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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Eladio CORTEZ MORALES,

Petitioner,

v.

Sergio ALBARRAN, Field Office Director of
the San Francisco Field Office of U.S.
Immigration and Customs Enforcement;

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

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

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

Respondents.

Case No.: 3:25-cv-9241

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF EX PARTE
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 hereby moves this Court for an order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pamela Bondi, in her official capacity as the U.S. Attorney General, from re-arresting Petitioner Eladio Cortez Morales (“Mr. Cortez Morales” or “Petitioner”) unless and until he is afforded 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 there has been a material change in circumstances and that he is a danger or a flight risk 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; Declaration of Peter Weiss, Esq., filed at Dkt. 1-1; accompanying Exhibits A-I, filed at Dkts. 1-2 through 1-10; and the attached Declaration of Peter Weiss Re Notice (TRO Notice Decl.). Notice of the filing of this Motion has been provided to Respondents’ counsel. *See* TRO Notice Decl.

Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing his unlawful re-detention absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

Mr. Cortez Morales is scheduled for an in-person check-in at ICE’s Intensive Supervision Appearance Program (“ISAP”) office in San Jose, California on Tuesday, October 28 at 3pm. ICE is currently detaining large numbers of immigrants at their ICE or ISAP check-ins without providing notice or process. In the past two weeks, undersigned Counsel has had two clients detained at in-person check-ins with ICE or ISAP. Despite undersigned Counsel’s efforts, Respondents have not provided undersigned Counsel with any assurance that Mr. Cortez Morales will not be detained at his check-in today at 3PM.

Re-detention will result in immediate, irreparable injury to Mr. Cortez Morales, who is a

1 survivor of sexual violence and who suffers from PTSD, anxiety and depression, conditions which
2 are likely to be exacerbated by his re-detention. His re-detention will also result in irreparable
3 harm to his mother, who suffers from depression and depends on Mr. Cortez Morales for
4 emotional support. It will also result in irreparable harm to the immigrant community in Gilroy,
5 California, which depends on Mr. Cortez Morales' work of connecting families to immigration
6 legal services and resources.

7 Absent immediate relief from this Court, Petitioner's re-arrest and re-incarceration
8 without notice and a hearing on whether such re-detention is justified would violate Petitioner's
9 right to Due Process.

10 WHEREFORE, Petitioner prays that this Court grant his request for a temporary
11 restraining order and a preliminary injunction enjoining Respondents from re-arresting him unless
12 and until he is afforded a hearing before a neutral decisionmaker on the question of whether his
13 re-detention would be lawful.

14
15 Dated: October 28, 2025

Respectfully Submitted,

16 /s/ Peter Weiss

17 Peter Weiss

18 PANGEA LEGAL SERVICES

19 *Pro Bono* Attorney for Mr. Cortez Morales
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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. Eladio Cortez Morales (“Mr. Cortez Morales”), by and through
3 undersigned counsel, hereby files this motion for a temporary restraining order and preliminary
4 injunction to enjoin the U.S. Department of Homeland Security’s (DHS), U.S. Immigration and
5 Customs Enforcement (ICE) from re-arresting him unless and until he is afforded notice and a
6 hearing before a neutral decisionmaker on the question of whether his bond should be revoked
7 because ICE establishes by clear and convincing evidence that he is a danger to the community
8 or a flight risk.

9 The DHS previously incarcerated Mr. Cortez Morales for over six months—between
10 October 2022 and April 2023—pending resolution of his immigration case. At a bond hearing
11 held pursuant to *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018), *aff’d*, 955 F.3d
12 762 (9th Cir. 2020), *rev’d*, 596 U.S. 543 (2022), an Immigration Judge (“IJ”) determined that Mr.
13 Cortez Morales was neither a flight risk nor a danger and ordered his release from custody on a
14 \$5,000 bond and participation in ICE’s alternatives to detention program. Upon Mr. Cortez
15 Morales’s release, ICE installed an electronic ankle monitor and enrolled him in the Intensive
16 Supervision Appearance Program (“ISAP”). Since his release on April 6, 2023, Petitioner has
17 remained out of custody and complied with ISAP requirements. Because of his compliance, ICE
18 removed his ankle monitor in 2024.

