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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 MYKE JONATHAN CUX JOCOP,
13 a.k.a. Mike Cux Jocop,

14 *Petitioner,*

15 v.

16 SERGIO ALBARRAN, Field Office Director of
17 the San Francisco Field Office of U.S.
18 Immigration and Customs Enforcement;
19 TODD M. LYONS, Acting Director of
20 U.S. Immigration and Customs Enforcement;
21 KRISTI NOEM, Secretary of the U.S.
22 Department of Homeland Security; and
23 PAMELA BONDI, Attorney General of the
24 United States,

25 *Respondents.*

Case No. 3:25-cv-09059-JD

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

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

IMMIGRATION HABEAS CASE

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner, Mr. Myke Jonathan Cux Jocop ("Mr. Cux Jocop"), hereby moves this Court to order Respondents to immediately release Mr. Cux Jocop and enjoin Respondents from re-arresting Mr. Cux Jocop unless and until he is afforded notice and a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether clear and convincing evidence demonstrates that he currently poses a flight risk or danger to the community such that his re-incarceration would be justified.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the Petition for Writ of Habeas Corpus, filed at Dkt. 1, accompanying exhibits at Dkts. 1-1 and 1-2, and the attached Authenticating Declaration of Peter Weiss and Exhibits in Support of TRO. Notice of the filing of this Motion has been provided to Respondents' counsel. *See* Authenticating Declaration of Peter Weiss, Exh. B (TRO Notice Decl.).

Mr. Cux Jocop warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in ending his unconstitutional detention and preventing his re-detention absent a constitutionally-compliant pre-deprivation hearing before a neutral adjudicator.

Respondents re-detained Mr. Cux Jocop on Tuesday, October 21, 2025 at approximately 4:00 PM and he remains detained at the time of filing the instant motion. Mr. Cux Jocop's continued re-incarceration will result in immediate, irreparable injury, not only to Mr. Cux Jocop, whose mental and physical health will deteriorate significantly in detention, but also to his long-term partner and their four children, ages 2, 5, 9 and 14, for whom Mr. Cux Jocop is both a financial provider and primary caretaker.

Absent immediate relief from this Court, Mr. Cux Jocop's continued re-detention without notice and a hearing on whether such re-detention is justified is violating and will continue to

1 violate Mr. Cux Jocop's constitutional rights.

2 WHEREFORE, Mr. Cux Jocop prays that this Court grant his request for a temporary
3 restraining order and a preliminary injunction ordering Respondents to immediately release him
4 and enjoining them from re-detaining him unless and until he is afforded a constitutionally-
5 compliant hearing before a neutral adjudicator on the question of whether his re-detention is
6 justified.

7 Dated: October 23, 2025

Respectfully Submitted

8 /s/Peter Weiss

9 Peter Weiss

10 Attorney for the Petitioner
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1 **I. INTRODUCTION**

2 Petitioner, Myke Jonathan Cux Jocop Alas (“Mr. Cux Jocop”), by and through
3 undersigned counsel, hereby files this motion for temporary restraining order and preliminary
4 injunction to order Respondents to immediately release Mr. Cux Jocop and enjoin the U.S.
5 Department of Homeland Security (“DHS”) and U.S. Immigration and Customs Enforcement
6 (“ICE”) from re-arresting Mr. Cux Jocop unless and until he is afforded notice and a hearing
7 before a neutral decisionmaker at which the government is required to establish he is a danger
8 or flight risk, as required by the Due Process clause of the Fifth Amendment. *See, e.g.,*
9 *Barrenechea v. Albarran*, No. 25-cv-07883-VC, 2025 U.S. Dist. LEXIS 189726 (N.D. Cal.
10 Sept. 22, 2025); *Duong v. Kaiser*, No. 25-cv-07598-JST, 2025 U.S. Dist. LEXIS 185024 (N.D.
11 Cal. Sept. 19, 2025); *Diaz v. Kaiser*, No. 25-cv-05071, 2025 U.S. Dist. LEXIS 113566 (N.D.
12 Cal. June 14, 2025); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 U.S. Dist. LEXIS 142213
13 (N.D. Cal. July 4, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019).

