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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Enil Jabib CLAROS,

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. 3:25-cv-9473

MOTION FOR *EX PARTE* TEMPORARY RESTRAINING ORDER

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

IMMIGRATION HABEAS CASE

NOTICE OF MOTION

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

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the Petition for Writ of Habeas Corpus, filed at Dkt. 1, accompanying exhibits, Dkt. 1.1 and 1.2, and the Authenticating Declaration of Elena Hodges, Dkt. 6, and Exhibits in Support of TRO, Dkt. 6.1-6.8, filed concurrently as a separate docket entry pursuant to the Court's Standing Order. Notice of the filing of this Motion has been provided to Respondents' counsel. *See* Dkt. 6.1 (Hodges Notice Decl.).

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

Respondents re-detained Mr. Claros on Monday, November 3, 2025 at approximately 2:40 P.M. and he remains detained at the time of filing the instant motion. Mr. Claros's continued re-incarceration will result in immediate and irreparable injury, not only to Mr. Claros, whose mental and physical health will deteriorate significantly in detention, but also to his wife and their three young children, ages 7, 9, and 14.

Absent immediate relief from this Court, Mr. Claros's continued detention—without notice or a hearing on whether such re-detention is justified—is violating and will continue to violate Mr. Claros's constitutional, statutory, and regulatory rights.

WHEREFORE, Mr. Claros prays that this Court grant his request for a temporary restraining order and a preliminary injunction ordering Respondents to preserve the status quo by immediately releasing Mr. Claros and enjoining Respondents from re-detaining him unless and until he is afforded a constitutionally-compliant hearing before a neutral adjudicator on the question of whether his re-detention is justified.

Dated: November 4, 2025

Respectfully submitted,

/s/ Elena Hodges
Elena Hodges
Pro Bono Attorney for the Petitioner

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I. INTRODUCTION

Petitioner, Enil Jabib Claros ("Mr. Claros"), by and through undersigned counsel, hereby files this motion for temporary restraining order ("TRO") and preliminary injunction ("PI") to order Respondents to immediately release Mr. Claros and enjoin the U.S. Department of Homeland Security ("DHS") and U.S. Immigration and Customs Enforcement ("ICE") from re-arresting Mr. Claros unless and until he is afforded notice and a hearing before a neutral decisionmaker at which the government is required to establish by clear and convincing evidence that he is a danger or flight risk, as required by the Due Process clause of the Fifth Amendment, as well as the Administrative Procedure Act ("APA"), the Immigration and Nationality Act ("INA"), and the INA's implementing regulations. *See, e.g.*, *Alva v. Kaiser*, No. 25-cv-06676-RFL, 2025 U.S. Dist. LEXIS 163060 (N.D. Cal. Aug. 21, 2025); *Barrenechea v. Albarran*, No. 25-cv-07883-VC, 2025 U.S. Dist. LEXIS 189726 (N.D. Cal. Sept. 22, 2025); *Duong v. Kaiser*, No. 25-cv-07598-JST, 2025 U.S. Dist. LEXIS 185024 (N.D. Cal. Sept. 19, 2025); *Diaz v. Kaiser*, No. 25-cv-05071, 2025 U.S. Dist. LEXIS 113566 (N.D. Cal. June 14, 2025); *Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 U.S. Dist. LEXIS 142213 (N.D. Cal. July 4, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019).

The DHS briefly detained Mr. Claros in July 2019 after he crossed the border with his wife and their three children, opting to order him released on recognizance through a process that takes into account flight risk and danger to the community. While at liberty for more than six years since then, Mr. Claros has not had any arrests and diligently appeared in person twice for his Reasonable Fear Interview ("RFI"), first at the ICE Field Office at 630 Sansome, and later at the San Francisco Asylum Office after the interview was rescheduled. Nevertheless, on Monday, November 3, 2025, ICE re-detained Mr. Claros without notice when Mr. Claros appeared as requested at his in-person RFI.

Mr. Claros has a strong interest in his liberty and is likely to succeed in establishing that ICE's action in re-detaining him before providing notice or hearing before a neutral adjudicator

violates the Due Process Clause. Mr. Claros and his family will suffer immediate and irreparable harm from his detention. Mr. Claros has been diagnosed with Complex Post-Traumatic Stress Disorder and has struggled in the past with suicidal ideation. His wife has health conditions that make it challenging to care for their children alone. Mr. Claros's detention is already having an immediate harmful effect on his minor children, including two elementary schoolers who are already receiving extra support at school related to learning and mental health challenges. Further, the balance of equities and the public interest favor Mr. Claros. Since his release from custody in 2019, Mr. Claros has lived freely in the community, is a dedicated father to his three young children, and has a pending U-visa petition based on severe abuse he suffered from his parents as a young child.

