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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND 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 of U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and PAMELA BONDI, Attorney General of the United States,

Respondents.

Case No.: 4:25-cv-09241-HSG

REPLY TO RESPONDENTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

IMMIGRATION HABEAS CASE

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I. INTRODUCTION

Petitioner Eladio Cortez Morales ("Mr. Cortez Morales") was brought to the United States by his parents when he was less than one year old and has lived here for about 36 years. Although he was released on bond by an immigration judge more than two and a half years ago while his immigration case proceeds, he continues to be subject to regular in-person supervision appointments with immigration authorities, at which he could be re-detained without notice. This Court issued a temporary restraining order ("TRO") finding that re-detention without a hearing would likely violate his rights under the Due Process Clause.

Respondents now assert for the first time that Immigration and Customs Enforcement ("ICE") has no current intent to re-detain Mr. Cortez Morales "absent changed circumstances" and this case should therefore be dismissed. Yet they refuse to explain what would constitute a sufficient change, reserving the right to unilaterally determine that issue and re-detain Mr. Cortez Morales without notice. Meanwhile, ICE is regularly arresting previously-released noncitizens based on de minimis "violations" of their supervision conditions or other supposed changes that courts have found have no bearing on flight risk or dangerousness. Respondents' complex, error-ridden supervision system, combined with their refusal to provide notice or process, means that Mr. Cortez Morales must approach each in-person check-in as one at which he may be detained. These supervision conditions are *currently* causing injury to Mr. Cortez Morales, who suffers from diagnosed post-traumatic stress disorder ("PTSD") related to being raped and tortured while incarcerated as a youth. If the TRO is lifted, Mr. Cortez Morales will continue to suffer an exacerbation of PTSD symptoms, robbing him of his ability to work, engage in meaningful relationships, and make even basic life plans.

As this Court has already found, Mr. Cortez Morales is likely to show that his re-detention without a hearing would be unconstitutional. Nothing in Respondents' arguments or new evidence undermines this Court's determination that Mr. Cortez Morales is entitled to pre-deprivation process to ensure any detention would be justified by clear and convincing evidence of flight risk or dangerousness. The Court should convert its TRO into a preliminary injunction.

II. RELEVANT FACTS AND RESPONSE TO RESPONDENTS' FACTUAL ALLEGATIONS

Mr. Cortez Morales reincorporates by reference here the statement of facts in his motion for a Temporary Restraining Order ("TRO"). *See* Dkt. 3. He adds here only additional information submitted in response to the factual allegations and argument in Respondents' opposition papers, Dkt. 16.

Mr. Cortez Morales lives with PTSD as a result of being raped and tortured while incarcerated as a youth. *See* Declaration of Peter Weiss, Exh. A, Declaration of Eladio Cortez Morales (Cortez Morales Decl.), ¶ 11; Exh. B, Letter from Community Solutions. Mr. Cortez Morales is petrified of being returned to a custodial setting similar to the one in which he suffered rape. Cortez Morales Decl., ¶¶ 11. Prior to this Court's TRO, he suffered a mental breakdown before his October in-person ISAP check-in. *Id.*, ¶ 12. He exhibited symptoms such as paranoia and hypervigilance, was sent home by his boss after a panic attack, and was forced to miss work for a week because he could not function in a professional setting due to the fear that ICE would re-detain him. *Id.*, ¶¶ 12-13. Since that time, he continues to suffer from anxiety that he could be detained without notice if the Court lifts its TRO. *See id.*, ¶¶ 15, 19. His mental health condition prevents him from doing simple things, like buying tickets for a concert with friends, or setting up recurring payments for his bills. *Id.*, ¶¶ 16-17. It also prevents him from doing more important things, like engaging in a romantic relationship, or thinking about marriage and children. *Id.*, ¶ 18. If Mr. Cortez Morales must continue attending ISAP check-ins with no guarantee of notice or process prior to his re-detention, his mental health will continue to suffer, and he fears that he will lose his job and be unable to move forward with his life. *Id.* ¶¶ 15, 18.