14 The DHS previously incarcerated Mr. Cux Jocop— whose sole criminal
15 conviction has been vacated for legal invalidity—for about four months during the height of the
16 COVID-19 pandemic in 2020. In June 2020, a court in this district ordered Mr. Cux Jocop
17 released pursuant to a bail application process that took care to consider flight risk and danger to
18 the community. While at liberty for more than five years since then, Mr. Cux Jocop has fully
19 complied with the court’s bail order and his ICE supervision conditions, including wearing a
20 GPS ankle monitor and participating in the Intensive Supervision Appearance Program
21 (“ISAP”). Based on Mr. Cux Jocop’s diligent compliance, ICE removed his GPS ankle monitor
22 around July 2023. Mr. Cux Jocop continued to participate in ISAP, appear at in-person and
23 virtual check-ins, and comply with all required conditions through the BI SmartLINK application
24 on his phone. He has not been arrested for or convicted of any crime since his release. *Id.*
25 Nevertheless, on Tuesday, October 21, 2025, ICE re-detained Mr. Cux Jocop without notice
26 when Mr. Cux Jocop appeared at a regularly-scheduled check-in at the ICE office in San
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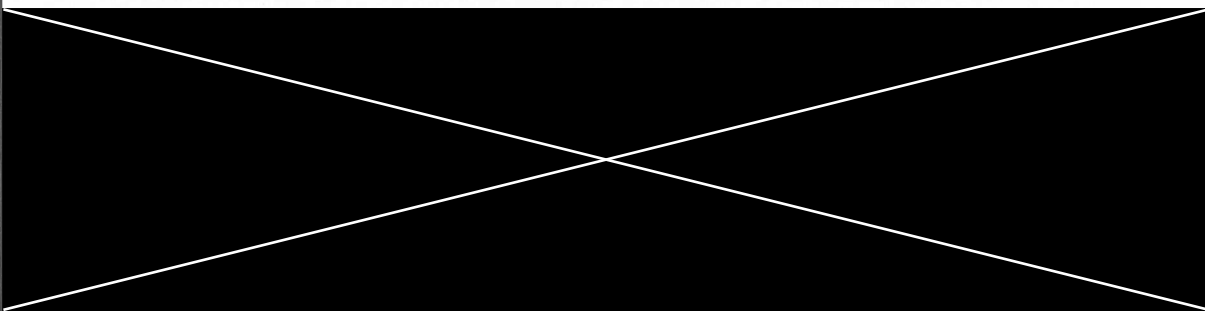
1 Francisco, California.

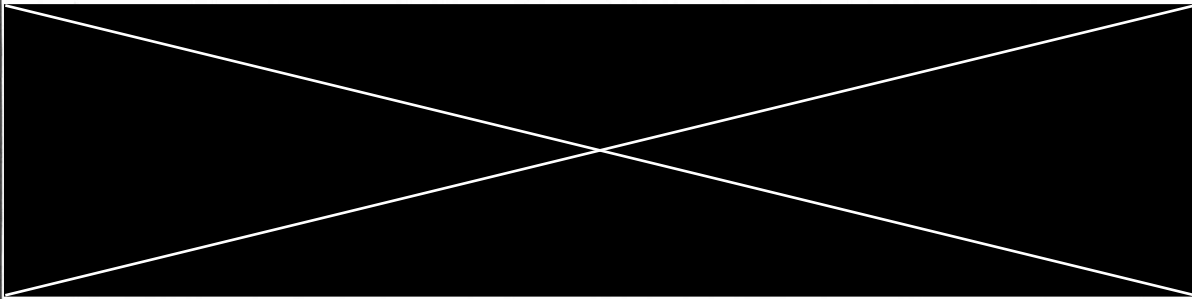
2 Mr. Cux Jocop has a strong interest in his liberty and is likely to succeed in establishing
3 that ICE's action in re-detaining him before providing notice or hearing before a neutral
4 adjudicator violates the Due Process Clause. Further, Mr. Cux Jocop and his family will suffer
5 immediate and irreparable harm from his detention. Mr. Cux Jocop and his partner, Nancy, have
6 two U.S. citizen children, ages 2 and 5, and Mr. Cux Jocop is also a stepfather to Nancy's two
7 U.S. citizen children, ages 9 and 14. Mr. Cux Jocop is a primary caregiver for these children,
8 taking care of them while Nancy is at work, and only leaving for his own full-time job as a
9 delivery driver when Nancy returns home. Furthermore, their two-year-old son is currently
10 recovering from surgery and requires extra care. Nancy relies on Mr. Cux Jocop's support and
11 cannot provide for and care for their children on her own. Further, the balance of equities and the
12 public interest favor Mr. Cux Jocop. Since his release from custody in 2020, Mr. Cux Jocop has
13 diligently pursued his case in Immigration Court, and the government granted him work
14 authorization. He works full-time as a delivery driver, cares for his partner and children, and
15 contributes to the community. The Court should order his immediate release and enjoin his re-
16 detention absent a hearing at which the government must show by clear and convincing evidence
17 that he is a current flight risk or danger to the community to justify further detention.