The Court should order Mr. Claros's immediate release and enjoin his re-detention absent a hearing at which the government must show by clear and convincing evidence that he is a current flight risk or danger to the community to justify further detention. To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring Mr. Claros out of this District or removing him from the country until these proceedings have concluded.

II. FACTUAL BACKGROUND

A. Lengthy U.S. Residence, Persecution in Honduras, and Flight Back to U.S.

Mr. Claros is a 34-year-old husband and father from Honduras. Dkt. 1.1 (Hodges Decl.), ¶ 4. Mr. Claros was brought to the United States as a young child and has lived in this country for most of his life. *Id.* Mr. Claros received a deportation order in 2011 and was removed to Honduras, where he lived until forced to flee back to the Unites States with his family 2019 to escape persecution by state actors on the basis of his political activity and beliefs. *Id.*, ¶ 5.

B. Initial Detention and Release

Mr. Claros crossed the United States border with his wife and three minor children on or about July 7, 2019. *Id.*, ¶ 6. He was briefly detained by Customs and Border Patrol. *Id.* The next day, on July 8, 2019, ICE released Mr. Claros on his own recognizance awaiting an RFI. *Id.* He

has lived in the United States ever since. *Id.* Mr. Claros and his family live in San Francisco, California. *Id.* In the more than six years since his release from ICE detention, Mr. Claros has had no arrests, and was detained once by the San Francisco Police Department in 2021; no charges were ever filed relating to that detention. *See* Dkt. 6.2 (Hodges Supp. Decl.), ¶ 9. Under California Penal Code section 849, this was not an arrest and was a detention only. *Id.*

C. Pending U Visa Petition

As a child, Mr. Claros was the victim of pervasive physical and emotional abuse by his parents. *See id*, ¶ 7. In one particularly severe incident, Mr. Claros's parents burned his hand with a hot iron and then beat him. *Id.* A Child and Family Services petition charged Mr. Claros's parents with Welfare & Institutions Code violations, a court sustained these petitions, and Mr. Claros was removed from his parents' custody for years. *Id.* The abuse Mr. Claros suffered caused lasting emotional harm from which he is still in the process of healing. *Id.*

On February 13, 2025, Mr. Claros filed a Form I-918, Petition for U Nonimmigrant Status on the basis of this harm with USCIS, a component agency of DHS. *See id.*, ¶ 8. U Nonimmigrant Status, also called a "U visa," is available to victims of certain criminal activity who are helpful to law enforcement in investigating or prosecuting the criminal activity. *See* 8 U.S.C. § 1101(a)(15)(U). If USCIS grants a petitioner's U visa, any prior removal order is subject to being reopened and/or cancelled. *See* 8 C.F.R. § 214.14(c)(5)(i).

Along with his U visa petition, Mr. Claros filed a Form I-192, Petition for Advance Permission to Enter as Nonimmigrant, and supporting documentation. Dkt. 1.2 (Hodges Decl.), ¶ 9. Mr. Claros disclosed his single 2011 conviction and provided evidence of his rehabilitation. *Id.* He also provided evidence of other positive equities. *Id.* Mr. Claros also filed I-918 Supplement A forms on behalf of his wife and three minor children to include them in his U via petition as derivative beneficiaries. *Id.* The petition remains pending. *See id.*

C. Re-Detention Without Process or a Hearing

On October 20, 2025, Mr. Claros received a notice that he had been scheduled for an RFI

at the ICE office at 630 Sansome Street, San Francisco, California ("630 Sansome") in two days, on October 22, 2025, at 8:00 A.M. *See id.*, ¶ 10. Counsel for Mr. Claros requested and received a brief continuance due to an attorney scheduling conflict, and the interview was rescheduled for November 3, 2025, at 7:45 A.M. at the San Francisco Asylum Office.

On November 3, 2025, Mr. Claros and his counsel attended his scheduled RFI together. *Id.*, ¶ 11. They appeared, as directed, at the Asylum Office, where Mr. Claros testified to an asylum officer about his fear of returning to Honduras. *Id.*, ¶¶ 11-13.