19 During the more than two and a half years in which he has lived at liberty, Mr. Cortez
20 Morales has become a powerful community organizer and advocate for justice in the Bay Area
21 and statewide. He works at a nonprofit organization in Gilroy, California, serving immigrant
22 families. Outside of work, he speaks at events across California to draw attention to the poor
23 conditions of confinement for immigrants in ICE detention. Mr. Cortez Morales is a source of
24 support for his mother, who suffers from depression. He is also a survivor of sexual assault, and
25 he has a pending application for a U Visa based on his reporting and cooperation with the
26 investigation into this crime.

1 Mr. Cortez Morales is scheduled for an in-person check-in at the ISAP office in San Jose,
2 California on Tuesday, October 28 at 3PM. ICE is currently detaining large numbers of
3 immigrants at their ICE or ISAP check-ins without providing notice or process. In the past two
4 weeks alone, undersigned Counsel has had two clients detained at in-person check-ins with ICE
5 or ISAP. Despite undersigned Counsel's efforts, as of the time of filing the instant petition,
6 Respondents have not provided undersigned Counsel with any assurance that Mr. Cortez Morales
7 will not be detained today at 3PM.

8 Mr. Cortez Morales faces the prospect of ICE unilaterally stripping him of his liberty,
9 tearing him away from his family and community, and keeping him detained under mandatory
10 detention without a bond hearing for the foreseeable future. He faces the very real possibility of
11 being transferred outside of Northern California with little or no notice, far away from his family
12 and community. Finally, Mr. Cortez Morales suffers from PTSD, anxiety and depression, and
13 being re-detained by ICE without notice or process, and placed in a carceral setting akin to the
14 one where he was sexually assaulted, is likely to cause him significant psychological harm.

15 By statute and regulation, ICE has the authority to re-arrest a noncitizen and revoke their
16 bond only where there has been a material change in circumstances since the individual's release.
17 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981);
18 *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
19 *Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). That authority, however, is proscribed
20 by the Due Process Clause because it is well-established that individuals released from
21 incarceration have a liberty interest in their freedom. On the particular facts of Mr. Cortez
22 Morales' case, due process requires notice and a hearing *prior to any revocation of his conditional*
23 *release on bond*.

24 That basic principle—that individuals placed at liberty are entitled to process before the
25 government imprisons them—has particular force here, where Mr. Cortez Morales's detention
26 was *already* found to be unnecessary to serve its purpose. An IJ previously found that he need not
27 be incarcerated to prevent flight or to protect the community. Circumstances have not changed
28 that would justify re-arrest. Mr. Cortez Morales has not committed any crimes or been arrested

1 since he was released, and he has complied with ICE's order of supervision and ISAP
2 requirements. Therefore, at a minimum, in order to lawfully re-arrest Mr. Cortez Morales, the
3 Government must first establish, by clear and convincing evidence and before a neutral
4 adjudicator, that there has been a material change in circumstances and that he is a danger or a
5 flight risk, such that his re-incarceration is necessary.

6 Mr. Cortez Morales meets the standard for a temporary restraining order. He will suffer
7 immediate and irreparable harm absent an order from this Court enjoining the government from
8 arresting him at his ISAP check-in on Tuesday, October 28, 2025 at 3PM, unless and until he first
9 receives a hearing before a neutral adjudicator, as demanded by the Constitution. Because holding
10 federal agencies accountable to constitutional demands is in the public interest, the balance of
11 equities and public interest are also strongly in Mr. Cortez Morales's favor.

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

13 Mr. Cortez Morales is 37 years old and lives in Gilroy, California. Dkt. 1-1, Declaration
14 of Peter Weiss ("Weiss Decl."), ¶ 6. He was born in Mexico and brought to the U.S. as an infant,
15 in about 1989. *Id.* He was raised in the U.S. and has no memory of Mexico whatsoever. *Id.*

16 Mr. Cortez Morales' father was killed when he was five years old. *Id.*, ¶ 7. His mother
17 struggled to support the family, and he grew up very poor. *Id.* As a teenager, Mr. Cortez Morales
18 was recruited into a gang, and at age 17, he was arrested for the shooting of a rival gang member.
19 *Id.* He was charged as an adult, convicted of assault with a deadly weapon, and sentenced to 22
20 years in prison. *Id.*