19 **II. FACTUAL BACKGROUND**

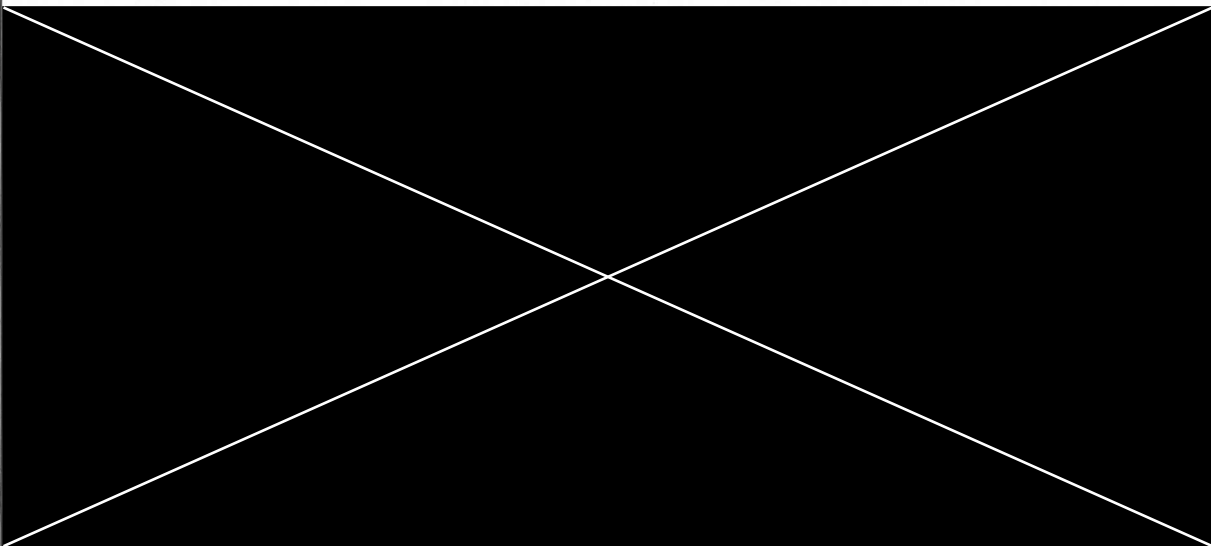
20 **A. Immigration Proceedings**

21 Petitioner Myke Jonathan Cux Jocop is a 40-year-old man from Guatemala. *See*
22 Authenticating Declaration of Peter Weiss, Exh. A (Corrected Weiss Decl.), ¶ 3. 

23 



Mr. Cux Jocop lived in the United States until about March 2020, when he was detained by ICE and his removal order was reinstated. *Id.*, ¶ 10.



Mr. Cux Jocop's case remains pending before the San Francisco Immigration Court, with an individual hearing scheduled for August 25, 2026. *Id.*, ¶ 15.

B. Detention, Release, and Participation in the Community Over the Past 5 Years

As stated above, Mr. Cux Jocop was detained by ICE in March 2020. On June 15, 2020, U.S. District Judge Vince Chhabria granted his individualized bail application submitted as part of a class action challenging conditions of immigration detention during the COVID-19 pandemic. *See* Dkt. 1-2, Bail Application Approval Order; *see Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36 (N.D. Cal. 2020), *aff'd in part and ref'd to mediation*, 845 Fed. Appx. 530 (9th Cir. 2021) (granting TRO and providing district court bail application process for individuals

1 detained in certain ICE facilities). Judge Chhabria ordered Mr. Cux Jocop released on bail. *See*
2 *Id.*; Corrected Weiss Decl., ¶ 17.

3 The next day, June 16, 2020, ICE released Mr. Cux Jocop on an order of supervision.
4 Corrected Weiss Decl., ¶ 18. ICE placed Mr. Cux Jocop on a monitoring program through the
5 Intensive Supervision Appearance Program (“ISAP”). *Id.* At first, Mr. Cux Jocop was outfitted
6 with a mandatory ankle monitor with a GPS tracking device. *Id.*, ¶ 19. However, around July
7 2023, in recognition of Mr. Cux Jocop’s compliance with his order of supervision, ISAP de-
8 escalated Mr. Cux Jocop’s case and removed the GPS ankle monitor. *Id.* Mr. Cux Jocop
9 continued to communicate with ISAP, appear at in-person and virtual check-ins, and comply
10 with all required conditions through the BI SmartLINK application on his phone. *Id.*, ¶ 19.

11 In the more than 5 years since his release from ICE detention, Mr. Cux Jocop has
12 complied with the bail order and ICE’s order of supervision. *Id.*, ¶ 20. He has repeatedly attended
13 his in-person check-ins with ICE and ISAP and his virtual check-ins through the BI SmartLINK
14 application. *Id.* He has not been arrested for or convicted of any crime during that time. *Id.* In
15 fact, his sole conviction, dating from 2013, was vacated for legal invalidity in 2021. *Id.*, ¶ 21.

16 In 2021, U.S. Citizenship and Immigration Services (“USCIS”) issued Mr. Cux Jocop an
17 employment authorization document (“EAD”). *Id.*, ¶ 11. Since that time, Mr. Cux Jocop has
18 worked lawfully to support his family. *Id.*

19 Since his release, Mr. Cux Jocop has lived with his partner, Nancy, and their children in
20 San Mateo, California. *Id.*, ¶ 5. The couple have two U.S. citizen children together, ages 2 and 5,
21 and Mr. Cux Jocop is a stepfather to Nancy’s two U.S. citizen children, ages 9 and 14. *Id.* In
22 addition to working full-time as a delivery driver, Mr. Cux Jocop is a primary caretaker for his
23 children. *Id.*, ¶¶ 5-6. He takes care of them while Nancy is at work, and only leaves for his job
24 when Nancy returns home in the evening. *Id.* Mr. Cux Jocop’s 2-year-old son is currently
25 recovering from surgery and requires extra care. *Id.*, ¶ 6. Nancy cannot take care of their children
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1 on her own, and does not know how she will provide and care for them if Mr. Cux Jocop remains
2 detained. *Id.*

4 **C. Re-Detention Without Process or a Hearing**

5 Despite Mr. Cux Jocop's compliance with ICE directives, on October 21, 2025, ICE
6 officers detained him at his yearly in-person check in at the San Francisco ICE Office at 630
7 Sansome Street, San Francisco, CA ("630 Sansome Street"). *Id.*, ¶ 22. ICE did not provide Mr.
8 Cux Jocop any notice, hearing, or process prior to his arrest.

