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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-EMC

REPLY IN SUPPORT OF PRELIMINARY INJUNCTION AND IN FURTHER SUPPORT OF HABEAS PETITION

IMMIGRATION HABEAS CASE

I. INTRODUCTION

Petitioner Enil Jabib Claros ("Mr. Claros") submits this Reply to address Respondents' arguments in opposition to his motion for a Temporary Restraining Order ("TRO Motion"). Respondents detained Mr. Claros following a negative in-person reasonable fear interview ("RFI") at the San Francisco Asylum Office ("AO"). After this Court issued the TRO, an immigration judge vacated the AO's determination, found that Mr. Claros does in fact have a reasonable fear of persecution and/or torture in Honduras, and referred Mr. Claros for further withholding-only proceedings before an immigration judge ("IJ"). *See* 8 C.F.R. § 1208.31. Respondents' sole initial justification for Mr. Claros's detention was that he "had a removal order." Now, Respondents contend, with threadbare analysis of Mr. Claros's circumstances, that the purpose of release has been served and that Mr. Claros poses a danger and flight risk. Neither argument holds water. Mr. Claros was released six years ago to pursue proceedings regarding his fear of removal, and those proceedings remain ongoing. His removal is not "reasonably foreseeable," as his pending withholding-only case could take years to conclude. And in the six years since the Department of Homeland Security ("DHS") deemed Mr. Claros *not* to be a danger of flight risk and released him on recognizance, his positive equities have only accumulated. In any event, Mr. Claros maintains a strong liberty interest in his years-long freedom. District courts have repeatedly held that individuals whom the government has allowed to live at freedom for years cannot suddenly be detained without notice or any process.

In order to protect Mr. Claros from further violations of his due process and statutory rights, the Court should convert the TRO to a preliminary injunction ("PI").

II. FACTUAL AND PROCEDURAL HISTORY

Mr. Claros provides both a factual update and brief response to Respondents' mischaracterization of the record. The full factual and procedural history is contained in the TRO Motion. *See* Dkt. 5 at 6–9. However, following the Court's issuance of the TRO on November 5, 2025, Respondents released Mr. Claros later that day. Dkt. 9; Dkt. 10. Next, ICE ordered Mr.

Claros to appear at the San Francisco ICE Office at 630 Sansome Street on November 7, 2025. Exh. A. Mr. Claros appeared as requested and received a new check-in date of November 28, 2025. *Id.* Additionally, on November 10, 2025, an IJ found that Mr. Claros has a reasonable fear of persecution and/or torture in Honduras. Exh. B (IJ RFI Review Order). The IJ vacated the AO's negative RFI determination and placed Mr. Claros in withholding-only proceedings. *Id.* Mr. Claros's initial scheduling hearing in his immigration case is set for May 5, 2026. Exh. C (Automated Case Information Page Screenshot for Mr. Claros, taken 11/17/2025).

Further, Mr. Claros notes that the government's Response misconstrues his criminal history. Respondents assert that Mr. Claros "has multiple criminal arrests and a conviction," but this is inaccurate. *See* Dkt. 12 at 3, 8. DHS appears to be relying on a 2021 incident in which Mr. Claros was taken into custody and then released, and the prosecutor determined there was insufficient evidence to charge Mr. Claros with any crime. *See* Exh. D (SF District Attorney Ltr., dated 11/13/2025). Under state law, this incident qualifies as a "detention only" rather than arrest, because Mr. Claros was released and the prosecutor did not file a criminal complaint. Cal. Pen. Code § 849(c). Mr. Claros's sole arrest led to his sole conviction in 2011.

III. LEGAL STANDARD

The standard for TROs and PIs are "substantially identical." *See Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). A TRO or PI is appropriate if there are "serious questions" going to the merits and the balance of hardships tips sharply in the plaintiff's favor. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131–32 (9th Cir. 2011).