21 In prison, Mr. Cortez Morales was beaten, raped and tortured by an older gang member.
22 *Id.*, ¶ 8. He reported this abuse and cooperated with an investigation. *Id.* Mr. Cortez Morales
23 suffered severe psychological harm from this abuse and was eventually diagnosed with Post-
24 Traumatic Stress Disorder ("PTSD"), anxiety and depression. *Id.* Today, Mr. Cortez Morales has
25 a pending application with U.S. Citizenship & Immigration Services ("USCIS") for a U Visa
26 based on these events. *Id.*

27 While in prison, Mr. Cortez Morales made the decision to disassociate from the gang.
28 Weiss Decl., ¶ 9. He used his time to participate in rehabilitative programming. *Id.* He completed

1 his GED, several college courses, and numerous vocational programs. *Id.* He took courses on
2 anger management, personal insight and self-improvement, and participated in support groups.
3 *Id.* He worked numerous jobs. He also served as a mentor to others in the Youth Offender
4 Program. *Id.*

5 In October 2022, Mr. Cortez Morales was granted parole and released after serving 17
6 years in prison, half his life. *Id.*, ¶ 10. Upon release, he was immediately arrested by ICE and
7 transferred to immigration detention. *Id.*

8 On September 25, 2025, Mr. Cortez Morales' sole criminal conviction was vacated for
9 legal invalidity. *Id.*, ¶ 11; *see also* Weiss Decl. at Exh. E (Vacatur order). A state court found that
10 his plea had not been entered knowingly, voluntarily and intelligently, in violation of the 5th and
11 14th Amendments to the U.S. Constitution. Exh. E (Vacatur order). Mr. Cortez Morales was re-
12 charged in juvenile court, on the grounds that he was under 18 when the alleged offense took
13 place. *Id.* He admitted the charges and his sentence was deemed served. *Id.* Mr. Cortez Morales
14 has no other convictions. Weiss Decl., ¶ 11.

15 **Mr. Cortez Morales's Detention, Bond Hearing, and Release**

16 As stated above, Mr. Cortez Morales was transferred to ICE upon release from prison.
17 Prior to this, while in state custody, ICE had issued him a Final Administrative Removal Order
18 pursuant to 8 U.S.C. § 1231(a)(6), finding that he was deportable due to an aggravated felony
19 conviction. Weiss Decl., ¶ 12.

20 On January 18, 2023 an asylum officer found that Mr. Cortez Morales had a reasonable
21 fear of persecution in Mexico, and referred his case to Immigration Court for withholding-only
22 proceedings. *Id.*, ¶ 13; Weiss Decl. at Exh. A (Notice of Referral to Immigration Judge).

23 Due to his final administrative removal order, Mr. Cortez Morales was subject to
24 mandatory detention and was not entitled to a custody redetermination hearing before an IJ. *See*
25 8 U.S.C. § 1231(a)(6). However, in April 2023, the immigration court scheduled Mr. Cortez
26 Morales for a custody redetermination hearing pursuant to *Aleman Gonzalez v. Sessions*, 325
27 F.R.D. 616 (N.D. Cal. 2018), *aff'd*, 955 F.3d 762 (9th Cir. 2020), *rev'd*, 596 U.S. 543 (2022)
28 (holding that all individuals detained pursuant to 8 U.S.C. § 1231(a)(6) are entitled to a bond

1 hearing after six months of detention.) Weiss Decl., ¶ 14.

2 On April 4, 2023, an IJ granted Mr. Cortez Morales's release from custody after
3 determining that he was neither a flight risk nor a danger to the community. Weiss Decl. at Exh.
4 B (IJ Bond Order). Mr. Cortez was ordered to pay a \$5000 bond and participate in ICE's
5 alternatives to detention program as a condition of release. *Id.*

6 On April 6, 2023, ICE released Mr. Cortez Morales and placed him on a monitoring
7 program through the Intensive Supervision Appearance Program ("ISAP"). Weiss Decl. at Exh.
8 C (ICE Order of Supervision). At first, Mr. Cortez Morales was outfitted with a mandatory ankle
9 monitor with a GPS tracking device. Weiss Decl., ¶ 17. However, after about one year, in
10 recognition of Mr. Cortez Morales's compliance with his order of supervision, ISAP de-escalated
11 Mr. Cortez Morales's case and removed the GPS ankle monitor. *Id.* Mr. Cortez Morales continued
12 to communicate with ISAP, appear at in-person and virtual check-ins, and comply with all
13 required conditions through the BI SmartLINK application on his phone. *Id.*