Mr. Claros was informed by a different asylum officer that he had been found not to have a reasonable fear of returning to Honduras and that he could seek Immigration Judge ("IJ") review while in ICE detention. *Id.*, ¶ 15. Thereafter, ICE officers entered the room and detained Mr. Claros. *Id.*, ¶ 16.

Upon information and belief, the official responsible for revoking Mr. Claros's release did not first refer the case to the ICE Executive Associate Director, did not make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director, and had not been delegated authority to revoke an order of supervision. *Id.*, ¶ 17.

ICE did not provide Mr. Claros any hearing or process prior to his arrest. *Id.*, ¶ 18. ICE did not explain to Mr. Claros why they were arresting him beyond a cursory statement that Mr. Claros "has a deportation order." *Id.*, ¶ 16. ICE similarly did not provide any reason that ICE considers him a current flight risk or danger to the community. *Id.*, ¶ 18. ICE gave no indication that DHS had revoked Mr. Claros's release on recognizance and did not give Mr. Claros an opportunity to contest any such revocation. *Id.*

Upon information and belief, at the time of filing Mr. Claros remains detained in ICE custody at 630 Sansome Street in San Francisco, California. *Id.*, ¶ 19. Despite six years at liberty during which he has lived freely in the community and has had no arrests, Mr. Claros has now been re-detained without any notice or opportunity to challenge his re-detention. He remains in

ICE custody, separated from his family.

III. LEGAL STANDARD

Mr. Claros is entitled to a TRO 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 PI and TRO standards are "substantially identical"). Alternatively, under the Ninth Circuit's sliding scale approach, the Court may grant a TRO if Mr. Claros 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).

IV. ARGUMENT

Mr. Claros overwhelmingly satisfies the TRO standard and should be immediately released and remain at liberty until a pre-deprivation hearing is held before a neutral adjudicator at which the government establishes he is a danger to the community or a flight risk. This Court and many others in this district have recently ordered similar relief in order to preserve the status quo. *See, e.g.*, *Aceros v. Kaiser*, No. 25-cv-06924-RMI (EKL), 2025 U.S. Dist. LEXIS 159021, at *6-8 (N.D. Cal. Aug. 16, 2025), converted to PI at 2025 U.S. Dist. LEXIS 179594 (Sept. 12, 2025); *Alva*, 2025 U.S. Dist. LEXIS 163060; *Barrenechea*, 2025 U.S. Dist. LEXIS 189726; *Duong*, 2025 U.S. Dist. LEXIS 185024; *Diaz*, 2025 U.S. Dist. LEXIS 113566; *Pinchi*, 2025 U.S. Dist. LEXIS 142213. The Court should do the same here and grant the TRO.

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

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

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

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

This Court and others in this district and beyond have recognized that due process requires that a noncitizen like Mr. Claros, who was previously found by an adjudicator to be appropriate for release from immigration detention, be given a pre-deprivation hearing *before* ICE re-detains him. *See, e.g.*, *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, 534 F. Supp. 3d 1050 (N.D. Cal. 2021); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction

warranted preventing re-arrest where plaintiff had been on bond for more than five years); *Barrenechea*, 2025 U.S. Dist. LEXIS 189726.

Indeed, in similar circumstances to this case, where a noncitizen was arrested following a negative RFI determination and was not afforded a pre-deprivation hearing, a court in this District recently required ICE to immediately release the petitioner and ordered that re-detention not occur absent a constitutionally compliant pre-deprivation hearing. *Alva*, 2025 U.S. Dist. LEXIS 163060, *2, 20-21 (granting TRO ordering release, enjoining ICE from re-detention without notice and hearing, and granting PI). Numerous courts in this District, including this Court, have ordered the same relief for noncitizen petitioners detained without pre-deprivation notice or hearings. *See Aceros*, 2025 U.S. Dist. LEXIS 159021, at *8 (granting TRO and finding pre-deprivation hearing required, subsequently converting order to PI); *Duong*, 2025 U.S. Dist. LEXIS 185024 (granting PI and finding pre-deprivation hearing required); *Qazi v. Albarran*, No. 2:25-cv-02791-TLN-SCR, 2025 U.S. Dist. LEXIS 191922 (E.D. Cal., Sept. 29, 2025) (granting TRO); *cf. also Singh v. Andrews*, No. 1:25-cv-00801-KES-SKO (HC), 2025 WL 1918679, at *5, (E.D. Cal. July 11, 2025) (granting PI, ordering immediately release from custody, and barring ICE from re-detaining petitioner through pendency of his proceedings without first holding a pre-deprivation hearing); *Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO (HC), 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025) (granting TRO, ordering immediate release from custody, and barring ICE from re-detaining petitioner absent a pre-deprivation hearing), converted to PI at Dkt. 15 (Aug. 20, 2025); *Pineda Campos v. Kaiser*, No. 25-cv-06920 (EKL), Dkt. 4 (N.D. Cal. Aug. 16, 2025) (granting TRO, ordering immediately release from custody, and barring respondents from re-detaining petitioner without a pre-deprivation hearing); *Hernandez Nieves v. Kaiser*, No. 25-cv-06921-LB, Dkt. 10 (N.D. Cal. Aug. 17, 2025) (same).[1]