IV. ARGUMENT

A. Mr. Claros Is Likely to Succeed on the Merits.

Mr. Claros is likely to succeed in showing—and has at least raised serious questions—that Respondents may not re-detain him after over six years at liberty without providing him a hearing before a neutral adjudicator.[1] Neither the statutory framework for his detention nor his

[1] Mr. Claros focuses his Reply on the procedural due process claim in light of the government's focus on that claim in their Response. He is also likely to succeed on the merits of his other claims regarding Respondents' violations of his substantive due process rights and violations under the Administrative Procedure Act, the Immigration and Nationality Act and implementing regulations, and the *Accardi* doctrine. *See* Dkt. 1, ¶¶ 52–66, 78–99.

immigration status or minimal criminal history undermine Mr. Claros's right to due process. A pre-deprivation hearing is crucial to ensure any re-detention complies with the Constitution.

i. Respondents' Arguments Regarding 8 U.S.C. § 1231 Are Irrelevant to Mr. Claros's Due Process Right to a Pre-Deprivation Hearing

First, Respondents claim that Mr. Claros was properly detained under 8 U.S.C. § 1231, but this argument does nothing to negate Mr. Claros's due process claims. Dkt. 12 at 4. Courts in this district and elsewhere have repeatedly held that individuals detained under § 1231 and then released for years while their protection claims proceed retain a strong interest in their liberty requiring pre-deprivation process. *See, e.g.*, *Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 U.S. Dist. LEXIS 139205 (N.D. Cal. July 17, 2025); *Alva v. Kaiser*, No. 25-cv-06676-RFL, 2025 U.S. Dist. LEXIS 163060 (N.D. Cal. Aug. 21, 2025); *Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO (HC), 2025 U.S. Dist. LEXIS 161136 (E.D. Cal. Aug. 19, 2025). Rather, "regardless of which detention statute applies," the constitution protects Mr. Claros's strong liberty interest in his six-years-long freedom, and prevents his re-detention without *any* notice or process. *Mendoza v. Albarran*, No. 25-cv-08205-VC, 2025 U.S. Dist. LEXIS 195992, at *2 (N.D. Cal. Oct. 10, 2025). That remains true even for those detained under the post-removal order statute, § 1231(a)(6). Indeed, the Ninth Circuit has clearly held that the "liberty interests of persons detained under § 1231(a)(6) are comparable to those of persons detained under § 1226(a)." *Diouf v. Napolitano*, 634 F.3d 1081, 1086–87 (9th Cir. 2011).

Respondents repeatedly cite *Johnson v. Guzman-Chavez*, 594 U.S. 523 (2021), to support their contention that individuals detained under § 1231(a)(6) are "not entitled" to any bond hearing. *See* Dkt. 12 at 4, 6. 9. But that decision held only that individuals subject to reinstatement of removal such as Mr. Claros are detained under § 1231 rather than § 1226, and therefore do not automatically receive a bond hearing under the regulations implementing the latter provision. *See Guzman-Chavez*, 594 U.S. at 527 (citing the regulations). It did not consider a due process challenge to *re*-detention for someone already released. *See generally id.* In fact, the Supreme Court subsequently explicitly declined to answer the question whether the

Due Process Clause may entitle individuals detained under § 1231(a)(6) to a bond hearing at some point. *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022). And as the Ninth Circuit has explained, the government's ability to subject noncitizens to immigration detention "is always constrained by the requirements of due process." *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

Nor do the regulations promulgated by DHS concerning re-detention under § 1231(a)(6) operate as a shield to constitutional challenges, as Respondents would have it. Dkt. 12 at 6 (citing 8 C.F.R. § 241.4(l)). *Zadvydas*, 533 U.S. 678, 696 (2001) (rejecting the dissent's contention that the post-order detention regulations were sufficient to protect a noncitizen's liberty interest). Contrary to Respondents' argument, Mr. Claros does not lodge a facial challenge to the post-order custody regulations. *See* Dkt. 1. Rather, he contends that in his particular circumstances—where he has lived in the community for more than six years while his immigration proceedings are ongoing—he has a sufficient liberty interest and is due notice and an opportunity to contest the basis for detention prior to any re-incarceration. *Id.*, ¶¶ 40–45. The government has previously conceded that as-applied constitutional challenges to the post-order regulations "remain available." *Arteaga-Martinez*, 596 U.S. at 583. Mr. Claros raises at least serious questions that, in his particular case, the Constitution requires more than the minimal post-detention process set forth by the regulations.[2]

ii. The Mathews Test Weighs Heavily in Mr. Claros's Favor

Respondents provide no compelling reason to overturn the Court's proper application of the *Mathews* framework. *See* Dkt. 9 at 3. Mr. Claros satisfies each *Mathews* factor.