14 In the over two and a half years since his release from ICE detention, Mr. Cortez Morales
15 has complied with ICE's order of supervision and ISAP requirements. *Id.*, ¶ 18. He has attended
16 his in-person check-ins, and complied with his virtual check-ins through the BI SmartLINK
17 application. He has stayed at home on designated days for home visits or calls by ISAP agents.
18 *Id.* He has not been arrested for or convicted of any crime during that time. *Id.*

19 On several occasions, Mr. Cortez Morales was scheduled for a virtual check-in over the
20 BI SmartLINK App, and the app did not work properly. *Id.*, ¶ 19. Each time this happened, Mr.
21 Cortez Morales called his ISAP agent, and the agent agreed to complete the virtual check-in over
22 the phone. *Id.* The ISAP agent told Mr. Cortez Morales that the BI SmartLINK app was "glitchy."
23 *Id.*

24 Due to his strong record of compliance, ISAP reduced Mr. Cortez Morales' reporting
25 requirements to the following: uploading a photograph of himself to the BI SmartLINK app
26 whenever he receives a notification to do so, about once a week; participating in a video call with
27 his ISAP officer about once a month; and attending in-person check-ins at the ISAP San Jose
28 office about once every six months. *Id.*, ¶ 20.

1 In about 2023, U.S. Citizenship and Immigration Services (“USCIS”) issued Mr. Cortez
2 Morales an employment authorization document (“EAD”). *Id.*, ¶ 21.

3 On August 22, 2024, an IJ administratively closed Mr. Cortez Morales’ removal case
4 pending the outcome of his U Visa application. *Id.*, ¶ 22; see also Weiss Decl. at Exh. D (IJ Order
5 granting administrative closure).

6 **Mr. Cortez Morales’s Life After Release from Custody**

7 Since his release from ICE detention in 2023, Mr. Cortez Morales has focused on his
8 rehabilitation and serving his community. Weiss Decl., ¶ 23. He was discharged from state parole
9 in October 2024 without any violations. *Id.*; see also Weiss Decl. at Exh. F (Parole discharge
10 document). Mr. Cortez Morales attended classes at De Anza College and received a Certificate
11 of Achievement in Leadership and Social Change in June 2024. Weiss Decl., ¶ 24; Exh. G
12 (Equities, including De Anza College certificate). After receiving his work permit, he secured
13 full-time employment at the nonprofit organization Community Agency for Resources, Advocacy
14 and Services (CARAS) in Gilroy, California. Weiss Decl., ¶ 25. He started there as a peer support
15 specialist, helping unhoused residents access social services. *Id.* Today, he is a Program
16 Coordinator in CARAS’ immigration program, connecting residents with immigration legal
17 services and conducting know-your-rights presentations. *Id.* Mr. Cortez Morales also volunteers
18 with CARAS’ Youth Center, conducting programs for teens on topics such as positive
19 masculinity. *Id.*

20 Furthermore, Mr. Cortez Morales has become a recognized leader in the immigrants’
21 rights movement in California. *Id.*, ¶ 26. He has delivered speeches at the California state capitol
22 and participated in statewide events to draw attention to the poor conditions of confinement for
23 immigrants in ICE detention. *Id.*; see also Weiss Decl. at Exh. G (Equities, including photographs
24 of Mr. Cortez Morales’ advocacy work). He is a volunteer organizer with several nonprofit
25 organizations, including Silicon Valley De-Bug, SIREN, Dignity Not Detention, and Interfaith
26 Movement for Human Integrity, whose members have written letters of support on his behalf.
27 Weiss Decl., ¶ 27; Exh. G (Equities, including letters of support.)
28

Mr. Cortez Morales also provides support to his family members. Weiss Decl. at Exh. G (Equities, including letters of support). His mother suffers from depression, and he spends time with her and provides her with emotional support. *Id.* He also assists his disabled uncle with manual labor, and accompanies his grandmother to medical appointments when needed. *Id.*

Mr. Cortez Morales Faces Re-Detention Without Notice or Process

ICE is currently detaining large numbers of immigrants at their ICE or ISAP check-ins and immigration court appointments, without providing notice or process.¹ In the past two weeks alone, undersigned counsel has had two clients detained at in-person check-ins with ICE or ISAP. Weiss Decl., ¶ 5.

