally, the
26 government bears minimal burden in providing a hearing with these basic
27 procedural safeguards. Mr. Hogarth is therefore likely to succeed on the merits of
28 his procedural due process claim.

B. The BIA's Decision Is Not in Accordance with Law.

Mr. Hogarth is also likely to prevail on his APA claim.¹ The APA requires reviewing courts to “hold unlawful and set aside agency action, findings, and conclusions” that are “not in accordance with law.” *Singh v. Clinton*, 618 F.3d 1085, 1088 (9th Cir. 2010) (quoting 5 U.S.C. § 706(2)(A)). The BIA’s decision to vacate the IJ’s bond order is plainly not in accordance with law because its reasoning rests on fundamental legal errors.

The BIA reasoned that neither it nor the IJ has “regulatory authority to set bond conditions” because a final administrative order of removal was entered against Mr. Hogarth in January 2025. Joyce Decl., Ex. B at 3. That is plainly wrong. The IJ’s authority to grant bond derived from the district court order, and the entry of a final administrative order of removal almost two years after the fact does not affect that authority.

First, the BIA erred in reasoning that the bond should be vacated because neither it, nor the IJ, has “regulatory authority to set bond conditions” when a final administrative order has issued. *Id.* The IJ’s authority to set bond for Mr. Hogarth derived entirely from the district court judgment that ordered the IJ to hold a bond hearing to comply with the Due Process Clause—in other words, the IJ’s authority was never dependent on regulations or statutes.² To the contrary, the IJ had no statutory or independent regulatory authority to set Mr. Hogarth’s bond conditions because he was detained under 8 U.S.C. § 1226(c), which expressly prohibits bond hearings.³ See *Avilez*, 69 F.4th at 530 (holding that a noncitizen detained under

¹ The Court declined to address Mr. Hogarth's claim in its order granting the TRO application because it determined that Mr. Hogarth had shown a likelihood of success on his Due Process claim. Dkt. No. 13 at 10, n.2.

² 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. ¶¶ 15-19.

³ 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. ¶ 23, Ex. A at 2.

1 Section 1226(c) “is not statutorily entitled to a bond hearing”; *see also Castaneda*
2 *v. Garland*, 562 F. Supp. 3d 545, 560 (C.D. Cal. 2021) (explaining that an
3 “immigration judge lacks jurisdiction to conduct a bond hearing for a noncitizen,”
4 who, like Mr. Hogarth, is “detained under 8 U.S.C. § 1226(c)”).

5 Second, the entry of a final order of removal by the agency has *no effect* on
6 the authority conferred by the district court. That is especially true here, given that
7 the January 2025 order of removal entered against Mr. Hogarth has been *stayed* by
8 the Ninth Circuit. Joyce Decl. ¶ 27. The district court’s holding was grounded in
9 the Due Process Clause and so the particular statute that authorizes Mr. Hogarth’s
10 detention is largely irrelevant. *See Doe v. Becerra*, 697 F. Supp. 3d 937, 943 (N.D.
11 Cal. 2023) (finding that “the shift in the statutory basis governing Doe’s detention
12 does not negate his constitutional rights nor substantively change the applicable due
13 process analysis”). Indeed, IJs often hold bond proceedings after a final
14 administrative order of removal is entered and while judicial review is
15 pending. *See, e.g., Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008)
16 (describing bond proceedings that were held after the administrative removal phase
17 had concluded and while a petition for judicial review was pending).

18 Moreover, the entry of the final order of removal changes nothing about Mr.
19 Hogarth’s legal status under 8 U.S.C. § 1226(c). As the Ninth Circuit has
20 explained, where an individual has a stay of removal, the government’s authority to
21 detain a noncitizen under Section 1226(c) “applies throughout the administrative
22 *and judicial phase* of removal proceedings.” *Avilez*, 69 F.4th at 535 (emphasis
23 added). Mr. Hogarth was detained under Section 1226(c) for nearly two years after
24 the BIA ordered him removed in August 2021, and he was detained for the entire
25 pendency of his first petition for review before the Ninth Circuit. Joyce Decl.
26 ¶¶ 14-22. And, but for the district court ordering a constitutionally mandated
27 hearing, and the IJ granting him bond at that hearing, he would remain detained
28 pursuant to Section 1226(c) today because his second petition for review before the

1 Ninth Circuit is pending with a stay of removal in place. *Id.* ¶¶ 24-28; *see also* 8
2 U.S.C. § 1231(a)(1)(B) (providing that, if a court reviews the removal order and
3 stays the removal, the removal period does not begin until “the date of the court’s
4 final order”).