Additionally, Respondents make several factual errors and omissions in opposing a PI. First, they state that Mr. Cortez Morales entered the United States unlawfully in 2004. Dkt. 16, at 6. In fact, he was brought to the U.S. as an infant in 1989. Dkt. 1-1 at 6. Mr. Cortez Morales was raised in the United States and has lived here for about 36 years. *Id.*

Second, Respondents misstate Mr. Cortez Morales' ISAP reporting requirements. Respondents erroneously state that he is required to report to ISAP every eight weeks,

alternating between in-person and virtual appointments. Dkt. 16 at 7. In fact, Mr. Cortez Morales is required to report every eight weeks *in-person*, with no virtual option. *See* Cortez Morales Decl., ¶ 3. In addition, he is required to report virtually to ISAP once a week by taking and uploading a photograph of himself to the BI SmartLINK application ("app") within 15 minutes of receiving a notification during an hours-long window, or else he can be considered in violation of his conditions of release. *Id.*

Mr. Cortez Morales has diligently sought to comply with these requirements. *Id.*, ¶ 3. Even so, he lives in constant fear of being redetained due to missing a virtual check-in because of problems with the app. *See id.*, ¶ 10. His ISAP agent told him the app is "glitchy," and Mr. Cortez Morales has experienced problems with the app many times, such as when it fails to send a notification to upload his photo within the scheduled timeframe, or when it rejects his attempts to upload his photo. *Id.*, ¶¶ 6-8. Each time these issues occur, Mr. Cortez Morales contacts his ISAP agent but he often does not receive a response within his required reporting window. *Id.*, ¶ 9. Because of these issues, Mr. Cortez Morales fears he may be considered out of compliance based on issues beyond his control, but will not be told of any problem until the moment ICE redetains him. *Id.*, ¶ 10.

Last week alone, ICE officers detained at least seven people at the San Jose ISAP office when they appeared for their scheduled ISAP check-ins. *See* Weiss Decl. at Exhibit C., Tor Smith, "Several arrests at San Jose ICE check-in office, RRN says," *KRON4 News* (December 23, 2025).

Mr. Cortez Morales' next in-person ISAP check-in is scheduled for February 20, 2026. Cortez Morales Decl., ¶ 18.

III. ARGUMENT

The standard for TROs and preliminary injunctions are "substantially identical." *See Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). A TRO or preliminary injunction is appropriate if there are "serious questions" going to the merits and the balance of hardships tips sharply in the plaintiff's favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d

1127, 1131 (9th Cir. 2011). This Court granted a TRO, and nothing in Respondents' filing establishes that the TRO should not convert to a preliminary injunction.

A. Mr. Cortez Morales is Likely to Succeed on the Merits, or Has At Least Established Serious Questions

Mr. Cortez Morales is likely to succeed in showing—and has at least raised serious questions—that Respondents may not re-detain him after more than two and a half years at liberty without providing him a hearing before a neutral adjudicator, at which the government bears the burden of proof that Mr. Cortez Morales is a flight risk or a danger to the community. Additionally, Mr. Cortez Morales is *currently* suffering harm from ICE's refusal to provide him notice and a hearing prior to any re-detention or even to identify the "changed circumstances" it might invoke to re-detain him, while simultaneously requiring him to attend regular check-ins at which they could suddenly and without notice take him into custody. The Court can and should redress this concrete harm.

1. Mr. Cortez Morales Has Established Article III Standing

"Standing under Article III of the Constitution requires that an injury be concrete, particularized, and actual *or* imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010) (emphasis added). To show standing based on future injury, a plaintiff "need only establish a risk or threat of such injury." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 764 (9th Cir. 2018) (internal quotation omitted). Mr. Cortez Morales meets these requirements. *See, e.g., Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 524772 (N.D. Cal. Dec. 19, 2025) (holding plaintiffs had standing to enjoin possible future re-detention without notice or a hearing).