On October 27, 2025 at 7:04AM, undersigned Counsel contacted Pamela Johann, Chief of the Civil Division of the U.S. Attorney's Office for the Northern District of California, via email to ask if ICE intended to detain Mr. Cortez Morales at his check-in on October 28, 2025. Weiss Decl., ¶ 28. At 9:52AM, Ms. Johann responded that she had forwarded my inquiry to ICE and would let me know if she received any information. *Id.*, ¶ 29. At 2:29PM, Ms. Johann called undersigned Counsel and asked if Mr. Cortez Morales would wait until COB to file a habeas petition and TRO, to see if she could obtain an assurance from ICE that Mr. Cortez Morales would not be detained at his check-in. *Id.*, ¶ 30. As of the time of filing the instant motion for TRO, undersigned Counsel has not heard back from Ms. Johann. *Id.*

Despite the fact that Mr. Cortez Morales was ordered released by an IJ, he faces the prospect of ICE unilaterally stripping him of his liberty, tearing him away from his family and community, and keeping him detained under mandatory detention with no opportunity for a neutral adjudicator to review his case. *Id.*, ¶ 31. He also faces the very real possibility of being transferred outside of Northern California with little or no notice, far away from his family and community, or even being unlawfully deported to Mexico, a country where he fears persecution. *Id.*

¹ See e.g., Weiss Decl. at Exh. H, St. John Barned-Smith and Brooke Park, "About 25 Northern California immigrants detained after being summoned by ICE," *San Francisco Chronicle* (October 26, 2025); Exh. I, Hilda Gutierrez, Michael Bott and Alex Bozovic, "ICE ordered to release dozens of Bay Area immigrants over due process concerns," *NBC Bay Area* (Oct 10, 2025).

Following his experience of rape and torture while incarcerated, Mr. Cortez Morales was diagnosed with PTSD, anxiety and depression. *Id.*, ¶8. Since his release in 2023, Mr. Cortez Morales has finally accessed therapy. *Id.*, ¶ 32. Being re-detained without notice and placed back in a carceral setting akin to the one where he raped and tortured is likely to have a destabilizing effect on Mr. Cortez Morales's mental health and cause him severe psychological harm. *Id.*

Intervention from this Court is therefore required to ensure that Mr. Cortez Morales is not unlawfully re-arrested and re-incarcerated and subjected to irreparable harm without the process due to him.

III. LEGAL STANDARD

Mr. Cortez Morales is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Mr. Cortez Morales does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Cortez Morales overwhelmingly satisfies both standards.

IV. ARGUMENT

A. MR. CORTEZ MORALES WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Absent intervention

from this Court, Respondents are likely to arrest Mr. Cortez Morales at his ISAP check-in on October 28, 2025 at 3pm, without showing any change in circumstances justifying his arrest, nor providing him with a hearing before a neutral adjudicator, in violation of his due process rights. Mr. Cortez Morales will suffer irreparable injury if he is arrested and detained without due process, separated from his family and community, in conditions that will likely lead to dramatic deterioration in his mental health.

1. Mr. Cortez Morales is Likely to Succeed on the Merits of His Claim That in This Case the Constitution Requires a Hearing Before a Neutral Adjudicator Prior to Any Re-Incarceration by ICE

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

The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot redetain Panosyan.").

ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under

1 BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously released
2 on bond only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176;
3 *Matter of Sugay*, 17 I&N Dec. at 640.

4 There has been no such change in circumstances that would justify ICE's redetention of
5 Mr. Cortez Morales. He has not committed any crime, or been arrested, since he was released on
6 bond. ICE has alleged no violations of the terms of his release.