9 When undersigned Counsel asked why Mr. Cux Jocop was being detained, an ICE officer
10 said that Mr. Cux Jocop had four ISAP violations where he failed to upload a photo of himself to
11 the BI Application within the short period permitted. *Id.*, ¶ 23. The ICE officer did not provide
12 Mr. Cux Jocop with any evidence of his noncompliance, nor give Mr. Cux Jocop an opportunity
13 to provide contrary evidence of compliance before taking him into custody. *Id.*, ¶ 24.

14 The ICE officer said that Mr. Cux Jocop would be detained overnight at 630 Sansome
15 Street. *Id.*, ¶ 25. Upon information and belief, at the time of filing Mr. Cux Jocop remains
16 detained at the San Francisco ICE office at 630 Sansome St., in San Francisco, California. *Id.*

17 Despite five years at liberty during which he has complied with the law, Mr. Cux Jocop
18 has now been re-detained without any notice or opportunity to challenge his re-detention. He
19 remains in ICE custody, separated from his family.

21 **III. LEGAL STANDARD**

22 Mr. Cux Jocop is entitled to a temporary restraining order if he establishes that he is
23 "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of
24 preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the
25 public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int'l*
26 *Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that
27 preliminary injunction and temporary restraining order standards are "substantially identical").
28 Alternatively, under the Ninth Circuit's sliding scale approach, the Court may grant a temporary

1 restraining order if Mr. Cux Jocop raises “serious questions” as to the merits of his claims, the
 2 balance of hardships tips “sharply” in his favor, and the remaining equitable factors are
 3 satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

4 **IV. ARGUMENT**

5 Mr. Cux Jocop overwhelmingly satisfies the TRO standard and should be immediately
 6 released and remain at liberty until a pre-deprivation hearing is held before a neutral adjudicator
 7 at which the government establishes he is a danger to the community or a flight risk. Courts in
 8 this district have recently ordered similar relief. *See, e.g., Barrenechea*, 2025 U.S. Dist. LEXIS
 9 189726; *Duong*, 2025 U.S. Dist. LEXIS 185024; *Diaz*, 2025 U.S. Dist. LEXIS 113566; *Pinchi*,
 10 2025 U.S. Dist. LEXIS 142213. The Court should do the same here and grant the TRO.

11 **A. Mr. Cux Jocop is Likely to Succeed on the Merits of His Claim That In This** 12 **Case the Constitution Required a Hearing Before a Neutral Adjudicator** 13 **Prior to Any Re-Incarceration by ICE**

14 Mr. Cux Jocop is likely to succeed on his claim that, in his particular circumstances,
 15 Respondents violated his rights under the Due Process Clause by re-detaining him without
 16 providing a pre-deprivation hearing before a neutral decision maker to determine whether re-
 17 detention is justified by a risk of flight or danger to the community.

18 Civil immigration detention must be justified by a permissible purpose and reasonably
 19 related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two permissible
 20 regulatory goals for immigration detention are “ensuring the appearance of [noncitizens] at
 21 future immigration proceedings” and “preventing danger to the community.” *Id.* Substantive
 22 due process “requires that that...[civil immigration detention] bear some reasonable relation to”
 23 one of those two permissible goals. *See Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004).
 24 Where civil detention is not related to a permissible regulatory goal, is “excessive in relation to”
 25 its purpose, or is “employed to achieve objectives that could be accomplished” with “alternative
 26 and less harsh methods,” the detention amounts to punishment in violation of substantive due
 27 process. *See id.* at 931-32.
 28

Due process also constrains ICE’s power to re-arrest a noncitizen who is at liberty following a release from immigration custody. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process.”). “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 528 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *see also id.* at 718 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.”).

Courts in this district and beyond have recognized that due process requires that a noncitizen like Mr. Cux Jocop who was previously found by an adjudicator to be appropriate for release from immigration detention be given a pre-deprivation hearing *before* ICE re-detains him. *See, e.g., Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest where plaintiff had been on bond for more than five years); *Barrenechea*, 2025 U.S. Dist. LEXIS 189726.