(1) Mr. Claros has a weighty private interest in liberty

Mr. Claros's interest in his freedom from bodily restraint is at the "heart of the liberty" inherent in the Due Process Clause. *See Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty

[2] As detailed in the Habeas Petition, Respondents also violated their own regulations when they summarily detained Mr. Claros. *See* Dkt. 1, ¶¶ 52–66.

protected by the Due Process Clause"); *Hernandez*, 872 F.3d at 981 (a noncitizen's interest in being free from imprisonment is "fundamental"). Mr. Claros, a San Francisco resident, U-visa petitioner, husband, and father, has spent the last six years at liberty caring for his family. *See* Dkt. 1-1 (Hodges Decl.), ¶¶ 3–9. Respondents' efforts to minimize Mr. Claros's interest are callous and unconvincing. *See* Dkt. 12 at 9 (characterizing Mr. Claros's fundamental interest in being free from unconstitutional restraint on his liberty as "personal reasons for wanting to remain out of custody"). Respondents make four principal arguments, but each falters.

First, Respondents assert that Mr. Claros poses a flight risk and danger to the community, Dkt. 12 at 9, but this is belied by their own prior actions. Respondents already knew about Mr. Claros's now-fourteen-year-old misdemeanor battery conviction and his re-entry when they released him on recognizance in 2019. Dkt. 6-6. Their release determination reflected "a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Where a noncitizen has been previously released by immigration officials, any allegation that circumstances have changed materially to warrant re-detention must be evaluated by a neutral decision maker before they can be re-detained. *See Arzate v. Andrews*, No. 1:25-cv-00942-KES-SKO (HC), 2025 U.S. Dist. LEXIS 149743, at *13 (E.D. Cal. Aug. 4, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)); *see also Saravia*, 280 F. Supp. 3d at 1197. Respondents do not argue that circumstances have changed materially to warrant Mr. Claros's re-detention. *See generally* Dkt. 12. Nor could they.

Since his release, Mr. Claros has lived at liberty in his community, acting as a key support to his wife, their three minor children, and his younger brother. Dkt. 6-3 (Claros Decl.); Dkt. 6-4 (Ortiz Decl.); Dkt. 6-5 (School Social Worker Ltr.). Mr. Claros's sole arrest and conviction have become more remote in time, and he has never been charged with any other crime. Mr. Claros has filed a U-visa petition based upon severe abuse of which he was the victim. Dkt. 1-1 (Hodges Decl.), ¶¶ 8–9. Additionally. two weeks ago, an immigration judge

vacated the AO's negative RFI determination and placed Mr. Claros in withholding-only proceedings, giving him incentive to continue to appear and pursue protection from removal. Exh. B (IJ RFI Review Order). In just the last month, Mr. Claros has appeared as requested *four times*: twice at the San Francisco ICE Office, once at the AO, and once at the San Francisco Immigration Court. Now more than ever, Mr. Claros does not pose a flight risk or danger to the community. In any event, this is the very issue a pre-deprivation hearing would consider, and Mr. Claros' "protected liberty interest in remaining out of custody" cannot be unilaterally abrogated without process. *Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 U.S. Dist. LEXIS 179594, at *17 (N.D. Cal. Sep. 12, 2025) (citing *Ramirez Clavijo v. Kaiser*, 25-cv-06248-BLF, 2025 U.S. Dist. LEXIS 163056, at *6 (N.D. Cal. Aug. 21, 2025) (collecting cases); *Romero v. Kaiser*, No. 22-cv-02508, 2022 U.S. Dist. LEXIS 82538, at *2 (N.D. Cal. May 6, 2022)).