[1] In addition to being constrained by due process, ICE's authority to re-detain noncitizens is also constrained by Board of Immigration Appeals ("BIA") case law. Although the statute and regulations grant ICE the ability to revoke a noncitizen's immigration bond, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9), the BIA recognized that ICE's authority to re-arrest noncitizens is implicitly limited to situations where there is a material "change in circumstances." *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981). The Ninth Circuit has assumed that, under *Sugay*, ICE has no authority to re-detain absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. Appx. 787,

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

1. Mr. Claros Has a Protected Liberty Interest in His Release.

Mr. Claros's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Further, the Supreme Court has repeatedly recognized that individuals' weighty interest in avoiding re-incarceration is protected by the Due Process Clause. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

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

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous

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788 (9th Cir. 2021). Thus, ICE may only re-detain a noncitizen like Mr. Claros if changed circumstances *increases* his risk of flight or danger to the community. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017) (discussing *Sugay*). Because Mr. Claros has never been arrested or convicted of any crime during his five years at liberty, his risk of flight and danger have *decreased* since ICE released him on recognizance in 2019. His re-detention thus violates BIA case law in addition to due process.

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

Here, when this Court "'compar[es] the specific conditional release in [Mr. Claros'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. Claros'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, care for his children, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. Indeed, Mr. Claros has lived in his community, married his longtime partner, is a loving father to his three children, ages 7, 9, and 14. Hodges Decl. Decl., Exh. C (Claros Decl.). Mr. Claros has a weighty liberty interest for which process was due before the government could deprive him of it.

2. Mr. Claros's Liberty Interest Mandated a Hearing Before any Re-Arrest.

If a petitioner identifies a protected liberty interest, the Court must then determine what process is due. "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). To determine the process due in this context, courts use the flexible balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g.*, *Ortega*, 415 F. Supp. 3d at 970; *Jorge M. F.*, 534 F. Supp. 3d at 1055.

Under the *Mathews* test, the Court balances three factors: "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 any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

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

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

a. Mr. Claros's private interest in his liberty is profound.

First, Mr. Claros's private interest in his liberty is substantial. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause."). Under *Morrissey* and its progeny, individuals

conditionally released from serving a criminal sentence have a liberty interest that is "valuable," even if that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. Thus, released individuals must be provided notice and a hearing *before* they are incarcerated. *See Johnson*, 682 F.2d at 873; *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. If that is true for parolees or probations—who have a diminished liberty interest given their convictions—the interest for an individual awaiting civil immigration proceedings is even greater. *See, e.g.*, *Ortega*, 415 F. Supp. 3d at 969 ("[G]iven the civil context" of immigration detention, a noncitizen's interest in release on bond is "arguably greater than the interest of parolees in *Morrissey*.").

Mr. Claros's private interest is increased by the harm to him and his family from his detention. As explained above, Mr. Claros's detention leaves his wife without her husband and children without their father. Given his wife's health conditions, his younger son G.'s mental health struggles, this risks physical and mental health impacts for the entire family. *See* Dkt. 6.3 (Claros Decl.); Dkt. 6.4 (Ortiz Decl.); Dkt. 6.5 (School Social Worker Ltr.). Mr. Claros's interest in his years-long liberty must be weighed heavily. *See Mathews*, 424 U.S. at 334-35.