Indeed, in similar circumstances to this case, where a noncitizen released in a *Zepeda-Rivas* bail hearing was re-arrested prior to being provided a pre-deprivation hearing, courts have required ICE to immediately release petitioners and ordered that re-detention not occur absent a constitutionally compliant pre-deprivation hearing. *Duong*, 2025 U.S. Dist. LEXIS 185024 (granting PI and finding pre-deprivation hearing required for individual released in *Zepeda-Rivas* bail hearing); *Qazi v. Albarran*, No. 2:25-cv-02791-TLN-SCR, 2025 U.S. Dist. LEXIS 191922 (E.D. Cal., Sept. 29, 2025) (granting TRO); *cf. also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *5, (E.D. Cal. July 11, 2025) (granting

preliminary injunction, ordering immediately release from custody, and barring ICE from re-detaining petitioner through pendency of his proceedings without first holding a pre-deprivation hearing); *Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO (HC), 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025) (granting temporary restraining order, ordering immediate release from custody, and barring ICE from re-detaining petitioner absent a pre-deprivation hearing), converted to preliminary injunction at Dkt. 15 (Aug. 20, 2025); *Pineda Campos v. Kaiser*, No. 25-cv-06920 (EKL), Dkt. 4 (N.D. Cal. Aug. 16, 2025) (granting temporary restraining order, ordering immediately release from custody, and barring Respondents from re-detaining petitioner without a pre-deprivation hearing); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, Dkt. 10 (N.D. Cal. Aug. 17, 2025) (same).¹

Courts have analyzed these claims by considering whether there exists a protected liberty interest under the Due Process Clause, and then examining the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989); *see also Duong*, 2025 U.S. Dist. LEXIS 185024, at *9. That analysis leads to the same result here.

1. Mr. Cux Jocop Has a Protected Liberty Interest in His Release

Mr. Cux Jocop's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Further, the Supreme Court has repeatedly recognized that

¹ In addition to being constrained by due process, ICE's authority to re-detain noncitizens is also constrained by BIA case law. Although the statute and regulations grant ICE the ability to revoke a noncitizen's immigration bond, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9), the BIA recognized that ICE's authority to re-arrest noncitizens is implicitly limited to situations where there is a material "change in circumstances." *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). The Ninth Circuit has assumed that, under *Sugay*, ICE has no authority to re-detain absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. Appx. 787, 788 (9th Cir. 2021). Thus, ICE may only re-detain a noncitizen like Mr. Cux Jocop if changed circumstances *increases* his risk of flight or danger to the community. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (discussing *Sugay*). Because Mr. Cux Jocop has repeatedly appeared at ICE or ISAP offices and has never been arrested or convicted of any crime during his five years at liberty, his risk of flight and danger have significantly *decreased* since the District Court ordered his release in May 2020. His re-detention thus violates BIA case law in addition to Due Process.

1 individuals' weighty interest in avoiding re-incarceration is protected by the Due Process
 2 Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a
 3 protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47
 4 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

5 In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has
 6 in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions
 7 of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and
 8 to form the other enduring attachments of normal life." *Id.* at 482. The Court explained that "the
 9 liberty of a parolee, although indeterminate, includes many of the core values of unqualified
 10 liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.*
 11 Therefore, "[b]y whatever name, the liberty is valuable and must be seen within the protection
 12 of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

13 This basic principle—that individuals have a liberty interest in their conditional
 14 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
 15 occasions. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
 16 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
 17 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony
 18 probation have a protected liberty interest requiring pre-deprivation process). In fact, an
 19 individual maintains a protected liberty interest in his freedom even when he obtained liberty
 20 through a mistake of law or fact. *See Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.
 21 2017); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
 22 considerations support the notion that an inmate released on parole by mistake, because he was
 23 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
 24 the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would
 25 be inconsistent with fundamental principles of liberty and justice" to return him to prison)
 26 (internal quotation marks and citation omitted).

27 Here, when this Court "'compar[es] the specific conditional release in [Mr. Cux Jocop's
 28 case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are

1 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Cux
 2 Jocop's release "enables him to do a wide range of things open to persons" who have never
 3 been in custody or convicted of any crime, including to live at home, work, care for his children,
 4 and "be with family and friends and to form the other enduring attachments of normal life."
 5 *Morrissey*, 408 U.S. at 482. Indeed, Mr. Cux Jocop is both a breadwinner for his family and a
 6 caretaker for his children, ages 2, 5, 9 and 14. Corrected Weiss Decl., ¶¶ 5-6. During the day, he
 7 picks up the children from school and provides childcare while his partner works, and then he
 8 goes to his full-time job as a delivery driver when his partner comes home. *Id.*, ¶ 6. Currently,
 9 Mr. Cux Jocop's two-year-old son is recovering from surgery and requires extra care, which Mr.
 10 Cux Jocop provides daily. *Id.* Mr. Cux Jocop has complied with all conditions of release for
 11 over five years, as he litigates his removal proceedings. And rather than expediting Mr. Cux
 12 Jocop's case during the past five years, the government "chose to allow [it] to continue for five
 13 years while he reintegrated into the community." *Duong*, 2025 U.S. Dist. LEXIS 185024, at
 14 *14-15 (quoting *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 U.S. Dist.
 15 LEXIS 158839 (E.D. Cal. Aug. 15, 2025)). Thus, Mr. Cux Jocop has a weighty liberty interest
 16 for which process was due before the government could deprive him of it.