Respondents' contrary arguments fail. Although Respondents refused to assure Mr. Cortez Morales that they would not detain him before he filed this action, Dkt. 1-1, they now state that he lacks standing because, according to a line-level staff member, they have no *current* intent to detain him absent "changed circumstances." Dkt. 16-1, ¶ 18. Meanwhile, Respondents fail to identify what would constitute "changed circumstances" and reserve the right to unilaterally invoke that exception and arrest Mr. Cortez Morales without any notice or opportunity to contest any alleged change. *See id.* Given the lack of any standards for changed

circumstances; Respondents' documented practice of relying on immaterial circumstances or nonexistent "violations" to revoke release; and the current concrete harms suffered by Mr. Cortez Morales, this Court has jurisdiction to grant the PI.

a. Mr. Morales is Currently Suffering an Actual Injury, Including Deterioration in Mental Health, From ICE's Refusal to Provide Notice and a Hearing Before Redetention

First, Respondents are wrong to assume that Mr. Cortez Morales will only be harmed if he is actually detained. Rather, his current custodial conditions, including regular in-person supervision check-ins combined with the threat of arbitrary detention without notice, are causing *current, actual* harm. Mr. Cortez Morales lives with PTSD from being raped and tortured while incarcerated as a youth. *See* Cortez Morales Decl., ¶ 11; Weiss Decl. at Exh. B, Letter from Community Solutions. Prior to this Court's TRO, he suffered a mental breakdown before his October in-person ISAP check-in. Cortez Morales Decl., ¶ 12. He exhibited symptoms such as paranoia and hypervigilance, was sent home by his boss after a panic attack, and was forced to miss work for a week because he could not function in a professional setting due to the fear that ICE would re-detain him. *Id.*, ¶¶ 12-13. Since that time, he continues to suffer severe anxiety that he could be detained without notice if the Court lifts its TRO. *See id.*, ¶¶ 15, 19. This prevents him from doing everyday things like planning to attend events with friends, or setting up recurring payments for his bills. *Id.*, ¶¶ 16-17. It also prevents him from doing important things like engaging in a romantic relationship, or thinking about marriage and children. *Id.*, ¶ 18. His custodial arrangement, with no guardrails against a surprise, unlawful detention, has caused and will continue to cause current, actual harm to Mr. Cortez Morales' mental health, job security, and ability to plan his life. An injunction by this Court requiring notice and a pre-deprivation hearing would redress this harm as Mr. Cortez Morales could attend his regular check-ins and plan his life without fear that he will be unexpectedly arrested.

b. Respondents' Actions in Other Cases, Including Their Unilateral Determination of "Changed Circumstances" Unrelated to Flight Risk or Danger, Show a Sufficient Threat of Surprise Detention

Even if the inquiry focuses only on the risk of detention, there is a "significant risk" that Mr. Cortez Morales will be re-detained, despite Respondents' new purported assurances. *Monsanto*, 561 U.S. at 155 (finding standing where there was a "significant risk" of harm). As a

preliminary matter, Respondents present a declaration from Deportation Officer ("DO") Jesse Cruz as evidence that they have no current detention plans and will not re-detain Mr. Cortez Morales absent "changed circumstances." *See* Dkt. 16-1. But DO Cruz is a non-supervisory line officer, and the declaration "does not demonstrate that he has the authority to speak for any of the Respondents or even the ERO." *Hogarth v. Santacruz*, No. 5-25-cv-09472-SPG-MAR, 2025 U.S. Dist. LEXIS 228009, at 28 (C.D. Cal. Oct. 23, 2025) (rejecting reliance on DO's declaration that ICE had no plans to detain and granting PI enjoining future detention).

Even assuming, *arguendo*, that DO Cruz's assurances are reliable[1], ICE's refusal to define what "changed circumstances" means, and their reservation of the right to unilaterally determine it, renders this guarantee virtually meaningless. For one thing, ICE does not even state that any change must be "material." *See* Dkt. 16-1. Thus, ICE could, consistent with DO Cruz's declaration, re-detain Mr. Cortez Morales because of circumstances that have no bearing on whether Mr. Cortez Morales poses a flight risk or danger—such as its own internal directives or changes in law—as it has done in other cases. *See, e.g.*, *Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 U.S. Dist. LEXIS 90261 (N.D. Cal. May 12, 2025) (ICE re-detained petitioner released on IJ bond solely due to a DHS "internal directive" on third country removal); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 966 (N.D. Cal. 2019) (ICE sought to re-detain petitioner granted IJ bond after the Supreme Court remanded *Rodriguez*, the case petitioner had relied upon to obtain a bond hearing). Additionally, numerous recent cases reveal that ICE has recently engaged in a practice of re-detaining individuals for "technical violations" of ISAP reporting requirements, even while it does not assert that those *de minimis* violations show any risk of flight or danger. *See, e.g., Vilela v. Robbins*, No. 1:25-CV-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219192, at *12 (E.D. Cal. Nov. 6, 2025) ("While respondents assert that ICE arrested petitioner for those technical violations . . . they do not argue that a missed check-in or