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

The risk of erroneous deprivation of liberty is high if ICE can unilaterally re-detain Mr. Claros without a hearing before a neutral adjudicator that determines whether detention serves a permissible purpose of preventing flight risk or danger. *See Zadvydas*, 533 U.S. at 690. Indeed, ICE already reviewed Mr. Claros's case over six years ago, taking flight risk and danger into account, and determined that Mr. Claros should be released on his own recognizance. Hodges Decl., Exh. F (Form I-220A, DHS Order of Release on Recognizance). In the time since, ICE's determination has been proven correct: Mr. Claros lived in the community for over six years and has had no arrests during that time. Dkt. 1.1 (Hodges Decl..), ¶ 6. Mr. Claros has diligently appeared in person for recent immigration appointments, not just once, but *twice in the last two weeks*, including once at the ICE Office at 630 Sansome, on October 22, 2025. *Id.*, ¶¶ 10–11. In

fact, Mr. Claros was re-detained yesterday, November 3, 2025, *when he appeared in person at the Asylum Office*. *Id.*, ¶ 11. These developments show that detention is likely *not* warranted.

DHS's choice to re-detain Mr. Claros without notice or a hearing has deprived him of his liberty and separated him from his family and community without any opportunity for Mr. Claros to contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at his scheduled check-in without notice or hearing, and where compliance with release terms is in dispute, and ordering immediate release and enjoining Respondents from re-detention without a pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show by clear and convincing evidence that petitioner is a flight risk or danger to the community); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 187248 (E.D. Cal. Sept. 23, 2025) (same).

The value of a pre-deprivation hearing before a neutral decision-maker is high. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than ICE's unilateral decision to produce accurate determinations regarding factual disputes, and to determine whether Mr. Claros actually currently poses a flight risk or danger such that detention is justified. *See, e.g, Doe*, 2025 U.S. Dist. LEXIS 37929, at *15 ("At a hearing, a neutral decisionmaker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness."). Requiring such a hearing be held *before* Mr. Claros is re-detained serves to protect his liberty interest, facilitate his right to counsel and to gather evidence, and ensure that ICE's decision to revoke Mr. Claros's release does not evade review. *See Zinermon*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

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

Third, the government's interest in detaining Mr. Claros *without* a hearing is low. Mr. Claros has lived in the community caring for his family for more than six years, and has appeared in person for his immigration appointments. Dkt. 1.1 (Hodges Decl.), ¶¶ 10–11. The government cannot plausibly assert it has any urgent basis for keeping Mr. Claros in detention while a pre-deprivation hearing is scheduled, given his lawful conduct over the last six years. In any event, providing Mr. Claros with a hearing before this Court (or another neutral decisionmaker) to determine whether there is evidence that Mr. Claros *currently* poses any risk of flight or danger to the community imposes a *de minimis*, if any, burden on the government. Such a hearing is far *less* costly and burdensome for the government than keeping Mr. Claros detained at what the Ninth Circuit described as a "staggering" cost to the public of $158 each day per detainee in 2017, "amounting to a total daily cost of $6.5 million" (the current cost now is likely significantly higher). *Hernandez*, 872 F.3d at 996.

In short, the three *Mathews* factors all weigh in Mr. Claros's favor and demonstrate that due process required notice and a hearing before a neutral adjudicator *prior to* Mr. Claros's re-incarceration to determine if such re-incarceration is justified. Because Respondents failed to give Mr. Claros the notice and hearing he was due, Due Process requires his immediate release and an order preventing the government from re-incarcerating him unless and until his is provided with a constitutionally compliant hearing. *See, e.g., Duong*, 2025 U.S. Dist. LEXIS 185024; *Qazi*, 2025 U.S. Dist. LEXIS 191922; *J.O.L.R.*, 2025 U.S. Dist. LEXIS 187248, at *15 ("Petitioner's immediate release is required to return him to the status quo ante—the last uncontested status which preceded the pending controversy.") (citing cases).

3. Statute and Regulation Govern Procedures for Revoking an Order of Release, and the APA Limits Unlawful Agency Action.

Mr. Claros is also likely to succeed on the merits of his statutory and regulatory claims under the APA, INA, and implementing regulations. DHS's revocation of Mr. Claros's order of

release on recognizance was not in accordance with the INA and implementing regulations governing who may lawfully revoke an order of supervision and under what circumstances.