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

13 Federal district courts in California have repeatedly recognized that the demands of due
14 process and the limitations on DHS's authority to revoke a noncitizen's bond or parole require a
15 pre-deprivation hearing for a noncitizen on bond, like Mr. Cortez Morales, *before* ICE re-detains
16 him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No.
17 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (granting a preliminary
18 injunction for Petitioner to be provided with a pre-deprivation hearing prior to re-arrest by
19 Respondents, even though he was facing a new criminal charge after release); *Jorge M. F. v.*
20 *Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);); *Romero*
21 *v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner
22 would suffer irreparable harm if re-detained, and required notice and a hearing before any re-
23 detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal.
24 May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview
25 when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070-JSC,
26 2025 U.S. Dist. LEXIS 113570, at *6 (N.D. Cal. Jun. 14, 2025) (granting temporary restraining
27 order enjoining Respondents from re-detaining Petitioner without notice and a hearing); *Diaz v.*
28 *Kaiser*, 3:25-cv-05071, 2025 U.S. Dist. LEXIS 113566, at *10 (N.D. Cal. Jun. 14, 2025) (granting

temporary restraining order and finding that a pre-detention hearing would prevent against the risk of erroneous deprivation). See also *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

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

a. Mr. Cortez Morales Has a Protected Liberty Interest in His Conditional Release

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

Since 2023, Mr. Cortez Morales has exercised that freedom under the IJ's April 4, 2023, order granting him release on a \$5,000 bond. See Weiss Decl. at Exh. B (IJ Bond Order). He has exercised his freedom by studying at De Anza College; securing gainful employment that helps his community; becoming a directly-impacted leader in the California immigrants' rights movement; caring for his family members; and accessing mental health treatment for his own conditions. See Weiss Decl., ¶¶ 24-27, 32; Exh. G (Equities) Although he was released on bond (and thus under government custody), he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. See *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to

1 form the other enduring attachments of normal life.” *Id.* at 482. The Court explained that “the
2 liberty of a parolee, although indeterminate, includes many of the core values of unqualified
3 liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
4 “[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth]
5 Amendment.” *Morrissey*, 408 U.S. at 482.

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

21 In fact, it is well-established that an individual maintains a protectable liberty interest even
22 where the individual obtains liberty through a mistake of law or fact. *See id.; Gonzalez-Fuentes*,
23 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
24 considerations support the notion that an inmate released on parole by mistake, because he was
25 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
26 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
27 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
28 (internal quotation marks and citation omitted).

Here, when this Court “compar[es] the specific conditional release in [Mr. Cortez Morales’s case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Cortez Morales’s release “enables him to do a wide range of things open to persons” who have never been in custody or convicted of any crime, including to live at home, work, volunteer, engage in political activism, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

Furthermore, in this case, redetention would have a profoundly destabilizing effect on the Petitioner’s mental health. Mr. Cortez Morales suffers from PTSD, anxiety and depression related to the abuse that he survived in prison. Weiss Decl., ¶ 8. Since his release, he has finally accessed therapy. *Id.*, ¶ 32. Being re-detained without notice and placed in a setting akin to the one where he was raped and tortured is likely to cause him psychological harm. *Id.* He thus has a particularly strong interest in his continued liberty, and is entitled to constitutional due process before he is re-incarcerated.

b. Mr. Cortez Morales’s Liberty Interest Mandates a Hearing Before any Re-Arrest and Revocation of Bond

Mr. Cortez Morales asserts that due process mandates that he receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation of a bond.

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

1 any, of additional or substitute procedural safeguards; and finally the government's interest,
 2 including the function involved and the fiscal and administrative burdens that the additional or
 3 substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
 4 *Eldridge*, 424 U.S. 319, 335 (1976)).

5 The Supreme Court "usually has held that the Constitution requires some kind of a hearing
 6 before the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127
 7 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the
 8 only remedies the State could be expected to provide" can post-deprivation process satisfy the
 9 requirements of due process. *Zinerman*, 494 U.S. at 985.

10 Because, in this case, the provision of a pre-deprivation hearing is both possible and
 11 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Cortez
 12 Morales with notice and a hearing prior to any re-incarceration and revocation of his bond. See
 13 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*,
 14 494 U.S. at 985; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
 15 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
 16 proceedings may not constitutionally be held in jail pending the determination as to whether they
 17 can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Mr.
 18 Cortez Morales's] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

19 **i. Mr. Cortez Morales's Private Interest in His**
 20 **Liberty is Profound**

21 Under *Morrissey* and its progeny, individuals conditionally released from serving a
 22 criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition,
 23 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
 24 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
 25 constitutional due process before he is re-incarcerated—apply with even greater force to
 26 individuals like Mr. Cortez Morales, who have been released pending civil removal proceedings,
 27 because "his liberty interest is arguably greater than the interest of the parolees in *Morrissey*."
 28 See *Ortega v. Bonnar*, 415 F.Supp.3d at 970. Nonetheless, even in the criminal parolee context,

the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Mr. Cortez Morales retains a truly weighty liberty interest even though he is under conditional release.