[1] Many courts have recently cast doubt on the reliability of ICE's representations, promises, and even documents in court. *See, e.g., Clarke v. DHS*, 25-cv-6773 (GRB), 2025 U.S. Dist. LEXIS 262045, at *11 (N.D.N.Y, Dec. 18, 2025) (calling ICE declaration "evasive and demonstrably false"); *J.O.P. v. DHS*, No. 25-1519, 2025 U.S. App. LEXIS 12076 (4th Cir. May 19, 2025) (noting that DHS created a document days after a judicial decision as a "contrivance" in order to manufacture changed circumstances).

failure to seek advance approval to move means that petitioner is a flight risk or danger to the community."); *J.A.E.M. v. Wofford*, No. 1:25-CV 01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *4 (E.D. Cal. Oct. 27, 2025) ("Respondents do not argue that petitioner's two late check-ins mean that he is a flight risk or danger to the community . . . [but] ICE arrested petitioner for those technical violations."); *J.C.L.A. v. Wofford*, No. 1:25-CV-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *4 (E.D. Cal. Oct. 17, 2025); *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1322 (W.D. Wash. 2025).[2]

ICE's ability to unilaterally evaluate and change Mr. Cortez' Morales' release conditions also means he could "unknowingly violate the conditions of release and be detained" without notice or a hearing. *Hogarth*, 2025 U.S. Dist. LEXIS 228009, at 22 ("Respondents do not dispute that ICE has the authority to unilaterally change the conditions of Petitioner's release" which could lead to unknowing violations). That concern is not theoretical: in several recent cases, ICE has re-detained individuals based on ISAP "violations" without any notice that they were out of compliance, and in some cases even after an officer previously assured them they *were* compliant. *See, e.g.*, *J.C.L.A.*, 2025 U.S. Dist. LEXIS 205300, at *5 (ICE re-detained based on asserted ISAP violations even after an ISAP officer "assured him that this was not an issue"); Decl. of Petitioner, *Cux Jocop v. Albarran*, No. 3:25-cv-09059-JD (N.D. Cal, filed Nov. 3, 2025), Dkt. 8-2, ¶ 18 ("As they were detaining me, they told me I had four ISAP violations. I was very surprised…no ICE or ISAP officer had told me I was out of compliance…"); Decl. of Petitioner, *Doe v. Albarran*, No. 3:25-cv-08774-VC (N.D. Cal, filed Oct. 24, 2025), Dkt. 16-2 and 21-39, ¶¶ 17, 28.

Mr. Cortez Morales himself often has technical issues with the BI SmartLINK app, and lives in reasonable fear that he will be found in violation of his reporting requirements despite his best efforts to comply. *See* Cortez Morales Decl. ¶¶ 7-8, 10. Mr. Cortez Morales' ISAP case

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[2] Contrary to Respondents' contention, there *are* numerous examples of ICE re-detaining individuals who were granted bond *by an IJ* based on circumstances that do not show flight risk or danger. *See, e.g.*, *Ortega*, 415 F. Supp. 3d at 966 (finding that for this reason, a pre-deprivation hearing before a neutral adjudicator is required); *J.A.M.C. v. Albarran,* No. 3:25-cv-09649-WHO, 2025 U.S. Dist. LEXIS 230972 (N.D. Cal. Nov. 24, 2025) (ICE redetained petitioner released on IJ bond for allegedly violating "zone boundary" of GPS monitor).

officer has even acknowledged that the app is "glitchy." *Id.* ¶ 6. The app sometimes does not send Mr. Cortez Morales the required notification to upload his photo, or does not accept Mr. Cortez Morales' photo once he uploads it. *See id.*, ¶¶ 7-8. When Mr. Cortez Morales has these issues, he calls or messages his ISAP case officer, but often does not receive a response until long after the reporting window has passed, leaving him with possible technical violations at no fault of his own. *Id.* ¶ 9. There is a very significant risk that Mr. Cortez Morales will be re-detained based on technical violations of which he has no knowledge, and Respondents' position is that ICE need not give Mr. Cortez Morales any notice of his non-compliance nor any opportunity to contest any alleged violations before unilaterally taking him into custody. Dkt. 16-1, ¶ 19.