Immigration regulations permit only certain officials to revoke an order of supervision: the ICE Executive Associate Director, a field office director, or an official "delegated the function or authority . . . for a particular geographic district, region, or area." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2, 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles listed in § 241.4). If the field office director or a delegated official intend to revoke an order of supervision, they must first make findings that "revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate [Director]." 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an order of supervision, the delegation order must explicitly say so. *See Ceesay*, 781 F. Supp. 3d 137, 161 (finding a delegation order that "refers only to a limited set of powers under part 241 that do not include the power to revoke release" insufficient to grant authority to revoke an order of supervision).

Beyond the question of *who* may lawfully revoke an order of release, the INA and regulations also impose requirements on the procedures to be followed. A non-citizen with a final order of removal "who is not removed within the [90-day] removal period . . . shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (titled "Supervision after 90-day period"). A non-citizen may only be detained past the 90-day removal period following a removal order if found to be "a risk to the community or unlikely to comply with the order of removal" or if the order of removal was on specified grounds. *Id.* § 1231(a)(6). But even where initial detention past the 90-day removal period is authorized, if "removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the [noncitizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas*, 533 U.S. at 699-700.

The regulations purport to give additional reasons, beyond those listed at § 1231(a)(6), that an order of supervision may be revoked and a non-citizen may be re-detained past the removal period: "(1) the purposes of release have been served; (2) the [non-citizen] violates any condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the [non-citizen], or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R. § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot circumvent the plain text of the statute[,]" courts have questioned whether these additional regulatory grounds for revocation of release are *ultra vires* of statutory authority. *See, e.g.*, *You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018) (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds). Separately, upon revocation of an order of supervision, ICE must also give a non-citizen notice of the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

Here, ICE met none of these requirements. Mr. Claros's order of supervision was not revoked by the ICE Executive Associate Director. Dkt. 1.1 (Hodges Decl.), ¶ 17. The officer who revoked the order did not first make findings that revocation was in the public interest and that circumstances did not reasonably permit referral to the Executive Associate Director. *Id.* Nor had the officer been delegated authority to revoke an order of supervision. *Id.* Before revoking the order, DHS did not make findings that Mr. Claros is dangerous or unlikely to comply with a removal order, as required by statute. *Id.* DHS also made no findings that Mr. Claros's conduct indicated release would no longer be appropriate, that the purposes of release had been served, or that it was appropriate to enforce a removal order. *Id.* Nor did DHS give Mr. Claros notice of the reasons for revocation and opportunity to be heard, as required by the regulations. *Id.*, ¶ 18.

"An agency . . . literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute." *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (internal quotation marks and citation omitted).The APA authorizes judicial review of final agency action. 5 U.S.C. § 704. Final agency actions are those (1) that "mark the consummation of the agency's decision-making process" and (2) "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation modified).

ICE's revocation of an order of supervision is a final agency action subject to this Court's review. The revocation here marked the consummation of ICE's decision-making process regarding Mr. Claros's custody. The revocation was also an action by which rights or obligations have been determined or from which legal consequences flowed because it led ICE to detain Mr. Claros in violation of his rights under the Constitution, statute, and regulations.

The APA requires courts to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A)–(C). Agency action that conflicts with its own decisions or directives is arbitrary and capricious in violation of the APA. *See, e.g.*, *Organized Village of Kake v. U.S. Dep't of Agriculture*, 795 F.3d 956, 966 (9th Cir. 2015) ("Unexplained inconsistency between agency actions is a reason for holding an [action] to be an arbitrary and capricious change.") (internal quotation marks omitted); *see also Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period for a person who is found to be a danger to the community, unlikely to comply with a removal order, or whose removal order is on certain grounds specified in the statute. Even then, if removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by [§ 1231(a)(6]. In that case, of course, the [noncitizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances . . . ." *Zadvydas*, 533 U.S. at 699-700. Regulations that purport to give DHS

authority to revoke an order of supervision on grounds other than those listed § 1231(a)(6) are *ultra vires* and in excess of statutory authority because "[r]egulations cannot circumvent the plain text of the statute." *See You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018).

Here, DHS's unexplained detention of Mr. Claros is entirely arbitrary, and contrary to its prior determination that he is not a flight risk or danger to the community and merits release on recognizance. Dkt. 1.1 (Hodges Decl.) ¶¶ 6, 16.