Second, Respondents argue that no court may review the legality of Mr. Claros' detention under § 1231(a)(6) until he has been subject to "prolonged" detention of at least six months, as his removal is presumptively "foreseeable" during this time. *Id.* at 6–7. Perhaps that would be true as a statutory matter if Mr. Claros had been continuously detained since ICE reinstated his removal order. But given that ICE decided to release Mr. Claros *after* reinstating his removal order, it allowed him to develop the "enduring attachments of normal life" that give rise to a protected liberty interest. *Duong v. Kaiser*, No. 25-cv-07598-JST, 2025 U.S. Dist. LEXIS 185024, at *10 (N.D. Cal. Sept. 19, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Nothing in *Zadvydas* requires Mr. Claros to suffer six months in detention apart from his family before bringing a challenge to his *re-detention* without any notice or process:

> *Zadvydas* [] addressed the *length* of permissible detention, not what process is necessary to protect noncitizens' liberty interest when the government seeks to return them to custody. Instead, *Morrissey* addresses that issue, explaining that the deprivation is a "grievous loss" that can be taken away only upon review at a hearing before a neutral arbiter, regardless of whether government agents otherwise have statutory authority to re-detain an individual. *Morrissey*, 408 U.S. at 482, 489. Nothing in *Zadvydas* overrules that reasoning or otherwise provides the

> government with carte blanche to re-detain noncitizens without any process so long as the detention lasts under three months.

Alva, 2025 U.S. Dist. LEXIS 163060, at *10–11 (citing *Zadvydas*, 533 U.S. 678).

Third, Respondents' contention that simply because Mr. Claros received an RFI, the purpose of release has been served and removal is "reasonably foreseeable" strains credulity. Dkt. 12 at 6. In fact, Respondents re-detained Mr. Claros *before* his RFI process was complete. *See* 8 C.F.R. § 208.31(g) (allowing for IJ review of an AO RFI decision). After this Court issued the TRO ordering Mr. Claros released, an IJ found he established a reasonable possibility of persecution or torture in Honduras and referred his case for full consideration of his application for withholding of removal. Mr. Claros is now closer to receiving protection in the United States than he was when Respondents previously released him. Just as prior to his RFI, the government may not remove Mr. Claros until this process is complete. Respondents suggest, without basis, that Mr. Claros will be removed at the conclusion of the withholding-only proceedings. Dkt. 12 at 6 ("Upon the completion of withholding-only proceedings, Petitioner will either be subject to removal to Honduras or to a third country."). But Respondents ignore that there is a significant likelihood Mr. Claros' application for withholding of removal to Honduras will be granted, given his severe past persecution by the Honduran police because of his anti-corruption political opinion. And Respondents provide no evidence that they will be able to remove him to some unspecified third country, even while they have failed to identify any alternative country during the past six years. *See Tadros v. Noem*, No. 25cv4108 (EP), 2025 U.S. Dist. LEXIS 113198, at *9–10 (D.N.J. June 13, 2025) (rejecting the idea that the mere possibility of third-country removal made removal "reasonably foreseeable").

In any case, final resolution of Mr. Claros's pending proceedings may take years more, and he also has a pending U-visa petition that could provide an independent path to lawful status. His removal is not likely in the reasonably foreseeable future. *See, e.g.*, *Escalante v. Noem*, No. 9:25-cv-00182-MJT, 2025 U.S. Dist. LEXIS 148899, at *10 (E.D. Tex. Aug. 2, 2025) ("A remote possibility of an eventual removal is not analogous to a significant likelihood that

removal will occur in the reasonably foreseeable future.") (citation omitted). And even if Mr. Claros' removal date *were* approaching, he would *still* have a due process right to pre-deprivation process to determine whether he actually poses a flight risk or danger that gives the government an interest in re-detaining him now, instead of allowing him to voluntarily appear when removal plans are finalized. *See Alva*, 2025 U.S. Dist. LEXIS 163060, at *11–15.