c. Mr Cortez Morales' Regular In-Person ISAP Check-ins Make Judicial Intervention Necessary

Mr. Cortez Morales' regular in-person check-ins at the ISAP office in San Jose, California—including an upcoming one in February 2026—increases the likelihood of re-detention. *See* Cortez Morales Decl., ¶ 20. That factor distinguishes this case from the one upon which Respondents' heavily rely. *See* Dkt. 16 at 10 (citing *J.P. v. Santacruz, et al.*, No. 25-cv-1640-FWS-JC, 2025 U.S. Dist. LEXIS 210332 (C.D. Cal. Aug. 27, 2025)). There, the court found no imminent injury where one in-person check-in passed without incident, and the noncitizen was otherwise only subject to virtual check-ins. *See id.* Instead, this case is more like *Hogarth*, where the petitioner had regular in-person check-ins and the court found a likelihood of injury despite ICE's apparent assurances that it did not currently intend to detain him. *Hogarth*, 2025 U.S. Dist. LEXIS 228009, at 28 (distinguishing *J.P.*); *see also Pinchi*, 2025 U.S. Dist. LEXIS 524772, at 19 (finding standing where plaintiffs had upcoming removal hearings and/or check-ins). Absent a PI, Mr. Cortez Morales will continue to suffer from the effects of

severe trauma and anxiety before every new in-person check-in, uncertain of whether ICE will detain him without notice.[3] *See* Cortez Morales Decl., ¶ 15.

Finally, Respondents' suggestion that there is no risk because Mr. Cortez Morales' check-ins are with ISAP, and not ICE, is specious. Dkt. 16 at 7. ERO officers are stationed in the same building as the ISAP office in San Jose, know when individuals are scheduled to appear at ISAP, and often conduct arrests at ISAP check-ins based on information in the data management system used by ISAP contractors. See Weiss Decl. at ¶ 5; Decl. of Petitioner, *Doe v. Albarran*, No. 3:25-cv-08774-VC (N.D. Cal, filed Oct. 24, 2025), Dkt. 16-2 and 21-39, ¶ 17 ("I appeared in person at the ISAP office in San Jose. When I got there, ICE officers were there and detained me."); *J.R.M.J.*, 2025 U.S. Dist. LEXIS 232906, at *4 (individual re-detained at ISAP check-in in San Jose); *Martinez-Hernandez v. Andrews*, No. 1:25-cv-01035 JLT HBK, 2025 U.S. Dist. LEXIS 168147, at *8 (E.D. Cal. Aug. 28, 2025) (same); *Amarillo v. Robbins*, No. 1:25-cv-01623-TLN-JDP, at *3 (E.D. Cal. Nov. 24, 2025) (unexpectedly detained by ICE at monthly in-person ISAP visit). There is every indication that if ICE determines some "changed circumstance" has occurred, it will similarly re-detain Mr. Cortez Morales without notice at his next ISAP check-in. That significant risk gives rise to both ongoing and imminent injury-in-fact, which this Court can remedy through an order that ICE must provide pre-deprivation process.

2. Mr. Cortez Morales Is In Custody for Habeas Purposes, and Has Alternatively Pled a Complaint for Injunctive Relief

Respondents also incorrectly argue that Mr. Cortez Morales' claims do not sound in habeas because he challenges "future" rather than current confinement. Dkt. 16, at 11. But as a threshold matter, Mr. Cortez Morales brought not only a habeas petition, but also a civil complaint seeking injunctive relief. *See* Dkt. 1, at ¶ 1. Thus, *Panosyan v. Mayorkas*, 854 F. App'x 787 (9th Cir. 2021), where petitioner brought only habeas claims challenging his present physical confinement—but then was released—is inapposite. Even assuming, *arguendo*, Mr.