Additionally, the INA and due process require that civil immigration detention be reasonably related to a permissible non-punitive purpose. *See Zadvydas*, 533 U.S. at 690; *Patel*, 17 I&N Dec. at 666; *see also Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004) (holding that civil detention is unconstitutionally punitive if it is "excessive in relation to [its non-punitive] purpose" or is "employed to achieve objectives that could be accomplished in so many alternative and less harsh methods"). Here, ICE's decision to re-detain Mr. Claros without explanation following his RFI, despite his being at liberty for over six years, his lack of any arrests during that time, pending U-visa petition, and his in-person appearance for his RFI on October 22, 2025, was both excessive in relation to a non-punitive purpose, and any permissible purpose could have been accomplished through alternatives to detention. *Zadvydas*, 533 U.S. at 690; *Jones*, 393 F.3d at 934; *see* Dkt. 1.1 (Hodges Decl.) ¶¶ 6, 8-9, 11, 16; Dkt. 6.2 (Hodges Supp. Decl.), ¶¶ 7-8.

4. The *Accardi* Doctrine Additionally Protects Mr. Claros from DHS's Unlawful Revocation of His Release.

Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is

incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

Accardi is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235 (affirming reversal of agency denial of public assistance made in violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

Where a "petitioner can prove the allegation [that an agency failed to follow its rules in a hearing] he should receive a new hearing." *Accardi*, 347 U.S. at 260. "As a result, this Court cannot conclude that [the revoking officer] had the authority to revoke release" and Mr. Claros "is entitled to release on that basis alone." *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 162 (citing *Rombot v. Souza*, 296 F. Supp. 3d 386, 386-89 ((D. Mass. 2017)); *see also M.S.L. v. Bostock*, 2025 WL 2430267 (D. Or. Aug. 21, 2025) (releasing habeas petitioner where revocation of an ICE order of supervision was ordered by someone without regulatory authority to do so); *Zhu v. Genalo*, 2025 WL 2452352 (S.D.N.Y. Aug. 26, 2025). There is no permissible purpose for Mr. Claros's detention at this time, and ICE's decision to re-detain Mr. Claros without notice and without complying with the agency's statutory and regulatory obligations violates the APA and the *Accardi* doctrine

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

At a pre-deprivation hearing, due process requires that the government justify re-detention of Mr. Claros by clear and convincing evidence that he poses a flight risk or danger. *See Singh*, 638 F.3d at 1204 ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake . . . are both particularly important and more substantial than mere loss of money.") (internal quotation marks omitted); *Ixchop*

Perez v. McAleenan, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the "consensus view" among District Courts concluding that, "where . . . the government seeks to detain [a noncitizen] pending removal proceedings, it bears the burden of proving that such detention is justified); *Jorge M.F.*, 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before being returned to custody, ordering that the government bear the burden at the hearing by clear and convincing evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same). The hearing must also consider whether alternatives to detention would adequately ensure Mr. Claros's appearance. *See, e.g., G.C. v. Wofford*, No. 1:24-cv-01032-EPG-HC, 2025 U.S. Dist. LEXIS 39773, at *26 (E.D. Cal. Mar. 4, 2025) (ordering bond hearing at which IJ considers alternative conditions of release); *M.R. v. Warden, Mesa Verde Det. Ctr.*, No. 1:24-cv-00988-EPG-HC, 2025 U.S. Dist. LEXIS 75622, at *34 (E.D. Cal. Apr. 21, 2025) (same).

As the above-cited authorities show, Mr. Claros is likely to succeed on his claims that the Due Process Clause, APA, INA, and regulations require notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration by ICE. At the very minimum, he clearly raises serious questions regarding these issues, so has met the standard for a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

B. Mr. Claros will Suffer Irreparable Harm Absent Injunctive Relief

Absent the TRO he seeks, Mr. Claros will suffer continued irreparable harm while he remains deprived of his liberty and subjected to unlawful incarceration by ICE. 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 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[2]

Mr. Claros already struggles with the mental health impacts of extensive trauma beginning in childhood and compounded by past torture and persecution in his country of origin. Dkt. 6.2 (Hodges Supp. Decl.), ¶ 10. He has been diagnosed with Complex Post-Traumatic Stress Disorder ("C-PTSD") and Developmental Trauma Disorder, and has experienced suicidal ideation. *Id.* Mr. Claros has received therapy to help him manage his trauma and mental health challenges. *Id.* Mr. Claros's physical and mental health and well-being is at risk the longer he remains detained, particularly in light of his mental health conditions, including C-PTSD, and his history of suicidal ideation. *See id.*