17 2. Mr. Cux Jocop's Liberty Interest Mandated a Hearing Before any Re-Arrest

18 If a petitioner identifies a protected liberty interest, the Court must then determine what
 19 process is due. "Adequate, or due, process depends upon the nature of the interest affected. The
 20 more important the interest and the greater the effect of its impairment, the greater the
 21 procedural safeguards the [government] must provide to satisfy due process." *Haygood v.*
 22 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-
 23 82). To determine the process due in this context, courts use the flexible balancing test set forth
 24 in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970;
 25 *Jorge M. F.*, 534 F. Supp. 3d at 1055.

26 Under the *Mathews* test, the Court balances three factors: "first, the private interest that
 27 will be affected by the official action; second, the risk of an erroneous deprivation of such
 28

1 interest through the procedures used, and the probative value, if any, of additional or substitute
 2 procedural safeguards; and finally the government's interest, including the function involved
 3 and the fiscal and administrative burdens that the additional or substitute procedural
 4 requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

5 Importantly, the Supreme Court "usually has held that the Constitution requires some
 6 kind of a hearing *before* the State deprives a person of liberty or property." *Zinerman v. Burch*,
 7 494 U.S. 113, 127 (1990) (emphasis in original). Post-deprivation process only comports with
 8 due process in a "special case" where post-deprivation remedies are "the only remedies the
 9 State could be expected to provide." *Id.* at 128. Further, only where "one of the variables in the
 10 *Mathews* equation—the value of pre-deprivation safeguards—is negligible in preventing the
 11 kind of deprivation at issue" can the government avoid providing pre-deprivation process. *Id.*;
 12 *see also Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting
 13 involuntary civil commitment proceedings may not constitutionally be held in jail pending the
 14 determination as to whether they can ultimately be recommitted).

15 Here, the *Mathews* factors all favor Mr. Cux Jocop and establish that the government
 16 was required to provide him notice and a hearing *prior* to any re-incarceration. *See, e.g., Duong*,
 17 2025 U.S. Dist. LEXIS 185024; *Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d at
 18 1055.

19 *a. Mr. Cux Jocop's private interest in his liberty is profound*

20 First, Mr. Cux Jocop's private interest in his liberty is substantial. *See Foucha v.*
 21 *Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core
 22 of the liberty protected by the Due Process Clause."). Under *Morrissey* and its progeny,
 23 individuals conditionally released from serving a criminal sentence have a liberty interest that is
 24 "valuable," even if that freedom is lawfully recovable. *Morrissey*, 408 U.S. at 482; *Young*, 520
 25 U.S. at 152. Thus, released individuals must be provided notice and a hearing *before* they are
 26 incarcerated. *See Johnson*, 682 F.2d at 873; *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864
 27 F.3d at 683. If that is true for parolees or probations—who have a diminished liberty interest
 28 given their convictions—the interest for an individual awaiting civil immigration proceedings is

1 even greater. *See, e.g., Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of
 2 immigration detention, a noncitizen’s interest in release on bond is “arguably greater than the
 3 interest of parolees in *Morrissey*.”).

4 Mr. Cux Jocop’s private interest is increased by the harm to him and his family from his
 5 detention. As explained above, Mr. Cux Jocop’s detention leaves his family without financial,
 6 physical and emotional support, especially for his children and stepchildren. It is Mr. Cux Jocop
 7 who takes care of them each day while his partner is at work, and before he leaves for his own
 8 full-time job in the evenings. Corrected Weiss Decl., ¶ 6. Moreover, the couple’s two-year-old
 9 son is currently recovering from surgery and requires extra care at this time. *Id.* Mr. Cux
 10 Jocop’s partner cannot provide and care for their children on her own, without Mr. Cux Jocop’s
 11 contributions. *Id.* Mr. Cux Jocop’s interest in his years-long liberty must be weighed heavily.
 12 *See Mathews*, 424 U.S. at 334-35.

13 *b. The Risk of an Erroneous Deprivation of Liberty is High, and a*
 14 *Constitutionally Compliant Hearing Would Decrease That Risk*

15 The risk of erroneous deprivation of liberty is high if ICE can unilaterally re-detain Mr.
 16 Cux Jocop without a hearing before a neutral adjudicator that determines whether detention
 17 serves a permissible purpose of preventing flight risk or danger. *See Zadvydas*, 533 U.S. at 690.
 18 Indeed, a court in this district already reviewed Mr. Cux Jocop’s case five years ago, taking
 19 flight risk and danger into account, and found that Mr. Cux Jocop should be released. *See* Dkt.
 20 1-2, Bail Application Approval Order. In the time since, the Court has been proven correct: Mr.
 21 Cux Jocop complied with the bail conditions, reported as required to ICE, and remained law-
 22 abiding. Moreover, ICE itself de-escalated Mr. Cux Jocop’s case, taking him off an ankle
 23 monitor. Corrected Weiss Decl., ¶ 33. In fact, Mr. Cux Jocop was re-detained *when he appeared*
 24 *in person at ICE as directed*. These developments show that detention is likely *not* warranted.