5 Lastly, the fact that the BIA completely failed to mention that the IJ’s bond
6 hearing granting him release was pursuant to a federal court order is another
7 example of the order not being in accordance with law. Not only did the BIA
8 ignore the existence of the district court order; the BIA failed to acknowledge that,
9 by vacating the IJ’s bond decision, it was functionally nullifying the Due Process
10 protections ordered by the district court.⁴ The BIA is not free to “disregard” the
11 mandate of a federal court. *Baez-Sanchez v. Barr*, 947 F.3d 1033, 1036 (7th Cir.
12 2020); *see also Castillo v. Barr*, 980 F.3d 1278, 1283 (9th Cir. 2020) (“Once we
13 reached [our] conclusion, both the Constitution and the statute required the Board to
14 implement it.”).

15 Here the BIA cited nothing—not a case, a statute, or a regulation—to support
16 its flawed reasoning that the administrative order of removal entered against
17 Hogarth somehow retroactively unauthorized the bond conditions that the IJ set
18 pursuant to a district court order that granted the hearing on due process
19 grounds. Joyce Decl., Ex. B at 3. The BIA’s order vacating the IJ’s bond decision
20 was plainly “not in accordance with law” under the APA. 5 U.S.C.
21 § 706(2)(A). Consequently, Mr. Hogarth is likely to succeed, or at a minimum has
22 raised serious questions, on his claim that this Court must set aside the order and
23 reinstate the bond conditions ordered by the IJ.

24 **VI. IRREPARABLE HARM**

25
26 ⁴ 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 Effectively denying Mr. Hogarth bond and revoking his liberty constitutes
2 irreparable harm. “It is well established that the deprivation of constitutional rights
3 ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994-95
4 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)); *see also* Dkt.
5 No. 13 at 12.

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

13 Beyond the deprivation of liberty itself, redetention would destroy the stable
14 life Mr. Hogarth has built. He would immediately lose his employment as a
15 contractor, eliminating the income on which he and his family depend. Hogarth
16 Decl. ¶ 7. His rehabilitation would be severely disrupted—he successfully
17 completed a 30-day residential program and now regularly attends Alcoholics
18 Anonymous, progress that would be jeopardized by incarceration. *Id.* ¶ 35.
19 Moreover, the harm would extend to his family as his redetention will impose
20 severe economic and emotional burdens on his wife and children who rely on his
21 presence and support—particularly given the recent passing of his mother-in-law,
22 who was the other primary caretaker for his wife. *Id.* ¶¶ 10-30; *see Hernandez*, 872
23 F.3d at 995 (recognizing that detention inflicts economic and collateral harms on a
24 detainee’s family that constitute irreparable harm); Dkt. No. 13 at 12-13. None of
25 these losses would be able to be remedied after the fact.

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

27 When the government is the party opposing the request for emergency relief,
28 the balance of the equities and the public interest merge. *Env’t Prot. Info. Ctr. v.*

1 *Carlson*, 968 F.3d 985, 991 (9th Cir. 2020) (citing *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018)).

2
3 Here, the balance of equities overwhelmingly favors Hogarth, who faces
4 irreparable injury in the form of indefinite detention, deprivation of his fifth
5 amendment right to due process, and threats to his life and livelihood if the BIA's
6 final order is carried out. *Hernandez*, 872 F.3d at 996 (when “[f]aced with ...
7 preventable human suffering, ... the balance of hardships tips decidedly in
8 plaintiffs' favor”) (internal citation omitted); *see also* Dkt. No. 13 at 13.

9 **VIII. CONCLUSION**

10 For the foregoing reasons, Mr. Hogarth respectfully requests that the Court
11 convert his application for a TRO into one for preliminary injunction and issue an
12 order enjoining ICE from redetaining him pending resolution of his Petition.

13

14

Respectfully Submitted,

15

16

Dated: October 10, 2025

KEKER, VAN NEST & PETERS
LLP

17

18

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

19

20

Attorneys for Petitioner Robert
George Hogarth

21

22

Dated: October 10, 2025

LAKIN & WILLE LLP

23

24

By: /s/ Judah Lakin
Judah Lakin
Amalia Wille

25

26

Attorneys for Petitioner Robert
George Hogarth

27

28