Finally, Respondents' contention that Mr. Claros possesses diminished due process rights because of his status as a noncitizen is inaccurate as a matter of law. *See* Dkt. 12 at 9. Respondents argue that *Morrissey* and its progeny do not apply in the immigration detention context, but many courts in this District have expressly held the opposite. *Compare id.* (citing *Morrissey v. Brewer*, 408 U.S. 471 (1972)); *with Arzate*, 2025 U.S. Dist. LEXIS 149743, at *9, at *9–10 ("Even where a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.") (citing *Young v. Harper*, 520 U.S. 143, 147–49 (1997), *Morrissey*, 408 U.S. at 482, *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)); *see also Jorge M.F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 Dist. LEXIS 40823, at *2 (N.D. Cal. Mar. 1, 2021) (granting a PI against re-arrest by ICE where petitioner had raised serious questions going to the merits of claim that he had a protectable liberty interest in conditional release under [*Morrissey*] and that he must be afforded a pre-deprivation hearing before re-detention") (cleaned up). Indeed, the Supreme Court long ago clarified that noncitizens are equally protected by the Due Process clause and the constitutional rights of people in criminal custody set the floor for the constitutional rights of detained noncitizens. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) ("[T]he constitutional rights of prisoners establish a floor for [detained noncitizens'] constitutional rights.").

(2) <u>The risk of erroneous deprivation of liberty without a preliminary injunction is high</u>

Second, the risk of erroneous deprivation is extraordinarily high. An individualized hearing would undoubtedly reduce the risk that Mr. Claros is erroneously re-detained despite not posing any risk of danger or flight. *See Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011)

("The risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial."). As explained above, although Respondents now allege that Mr. Claros is both a flight risk and danger because of his re-entry and criminal history, Dkt. 12 at 4, 6, DHS knew about both the re-entry and Mr. Claros's sole criminal conviction when they released him from custody in 2019, finding that he posed neither a flight risk nor danger to the community. Dkt. 6-6. DHS's determination has been borne out by Mr. Claros's conduct for the past six years, during which time he has continued to live in the community and has not been charged with any other crimes. Dkt. 1-1 (Hodges Decl.), ¶ 6. Further, Mr. Claros is now presenting his claims for protection in withholding-only proceedings and has a U-visa petition pending. Exh. B (RFI Review Order); Dkt. 1-1 (Hodges Decl.), ¶¶ 8–9. In these circumstances, a hearing prior to detention is particularly important. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (a hearing is usually required "before the State deprives a person of liberty"); *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 U.S. Dist. LEXIS 16389, at *3 (N.D. Cal. Jan. 30, 2020) ("After all, the purpose of a bond hearing is to inquire whether the [noncitizen] represents a flight risk or danger to the community.").

Respondents' contention that "existing agency procedures sufficiently protected" Mr. Claros from unwarranted detention is belied by the negligible steps they took here. Dkt. 12 at 9. Though the regulations require that a noncitizen previously released under § 1231(a)(6) "be notified of the reasons" for revoking release, 8 C.F.R. § 241.4(l)(1), ICE provided no notice or substantive justification before detaining Mr. Claros on November 3, 2025. Dkt. 1-1 (Hodges Decl.), ¶ 16 (ICE officers' sole stated basis for detention was that "[Mr. Claros] has a removal order"). Nor do their current justifications make sense, given the IJ's reversal of the AO's reasonable fear decision and Mr. Claros' continued pursuit of protection. The regulations relied upon by Respondents clearly offer little protection to prevent erroneous re-detention. Instead, for those far beyond the 90-day removal period like Mr. Claros, the Ninth Circuit has repeatedly required a hearing at which Respondents bear the burden to justify further detention by clear and

convincing evidence. *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011); *Diouf*, 634 F.3d at 1091–92.

(3) The government has little interest in detention without due process

Third, Respondents' interest in detaining Mr. Claros without an individualized hearing is low. *See Hernandez*, 872 F.3d at 994 ("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."). Respondents' claims that one additional hearing would overburden the immigration system, Dkt. 12 at 9–10, are specious in comparison to the "staggering" cost to taxpayers of detention itself. *Id.* at 996. Nor can Respondents plausibly contend that there is any urgent need to incarcerate Mr. Claros for removal. Rather, his case remains ongoing and he has diligently complied with ICE directives following his most recent release. Exh. A (ICE Check-In Confirmation). "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 U.S. Dist. LEXIS 142213, at *5 (N.D. Cal. July 24, 2025).