25 To the extent ICE is alleging that Mr. Cux Jocop violated the terms of his release by
 26 uploading photos of himself to the BI Application on the same date he was supposed to but
 27 slightly after the brief 2-hour window required, that would not show he is a flight risk. On the
 28

contrary, ICE acknowledges he is regularly informing ISAP of his whereabouts, and attending in-person appointments when required. Further, Mr. Cux Jocop was never informed of a deficiency by ICE or ISAP prior to his detention, nor given an opportunity to provide evidence of compliance or attempted compliance. *See Id.*, ¶¶ 20, 24.² To the extent there is a dispute regarding Mr. Cux Jocop's compliance with ISAP, a hearing is particularly important in ensuring Mr. Cux Jocop is not unnecessarily detained. Yet DHS's choice to re-detain Mr. Cux Jocop without notice or a hearing has deprived him of his liberty and separated him from his family and community without any opportunity for Mr. Cux Jocop to contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at his scheduled check-in without notice or hearing, and where compliance with release terms is in dispute, and ordering immediate release and enjoining Respondents from re-detention without a pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show by clear and convincing evidence that petitioner is a flight risk or danger to the community); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 187248 (E.D. Cal. Sept. 23, 2025) (same).

The value of a pre-deprivation hearing before a neutral decision-maker is high. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than ICE's unilateral decision to produce accurate determinations regarding factual disputes, and to determine

² Notably, there have been numerous reports that the BI SmartLINK application is vulnerable to "glitches" and "frequently malfunctions, causing immigrants to miss required check-ins." Authenticating Declaration of Peter Weiss., Exh. C, Johana Bhuiyan, "Poor tech, opaque rules, exhausted staff: inside the private company surveilling US immigrants," *The Guardian* (Mar 7, 2022); *see also id.*, Exh. D, Giulia McDonnell Nieto del Rio, "Meet SmartLINK, the App Tracking Nearly a Quarter Million Immigrants," *The Markup* (June 27, 2022) (noting "technical problems with the app" including failure to register a photo when sent).

whether Mr. Cux Jocop actually currently poses a flight risk or danger such that detention is justified. *See, e.g., Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 (“At a hearing, a neutral decisionmaker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness.”). Requiring such a hearing be held *before* Mr. Cux Jocop is re-detained serves to protect his liberty interest, facilitate his right to counsel and to gather evidence, and ensure that ICE’s decision to revoke Mr. Cux Jocop’s release does not evade review. *See Zinermon*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

c. The Government’s Interest in Re-Incarcerating Mr. Without a Hearing is Low

Third, the government’s interest in detaining Mr. Cux Jocop *without* a hearing is low. Mr. Cux Jocop has lived in the community caring for his family without incident, and has appeared at virtual and in-person check-ins as requested for more than five years. The government cannot plausibly assert it has any urgent basis for keeping Mr. Cux Jocop in detention while a pre-deprivation hearing is scheduled, given his lawful conduct over the last five years. In any event, providing Mr. Cux Jocop with a hearing before this Court (or another neutral decisionmaker) to determine whether there is evidence that Mr. Cux Jocop *currently* poses any risk of flight or danger to the community imposes a *de minimis*, if any, burden on the government. Such a hearing is far *less* costly and burdensome for the government than keeping Mr. Cux Jocop detained at what the Ninth Circuit described as a “staggering” cost to the public of \$158 each day per detainee in 2017, “amounting to a total daily cost of \$6.5 million” (the current cost now is likely significantly higher). *Hernandez*, 872 F.3d at 996.

In short, the three *Mathews* factors all weigh in Mr. Cux Jocop’s favor and demonstrate that due process required notice and a hearing before a neutral adjudicator *prior to* Mr. Cux Jocop’s re-incarceration to determine if such re-incarceration is justified. Because Respondents failed to give Mr. Cux Jocop the notice and hearing he was due, Due Process requires his immediate release and an order preventing the government from re-incarcerating him unless and until his is provided with a constitutionally compliant hearing. *See, e.g., Duong*, 2025 U.S. Dist.

1 LEXIS 185024; *Qazi*, 2025 U.S. Dist. LEXIS 191922; *J.O.L.R.*, 2025 U.S. Dist. LEXIS
 2 187248, at *15 (“Petitioner’s immediate release is required to return him to the status quo
 3 ante—the last uncontested status which preceded the pending controversy”) (citing cases).

4
 5 3. Due Process Requires that DHS Bear the Burden to Establish Flight Risk or
 6 Danger to the Community By Clear and Convincing Evidence

7 At a pre-deprivation hearing, due process requires that the government justify re-
 8 detention of Mr. Cux Jocop by clear and convincing evidence that he poses a flight risk or
 9 danger. *See Singh*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the
 10 State in civil proceedings in which the individual interests at stake . . . are both particularly
 11 important and more substantial than mere loss of money.”) (internal quotation marks omitted);
 12 *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the
 13 “consensus view” among District Courts concluding that, “where . . . the government seeks to
 14 detain [a noncitizen] pending removal proceedings, it bears the burden of proving that such
 15 detention is justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-
 16 deprivation hearing before being returned to custody, ordering that the government bear the
 17 burden at the hearing by clear and convincing evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at
 18 *21 (same).