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

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

ii. The Government’s Interest in Re-Incarcerating Mr. Cortez Morales Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing is Minimal

The government’s interest in detaining Mr. Cortez Morales without a due process hearing is low, and when weighed against Mr. Cortez Morales’s significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting Mr. Cortez Morales unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Mr. Cortez Morales when the Court considers that the process he seeks—notice and a hearing regarding whether his bond should be revoked—is a standard course of action for the government.

1 Providing Mr. Cortez Morales with a hearing before this Court (or a neutral decisionmaker) to
 2 determine whether there is clear and convincing evidence that Mr. Cortez Morales is a flight risk
 3 or danger to the community would impose only a *de minimis* burden on the government, because
 4 the government routinely provides this sort of hearing to individuals like Mr. Cortez Morales.

5 In April 2023, an IJ found that Mr. Cortez Morales was not a danger to the community
 6 nor a flight risk. *See* Weiss Decl. at Exh. B (IJ Bond Order). That determination still stands. In
 7 fact, ICE subsequently decided to remove his ankle monitor given his full compliance with the
 8 terms and conditions of his release. *Id.*, ¶ 17.

9 As to flight risk, an IJ determined that a bond of \$5000 was sufficient to guard against any
 10 possible flight risk, to “assure [his] presence at the moment of removal.” *Zadvydas*, 533 U.S. at
 11 699. Furthermore, Mr. Cortez Morales has cases for immigration relief pending before both
 12 USCIS (a U Visa application) and the IJ (withholding of removal, albeit administratively closed
 13 pending USCIS’ decision on his U Visa). *See* Weiss Decl. at Exh. D. It is difficult to see how the
 14 government’s interest in ensuring his presence at the moment of removal has materially changed
 15 since he was released in April 2023, as he has appeared at all scheduled court dates and check-
 16 ins. Weiss Decl., ¶ 18. The government’s interest in detaining Mr. Cortez Morales at this time is
 17 therefore low. That ICE has a new policy to make a minimum number of arrests each day under
 18 the new administration does not constitute a material change in circumstances or increase the
 19 government’s interest in detaining him.²

20 Moreover, the “fiscal and administrative burdens” that a pre-deprivation bond hearing
 21 would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Cortez Morales
 22 does not seek a unique or expensive form of process, but rather a routine hearing regarding
 23 whether his bond should be revoked and whether he should be re-incarcerated.

24
 25 ² *See* “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
 26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
 27 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
 28 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
 and-protests/ (“At the end of May 2025, ‘Stephen Miller, a senior White House official, told Fox News that the White
 House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested
 more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,’
 reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”).

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

11 Enjoining Mr. Cortez Morales’s re-arrest until ICE (1) moves for a bond re-determination
 12 before an IJ and (2) demonstrates by clear and convincing evidence a material change in
 13 circumstances and that Mr. Cortez Morales is a flight risk or danger to the community is far *less*
 14 costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted
 15 in 2017, which remains true today, “[t]he costs to the public of immigration detention are
 16 ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.”
 17 *Hernandez*, 872 F.3d at 996.

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

24 Providing Mr. Cortez Morales a pre-deprivation hearing would decrease the risk of an
 25 erroneous deprivation of his liberty. Before Mr. Cortez Morales can be lawfully detained, he must
 26 be provided with a hearing before a neutral adjudicator at which the government is held to show
 27 that there has been materially changed circumstances such that the IJ’s April 2023 bond
 28 determination should be altered or revoked because clear and convincing evidence exists to
 establish that Mr. Cortez Morales is a danger to the community or a flight risk.