[3] Although Respondents' brief suggests that Respondents' counsel was unable to obtain assurances of non-detention from ICE prior to the October check-in only because of the timing of the request and the TRO filing, ICE's own declaration states that it is their *policy* not to provide assurances one way or another before any particular check-in. *See* Exh. 16-1, ¶ 19.

Cortez Morales is not currently "in custody" for purposes of habeas, the Court may still entertain his complaint for equitable, injunctive relief.

In any case, Respondents are wrong on the habeas issue as well. As they concede, "custody" is not limited to circumstances where petitioners are actually and physically detained, but "encompass[es] circumstances in which the state has imposed significant restraints on a petitioner's liberty." Dkt. 16 at 11; *Munoz v. Smith*, 17 F.4th 1237, 1240–41 (9th Cir. 2021) (quoting *Jones v. Cunningham*, 371 U.S. 236, 2389 (1963)); *see also Preiser v. Rodriguez*, 411 U.S. 475, 487 (1973) ("Habeas corpus relief is not limited to immediate release from illegal custody, but that the writ is available as well to attack future confinement and obtain future releases.")). Here, Mr. Cortez Morales is subject to significant restraints on his liberty, including that he must check-in regularly with ICE and/or its subcontractors or risk return to detention. And contrary to Respondents' argument, his claims *do* challenge this current custodial arrangement, under which ICE claims the right to unilaterally determine changed circumstances, revoke bond, and re-detain him at any of these check-ins (or otherwise) without notice or a hearing. It is these release conditions which are exacerbating his mental illness, causing current actual harm, and subjecting him to a significant risk of future harm. His request that the Court require Respondents to provide him a pre-deprivation hearing *prior* to detaining him fits comfortably into a habeas petition, as many courts in this district and beyond have found. *See, e.g., Sun v. Santacruz*, No. 25-cv-02198-JLS-JC, 2025 U.S. Dist. LEXIS 165913, at *7 (C.D. Cal. Aug. 26, 2025) (rejecting government's identical arguments and finding habeas jurisdiction to require pre-deprivation hearing for petitioner previously released from detention) (citing cases); *see also Preiser*, 411 U.S. at 487.

3. Mr. Cruz Morales is Likely to Show that Under the *Mathews* Framework, He is Entitled to a Pre-Deprivation Hearing Before Being Detained

Mr. Cruz Morales is also likely to succeed on the merits of his procedural due process claims, as this Court already found. *See* Dkt. 9. Respondents do not contest that the *Mathews* framework is the correct framework, so any argument otherwise is waived. *See* Dkt. 16; *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011). Many recent cases have determined this is

the appropriate framework. *See e.g.*, *Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, at *6-7 (N.D. Cal. July 4, 2025) (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); *Guillermo M. R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, at *3 (N.D. Cal. July 17, 2025).

First, Mr. Cortez Morales' liberty interest, including his ability to live freely without fear of arbitrary detention, work, care for his mental health, and plan his future, is profound, and Respondents have not argued otherwise. *See Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (finding that conditionally-released individuals enjoyed a liberty interest protected by the Due Process Clause); *Young v. Harper*, 520 U.S. 143, 146–47 (1997) (same); *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (same).

Second, the risk of erroneous deprivation is great if Respondents can unilaterally determine what constitutes a "changed circumstance," and immediately re-detain without any showing that such change is material or otherwise justifies further detention. Indeed, in numerous recent cases, ICE has re-detained individuals based on supposed "changes" which are either entirely erroneous or have no bearing on flight risk or danger. *See e.g., Kaur v. U.S. Dep't of Homeland Security*, 1:25-cv-01726-TLN-SCR, 2025 U.S. Dist. LEXIS 264352, at *9 (E.D. Cal. Dec. 22, 2025) ("The Court does not find credible support in the record that Petitioner violated her conditions of release."); *Vilela*, 2025 U.S. Dist. LEXIS 219192, at *4; *J.A.E.M.*, 2025 U.S. Dist. LEXIS 211728, at *4. That includes cases where, like here, the petitioner had been released on bond by an immigration judge. *See, e.g.*, *Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO (HC), 2025 U.S. Dist. LEXIS 161136, at *6-7 (E.D. Cal. Aug. 19, 2025) (ICE redetained petitioner released on IJ bond without notice or explanation); *J.A.M.C.*, 2025 U.S. Dist. LEXIS 230972, at *1, 10 (ICE redetained petitioner, who had been released on IJ bond, for allegedly violating "zone boundary" of GPS monitor but failed to assert that this made him a flight risk or danger). These cases show that ICE's supposed continued adherence to the "changed circumstances" rule regarding IJ bonds in *Matter of Sugay*, 17 I&N Dec. 637, 639-40

(BIA 1981), does not adequately prevent the high risk of arbitrary re-detention unmoored from any current flight risk or dangerousness.