19 The hearing must also consider whether alternatives to detention—such as the ISAP
 20 program that has successfully managed Mr. Cux Jocop’s release for more than five years—
 21 would adequately ensure Mr. Cux Jocop’s appearance. *See, e.g., G.C. v. Wofford*, No. 1:24-cv-
 22 01032-EPG-HC, 2025 U.S. Dist. LEXIS 39773, at *26 (E.D. Cal. Mar. 4, 2025) (ordering bond
 23 hearing at which IJ considers alternative conditions of release); *M.R. v. Warden, Mesa Verde*
 24 *Det. Ctr.*, No. 1:24-cv-00988-EPG-HC, 2025 U.S. Dist. LEXIS 75622, at *34 (E.D. Cal. Apr.
 25 21, 2025) (same).

26 * * *

27 As the above-cited authorities show, Mr. Cux Jocop is likely to succeed on his claim that
 28 the Due Process Clause require notice and a hearing before a neutral decisionmaker *prior to any*

1 re-incarceration by ICE. At the very minimum, he clearly raises serious questions regarding this
 2 issue, so has met the standard for a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

3 **B. Mr. Cux Jocop will Suffer Irreparable Harm Absent Injunctive Relief**

4 Absent the temporary restraining order he seeks, Mr. Cux Jocop will suffer continued
 5 irreparable harm while he remains deprived of his liberty and subjected to unlawful
 6 incarceration by ICE. Detainees in ICE custody are held in “prison-like conditions.” *Preap v.*
 7 *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time
 8 spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a
 9 job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33
 10 (1972); *accord Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir.
 11 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms
 12 imposed on anyone subject to immigration detention” including “subpar medical and
 13 psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and
 14 their families as a result of detention, and the collateral harms to children of detainees whose
 15 parents are detained.” *Hernandez*, 872 F.3d at 995. Finally, the government itself has
 16 documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of
 17 Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in
 18 Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety
 19 standards; staffing shortages affecting the level of care detainees received for suicide watch, and
 20 detainees being held in administrative segregation in unauthorized restraints, without being
 21 allowed time outside their cell, and with no documentation that they were provided health care
 22 or three meals a day).³

23 Additionally, every day that Mr. Cux Jocop is detained leaves his family without a
 24 breadwinner and caretaker of four children. *See Corrected Weiss Decl.*, ¶¶ 5-6. Mr. Cux Jocop’s
 25 partner cannot take care of their children on her own, and does not know how she will provide
 26 for them as a single parent if Mr. Cux Jocop remains detained. *Id.*, ¶ 6. Mr. Cux Jocop’s

27 ³ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
 28 (last accessed Feb. 6, 2024).

1 detention puts the family at significant risk that they will be unable to pay rent or other bills. *Id.*
 2 It also risks harming his children's health, particularly his 2-year-old son who is recovering
 3 from surgery and depends on his father's care while his mother is at work. *Id.*

4 Finally, as the Ninth Circuit has repeatedly found, "the deprivation of constitutional
 5 rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002
 6 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Because Mr. Cux Jocop was
 7 re-detained without notice and in violation of his constitutional rights, he has established
 8 irreparable harm.

9 **C. The Balance of Equities and the Public Interest Favor Granting the** 10 **Temporary Restraining Order**

11 The balance of equities and the public interest undoubtedly favor granting this
 12 temporary restraining order. First, the balance of hardships strongly favors Mr. Cux Jocop. The
 13 government cannot suffer harm from an injunction that prevents it from engaging in an unlawful
 14 practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably
 15 assert that it is harmed in any legally cognizable sense by being enjoined from constitutional
 16 violations."). Therefore, the government cannot allege harm arising from a temporary
 17 restraining order or preliminary injunction ordering it to comply with the Constitution.

18 Further, any burden imposed by requiring the DHS to refrain from arresting Mr. Cux
 19 Jocop unless and until he is provided a hearing before a neutral is both *de minimis* and clearly
 20 outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713
 21 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures
 22 to all persons, even though the expenditure of governmental funds is required.").

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

1 violation of the requirements of Due Process. “The public interest and the balance of the
2 equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act*
3 *Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at
4 996 (“The public interest benefits from an injunction that ensures that individuals are not
5 deprived of their liberty and held in immigration detention because of bonds established by a
6 likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
7 (“Generally, public interest concerns are implicated when a constitutional right has been
8 violated, because all citizens have a stake in upholding the Constitution.”).

9 **V. CONCLUSION**

10 For all the above reasons, this Court should find that Mr. Cux Jocop warrants a temporary
11 restraining order and a preliminary injunction ordering that Respondents immediately release Mr.
12 Cux Jocop and enjoining Respondents from re-arresting him unless and until he is afforded a
13 hearing before a neutral adjudicator to determine whether the government has provided clear and
14 convincing evidence that he is a danger to the community or a flight risk such that re-
15 incarceration is justified.

16
17 Dated: October 23, 2025

Respectfully submitted,

18 /s/ Peter Weiss

19 Peter Weiss

20 *Pro Bono* Attorney for Mr. Cux Jocop
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