The *Mathews* test weighs in Mr. Claros's favor, and he is likely to succeed on his procedural due process claim. *See* Dkt. 1, ¶¶ 67–77.

B. Mr. Claros Would Suffer Irreparable Harm if Re-Detained

Respondents ignore the Ninth Circuit's recognition of the "irreparable harms imposed on anyone subject to immigration detention," *Hernandez*, 872 F.3d at 995, and do not contest Mr. Claros's allegations of his mental health diagnoses and prior suicidal ideation, or the severe impacts that any re-detention would have on his mental and physical health. *Compare* Dkt. 5 at 24, *with* Dkt. 12 at 10. Unwarranted detention would also devastate Mr. Claros's family, leaving his wife, who has serious health conditions, and their three young children, including a second grader and fourth grader who already have learning and mental health challenges, without key

support. Dkt. 6-3 (Claros Decl.); Dkt. 6-4 (Ortiz Decl.); Dkt. 6-5 (School Social Worker Ltr.). Respondents also argue that there is no irreparable harm where Mr. Claros has purportedly not established a likelihood of success on the merits, but that is wrong. *See All. for the Wild Rockies*, 632 F.3d at 1134–35 (applying sliding scale approach to PI factors). Regardless, Mr. Claros has shown that detention would violate his constitutional rights, which "unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

C. The Balance of Equities and Public Interest Favor Mr. Claros

Finally, Respondents allege no concrete harm to the government from a PI. Respondents' assertion that the public interest "lies squarely in detaining an individual subject to removal in the near term" falls apart given that Mr. Claros is not subject to near-term removal. Dkt. 12 at 11. Further, Respondents fail to explain how holding a pre-deprivation hearing would interfere with their stated interest in "the application of the law." *Id.* As this Court has observed, summarily detaining noncitizens at courthouses "undermines legitimate government interests" and risks chilling access to courthouses and "impair[ing] the fair administration of justice." *Aceros*, 2025 U.S. Dist. LEXIS 179594, at *37. Similarly, detaining individuals when they appear for a hearing at the AO, as Respondents did here, also impairs access to justice and risks chilling asylum-seekers from exercising their statutory and regulatory right to seek protection. "[T]he public has a strong interest in upholding procedural protections against unlawful detention[.]" *Id.* (quoting *Jorge M.F.*, 2021 U.S. Dist. LEXIS 40823, at *3). Here, that requires a pre-deprivation hearing before Mr. Claros is arbitrarily and unnecessarily re-detained.

D. Any Pre-Deprivation Hearing Must Be Constitutionally Compliant

Respondents do not contest that at any hearing ordered by this Court, the government must bear the burden of proof of showing that Mr. Claros is a current danger or flight risk by clear and convincing evidence to justify continued detention. Dkt. 1, ¶ 50 (citing *Singh*, 638 F.3d at 1204); *compare* Dkt. 12. Nor do they contest that the hearing must be conducted by a neutral

decisionmaker or that consideration of alternatives to detention and ability to pay any bond must be given. *See* Dkt. 1, ¶¶ 47, 50–51 (citing *Bell v. Wolfish*, 441 U.S. 520, 538 (1979)); *compare* Dkt. 12. Respondents have thus forfeited any objection to these requirements. *United States v. McEnry*, 659 F.3d 893, 902 (9th Cir. 2011) (issue not raised in government's answering brief is waived). The Court should specify that any bond hearing must adhere to these requirements.

V. CONCLUSION

For all the above reasons, and those stated in Mr. Claros's TRO Motion, the Court should convert its TRO into a preliminary injunction, and enjoin Respondents from re-detaining Mr. Claros during the pendency of this litigation, unless and until they demonstrate by clear and convincing evidence at a pre-deprivation hearing conducted by a neutral decisionmaker that Mr. Claros is a flight risk or danger such that his physical custody is required. If Respondents choose to provide such a hearing, Mr. Claros should not be re-detained until the Court can confirm that the hearing was conducted in accordance with the Court's order and due process.

Dated: November 19, 2025

Respectfully submitted,

/s/ Elena Hodges
Elena Hodges
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