Further, courts have explained that, if ICE *does* believe a change in circumstances justifies re-detention, a pre-deprivation hearing before a neutral adjudicator is the appropriate "procedural safeguard" at which ICE can present this evidence to "ensure any future detention…is lawful." *J.A.M.C.,* 2025 U.S. Dist. LEXIS 230972. Respondents argue that whether re-detention is warranted would vary "depending on the facts and circumstances leading to any decision to re-arrest." Dkt. 16, at 14. That is precisely why a hearing is the proper procedural safeguard, as it will allow a neutral adjudicator to review the *particular* facts and circumstances of the case. Indeed, Mr. Cortes Morales agrees with Respondents that this Court should *not* provide an "advisory opinion on what changed circumstances might warrant arrest," *id.*; but neither does due process allow the government to unilaterally re-detain without any process whatsoever, and without any requirement that a purported "change in circumstances" actually implicates flight risk or danger. Instead, a pre-deprivation hearing is the appropriate way to balance any interest the government may have in re-detention with Mr. Cortes Morales' interest in avoiding arbitrary incarceration. In other words: determining whether any changed circumstances show flight risk or danger is precisely what a bond hearing is for. *See Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025) ("While Respondents argue that there has been a change in circumstances, many if not all of these changes seem to substantially predate Petitioner's present detention…[G]iven that Petitioner was previously found to not be a danger or risk of flight and the unresolved questions about the timing and reliability of the new information, the risk of erroneous deprivation remains high [and] the value in granting Petitioner procedural safeguard is readily apparent.").

Third, Respondents have no interest in being able to redetain Mr. Cortez Morales without a hearing. Indeed, they do not even assert that he is currently a flight risk or danger. *See* Dkt. 16; *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("The government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured

by a lesser bond or alternative conditions."). If, in the future, circumstances change such that Respondents believe that Mr. Cortez Morales *has become* a flight risk or a danger, they can prove this to a neutral adjudicator and then they may re-detain him. Respondents claim vaguely that advance notice could "compromise officer safety or operational effectiveness." *See* Dkt. 16 at 8, 13. But they offer no explanation of why, nor evidence that it would occur here. Mr. Cortez Morales has diligently complied with ICE instructions since his release more than two and a half years ago, and Respondents do not contend otherwise, nor make any showing that he would attempt to evade a lawful order requiring his re-detention. In any event, any interest that Respondents have in avoiding notice is outweighed by the other *Mathews* factors.

Finally, nothing in 8 U.S.C. § 1231(a)(6) or in *Zadvydas* negates Mr. Cortez Morales' due process claims. *See* Dkt. 16 at 13-14. Respondents are incorrect that *Zadvydas* decides whether a hearing is required before someone who was previously detained under 1231(a)(6) is returned to custody; this was not at issue in *Zadvydas*, and the court's dicta that someone who violates conditions of release could be "no doubt" returned to custody does not indicate that this could happen at ICE's unreviewable discretion, rather than after a hearing. *See* Dkt. 16 at 13; *Zadvydas*, 533 U.S. at 700. Indeed, such unreviewable discretion is contrary to the spirit of *Zadvydas*, which found that procedural protections are required to protect against arbitrary or unlawful detention. *See Zadvydas*, 533 U.S. at 690 ("[G]overnment detention violates [the Due Process] Clause unless the detention is ordered…with adequate procedural protections.")

In short, given Respondents' refusal to adequately define the terms of Mr. Cortez Morales' release, including what would constitute "changed circumstances" sufficient for them to unilaterally and without notice re-detain him, and given their recent pattern of re-detentions without notice, due process requires an adequate guardrail to protect against arbitrary and unlawful detention. That guardrail is the pre-deprivation hearing already ordered by this Court in its TRO.