Under ICE’s process for custody determination—which affords Mr. Cortez Morales no

process whatsoever—ICE can simply redetain him at any time if the agency desires to do so. The risk that Mr. Cortez Morales will be erroneously deprived of his liberty is high if ICE is permitted to make a unilateral decision to rearrest him. Pursuant to 8 C.F.R. § 236.1(c)(9), an arrest of Mr. Cortez Morales automatically revokes his bond. Thus, the regulations permit ICE to unilaterally nullify a bond order without oversight of any kind. 8 C.F.R. § 236.1(c)(9).

Mr. Cortez Morales's detention will then be governed by 8 U.S.C. § 1231(a)(6), because he has a final administrative order of removal pursuant to 8 U.S.C. § 1228(b). Noncitizens detained under 8 U.S.C. § 1231(a)(6) are subject to mandatory detention and are not eligible for an individualized bond hearing before an IJ.³ Therefore, revocation of Mr. Cortez Morales's bond would evade *any* review by an IJ or any other neutral arbiter.

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

Due process also requires consideration of alternatives to detention at any custody

³ Noncitizens detained in the Ninth Circuit under 8 U.S.C. § 1231(a)(6) are currently eligible for prolonged detention bond hearings after six months of detention *See Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018)³, *aff'd*, 955 F.3d 762 (9th Cir. 2020), *rev'd*, 596 U.S. 543 (2022). However, the preliminary injunction was reversed and remanded by the U.S. Supreme Court, and then remanded by the Ninth Circuit to the District Court. *Tejada v. Godfrey*, No. 18-35460, 2023 U.S. App. LEXIS 10790 (9th Cir. Apr. 25, 2023). This injunction is currently still in place but is expected to be lifted in the near future.

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

* * *

As the above-cited authorities show, Mr. Cortez Morales is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

2. Mr. Cortez Morales will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Cortez Morales will suffer irreparable harm if he is deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks.

Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced

1 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations
 2 of environmental health and safety standards; staffing shortages affecting the level of care
 3 detainees received for suicide watch, and detainees being held in administrative segregation in
 4 unauthorized restraints, without being allowed time outside their cell, and with no documentation
 5 that they were provided health care or three meals a day).⁴

6 Mr. Cortez Morales has been out of ICE custody for over two and a half years. In that
 7 time, he has become a well-known voice in the immigrants' rights community in Northern
 8 California. He works at CARAS, a nonprofit organization in Gilroy, California, where he
 9 connects immigrant families with legal resources. Outside of his work, he speaks at rallies and
 10 events to draw attention to the abysmal conditions for people being held in ICE detention. Mr.
 11 Cortez Morales also supports his mother, who suffers from depression. If he were re-detained,
 12 he would lose his job, as he could not work from detention. He would no longer be able to speak
 13 at community events or volunteer with local organizations. His mental health conditions, which
 14 include PTSD, anxiety, and depression, are likely to be exacerbated by detention in conditions
 15 similar to those in which he previously suffered rape and torture. His detention by ICE will
 16 irreparably harm him, his mother, and the communities that rely on his budding leadership.

17 Finally, as detailed *supra*, Mr. Cortez Morales contends that his re-arrest absent a hearing
 18 before a neutral adjudicator would violate his due process rights under the Constitution. It is clear
 19 that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,
 20 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. Cortez Morales from
 21 suffering irreparable harm by being subject to unlawful and unjust detention.
 22

23 **3. The Balance of Equities and the Public Interest Favor Granting the** 24 **Temporary Restraining Order**

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

27 First, the balance of hardships strongly favors Mr. Cortez Morales. The government

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

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

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

Finally, a temporary restraining order is in the public interest. First and most importantly, “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Mr. Cortez Morales in violation of the requirements of Due Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”).

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

V. CONCLUSION

For all the above reasons, this Court should find that Mr. Cortez Morales warrants a

1 temporary restraining order and a preliminary injunction ordering that Respondents refrain from
2 re-arresting him unless and until he is provided notice and a hearing before a neutral
3 decisionmaker to determine first whether there has been a material change in circumstances, and
4 second, assuming there is a material change, whether the government can show by clear and
5 convincing evidence that detention would now be warranted on the basis that he is a danger or a
6 flight risk.

7 Dated: October 28, 2025

Respectfully submitted,

8 /s/ Peter Weiss

9 Peter Weiss

PANGEA LEGAL SERVICES

10 *Pro Bono* Attorney for Mr. Cortez Morales
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