Additionally, every day that Mr. Claros is detained leaves his family without a key support figure, including caring for his wife's physical ailments and supporting his children's mental health and their overall wellbeing. Mr. Claros's wife suffers from health conditions "that have been challenging to manage lately," including anxiety, severe headaches, and "painful rashes and swelling at night" affecting her hands and chest. *See* Hodges Decl., Exh. C (Claros Decl.), ¶ 2. Mrs. Claros was hospitalized around two months ago in connection to these symptoms, and was told by treating medical staff that she "needed to stay calm and avoid stress as much as [she] can." *Id.* Mrs. Claros affirms that "[l]osing Enil makes that impossible" and explains that Mr. Claros's detention "has already been so traumatic for me and for our children. I can hardly imagine the harm of ongoing detention on our family." *Id.*, ¶¶ 2, 7. It also risks harming his children's mental health, including his nine-year-old son who already has been

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

receiving therapeutic support through school "due to challenges related to trauma and emotional regulation[,]" and his seven-year-old daughter who has already been identified by her elementary school as needing additional support services. *See* Hodges Decl., Exh. E (School Social Worker Ltr.). Mr. Claros's three young children "are very attached to him and he is very involved in their lives," including by picking them up from school and taking them to appointments. Exh. D (Ortiz Decl.), ¶ 4. Mr. Claros's "children have been crying a lot and stay very close to Enil's wife, constantly saying that they want Enil come home." *Id.* Mr. Claros's detention also will harm his U.S. citizen brother, who explains that Mr. Claros "is like a father to me" and "[w]ith Enil detained, I have lost my main support system." *Id.*, ¶ 3. Mr. Claros's detention threatens to upend and traumatize his whole family, who "do not know what we will do without him." *Id.*, ¶ 5.

Finally, as the Ninth Circuit has repeatedly found, "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, 373 (1976)). The Ninth Circuit has made clear that "[w]hen an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (cleaned up). Because Mr. Claros was detained without notice and in violation of his constitutional rights, he has established irreparable harm.

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

The balance of equities and the public interest undoubtedly favor granting this TRO. First, the balance of hardships strongly favors Mr. Claros. The government 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."). "Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025).

Therefore, the government cannot allege harm arising from a TRO or PI ordering it to comply with the Constitution, the APA, the INA, and the regulations.

Further, any burden imposed by requiring the DHS to refrain from arresting Mr. Claros 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 TRO 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 TRO is not entered, the government would effectively be granted permission to detain Mr. Claros 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.").

D. Mr. Claros's Release is Required to Preserve the Status Quo.

A "TRO 'should be restricted to . . . preserving the status quo and preventing irreparable harm just so long as is necessary to hold a preliminary injunction hearing and no longer.'" *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (internal citation omitted). The status quo refers to "the last uncontested status which preceded the pending controversy." *Doe v. Noem*, No. 25-cv-00633, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (citing

GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199, 1210 (9th Cir. 2000)). Here, as in *Aceros*, the "status quo is the moment prior to [Mr. Claros's] likely illegal detention." *Aceros*, 2025 U.S. Dist. LEXIS 159021, at *6–7 (citing *Kuzmenko v. Phillips*, No. 25-cv-00663, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025) (granting a TRO requiring immediate release of the petitioner back to home confinement from custody, as a restoration of the status quo)). As this Court recently determined in a similar case, "[a] TRO immediately releasing Petitioner is appropriate here to return [him] to the status quo." *Aceros*, 2025 U.S. Dist. LEXIS 159021, at *6 (citing and quoting *E. Bay Sanctuary Covenant*, 932 F.3d at 779).

V. CONCLUSION

For all the above reasons, this Court should find that Mr. Claros warrants a temporary restraining order and a preliminary injunction ordering that Respondents immediately release Mr. Claros and enjoining Respondents from re-arresting him unless and until he is afforded a hearing before a neutral adjudicator to determine whether the government has provided clear and convincing evidence that he is a danger to the community or a flight risk such that re-incarceration is justified. The Court should additionally prohibit the government from transferring Mr. Claros out of this District and/or removing him from the country until these habeas proceedings have concluded.

Dated: November 4, 2025

Respectfully submitted,

/s/ Elena Hodges
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