B. Mr. Cortez Morales Would Suffer Irreparable Harm if a PI is Not Granted

Because Respondents' ability to re-detain Mr. Cortez Morales without a pre-deprivation hearing would violate due process, he would likely suffer irreparable harm without a PI. *See Hernandez*, 872 F.3d at 994 ("It is well established that the deprivation of constitutional rights

'unquestionably constitutes irreparable injury.'" (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). Respondents' claims that ICE has no *present* intention to re-detain "does not mitigate the likelihood of irreparable and immediate harm." *Hogarth*, 2025 U.S. Dist. LEXIS 228009, at *34. Indeed, ICE has provided no guarantee that at Mr. Cortez Morales' upcoming check-in—or at the following ones which will occur pursuant to his regular supervision schedule while this litigation proceeds—it would not detain him based on a newfound *de minimis* violation or other "change" that has no bearing on his flight risk or dangerousness. *See* Dkt. 16-1; *Sun*, 2025 U.S. Dist. LEXIS 165913, at *19. Mr. Cortez Morales' check-in appointment and "ICE's failure to provide any assurance that it will not redetain [him], clearly establish a risk of irreparable harm entitling [him] to injunctive relief." *Id.*

In any case, Mr. Cortez Morales is already suffering serious harm from Respondent's refusal to provide notice and a hearing prior to any redetention. *See generally* section 1.a., *supra.* Mr. Cortez Morales lives with a mental health condition that stems from being raped and tortured while incarcerated as a youth. *See* Cortez Morales Decl., ¶ 11; Exh. B, Letter from Community Solutions. The possibility of being redetained by surprise, held in a setting similar to the one in which he was victimized, and this being unreviewable by any court, has led to an exacerbation of his PTSD symptoms. *See* Cortez Morales Decl., ¶¶ 11-12. Prior to his October ISAP check in, Mr. Cortez Morales believed he was being followed by cars on the street, he isolated himself from others, and he suffered a mental breakdown at work. *Id.*, ¶¶ 12-13. He was forced to take a week off work, depleting his PTO. *Id.*, ¶ 13. Following the Court's issuance of a TRO, he was able to attend an in-person check in in December without these consequences. *Id.*, ¶ 19. However, if the PI is not issued, the situation will revert to the pre-TRO status quo. Mr. Cortez Morales has an upcoming in-person check-in on February 17, 2026, at which he will again face the prospect of detention without notice. Absent a PI, Mr. Cortez Morales' mental health will deteriorate and he will likely lose his job, be unable to support himself, and be unable move forward with his life in any meaningful way. *Id.*, ¶¶ 15, 18.

C. The Balance of Equities and Public Interest Favor Mr. Cortez Morales

Mr. Cortez Morales was brought to the U.S. as an infant and knows no other home. *See* Dkt. 1-1 at 6. He is a survivor of serious crimes, which he reported to law enforcement and cooperated in their investigation. *Id.*, ¶ 8. His removal case is currently closed while he pursues a U Visa. *Id.*, ¶ 22. In addition to his full-time job, he spends his time engaged in political activism, speaking at events and advocating for the rights of detained immigrants. *Id.*, ¶¶ 25-26. Respondents agree that he is not a current flight risk or danger. *See* Dkt. 16.

Respondents allege no concrete harm to the government from a preliminary injunction that requires notice and a hearing prior to redetaining Mr. Cortez Morales. *See* Dkt. 16 at 16-17. Indeed, Respondents provide bond hearings as a matter of course in immigration proceedings, and they do not allege that Mr. Cortez Morales would cause any harm or abscond before such a hearing could be carried out. In *this* case, the public interest "lies on the side of affording fair procedures to all persons," including Mr. Cortez Morales. *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). Here, that requires a hearing at which Respondents must present clear and convincing evidence that Mr. Cortez Morales is a flight risk or a danger to the community before detaining him.

IV. CONCLUSION

For all the above reasons, and those stated in Mr. Cortez Morales's TRO Motion, this Court should convert the TRO into a preliminary injunction.

Dated: December 29, 2025

Respectfully submitted,

/s/ Peter Weiss
Peter Weiss
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