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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
7

8 O.A.C.S.,

No.

9
10 Petitioner,

11 v.

**PETITIONER'S NOTICE OF MOTION
AND EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER**

12 Minga WOFFORD, Field Office Director,
Mesa Verde, Office of Detention and
13 Removal, U.S. Immigrations and Customs
Enforcement, U.S. Department of
14 Homeland Security;

Challenge to Unlawful Incarceration Under
Color of Immigration Detention Statutes;
Request for Declaratory and Injunctive Relief

15 Sergio ALBARRAN, Acting Field Office
Director of the San Francisco Immigration
16 and Customs Enforcement Office, U.S.
Department of Homeland Security;

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

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

21 Pam BONDI, in her Official Capacity,
22 Attorney General of the United States.

23 Respondents.
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NOTICE OF MOTION

Petitioner O.A.C.S. applies to this Honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain him based on an unlawful action by ICE, (2) ordering his immediate release from immigration detention; and (3) from re-arresting O.A.C.S. until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Respectfully submitted this 26th day of November, 2025.

By counsel,

/s/ Natalia Vieira Santanna

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INTRODUCTION

Petitioner, O.A.C.S., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) at Mesa Verde ICE Processing Center (“Mesa Verde”) since October 17, 2025, after having complied with the conditions of his release from the custody of the Department of Homeland Security (DHS) since he was released on December 1, 2023. For years, O.A.C.S. has appeared at appointments, taken photographs, and answered supervision calls from the Intensive Supervision Appearance Program (ISAP), while diligently pursuing asylum before the Executive Office of Immigration Review (EOIR). Throughout this time, O.A.C.S. has worked as a lawnmower.

O.A.C.S.’s current detention may be permitted under the Constitution and Immigration and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that he is a flight risk or danger to the community, or if his removal is imminent. As a hardworking and beloved community member with no criminal history, O.A.C.S. is not a flight risk or danger. His asylum case remains pending before EOIR, and thus, removal is not imminent. Thus, O.A.C.S.’s continued detention without a bond hearing before a neutral decision-maker violates his rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

As a result of his arrest and detention, O.A.C.S. is suffering irreparable and ongoing harm. The unconstitutional deprivation of “physical liberty” unquestionably constitutes irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

In light of this irreparable harm, and because he is likely to succeed on the merits of his due process claims, O.A.C.S. respectfully requests that this Court issue an *ex parte* temporary restraining order (“TRO”) immediately releasing him from custody and enjoining the government from re-arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision maker. Confronted with substantially identical facts and legal issues, this and other

1 courts in this circuit have recently granted the exact relief Petitioner seeks. *See J.O.L.R. v*
2 *Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL
3 2617255 * 11 (E.D. Cal Sept. 9, 2025); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal.
4 July 4, 2025), converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL 2084921 (N.D.
5 Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025)
6 (granting preliminary injunction).

7 To maintain this Court’s jurisdiction, the Court should also prohibit the government from
8 transferring O.A.C.S. out of this District and removing him from the country until these
9 proceedings have concluded.

10 **STATEMENT OF FACTS AND CASE**



11 Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
12 targeting people who are in regular removal proceedings in immigration court, many of whom
13 have pending applications for asylum or other relief. This “coordinated operation” is “aimed at
14 dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office
15 and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant*
16 *Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post, May 23,
17 2025, [https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/)
18 [trump/](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/); *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to*
19 *Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
20 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
21 administration implemented a policy to drastically increase immigration arrests to a target of at
22 least 3,000 per day. According to White House officials like Stephen Miller, this directive
23 prioritized arrest numbers over the individuals’ criminal history, encouraging agents to conduct
24 mass round-ups in public spaces rather than targeted investigations.

25 As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-
26 thirds of those deported had no criminal history. This focus on quantity over public safety led to a
27 new and aggressive tactic: systematically arresting immigrants at courthouses and ICE
28 appointments, regardless of the status of their legal cases. This has created a climate of fear,

1 discouraging people from attending their mandatory hearings or ICE appointments.

2 In addition, individuals are now held for extended periods, sometimes days, in temporary
3 holding cells that are not designed for overnight or prolonged detention, often under inhumane
4 conditions. Government officials have justified these harsh conditions not as a matter of
5 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
6 detention.

7 The government's new campaign is also a significant shift from the previous DHS
8 practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*
9 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
10 *Sessions*, 905 F.3d 1137 (9th Cir. 2018), (describing prior practice).

11 O.A.C.S. fled Peru in 2023 because of persecution he suffered on account of 
12  *See* Affidavit of O.A.C.S. ("O.A.C.S. Aff."). On or around
13 November 2023, O.A.C.S. crossed the border with the intention of seeking asylum. O.A.C.S.
14 Aff.. DHS admitted O.A.C.S. into their custody for a few days before determining that he is not a
15 danger to the community nor a flight risk and releasing him on recognizance. Exh. 1; *see also*
16 O.A.C.S. Aff.

17 Upon his release, O.A.C.S. established a life in Bakersfield, California. O.A.C.S. Aff.. He
18 presented his asylum petition and has been working as a landscaper. O.A.C.S. has never
19 committed any crimes, nor been arrested for any reason. He is considered a pillar in his
20 community, which includes his family, sister, and friends. *Id.*

21 O.A.C.S. diligently complied with all requirements imposed by DHS through the
22 Intensive Supervision Appearance Program (ISAP). *Id.* O.A.C.S. experienced several technical
23 and compliance issues related to his weekly check-in application. *Id.* On multiple occasions, after
24 submitting his required weekly photo on time, he would receive a notification one to two hours
25 later asking him to resubmit it. One day, he forgot to submit the photo at the scheduled time,
26 prompting an officer to call him that afternoon to request the submission. *Id.* On another
27 occasion, he missed a scheduled video call with an ISAP officer, leading the officer to call him
28 directly. Crucially, he did not receive any formal warnings, threats of arrest, or formal

1 noncompliance notices from ISAP officials regarding these sporadic incidents. *Id.*

2 On October 17, 2025, O.A.C.S. appeared for a supervision check-in with ICE. *Id.* At this
3 appointment, DHS accused O.A.C.S. of not complying with the conditions of his release and
4 detained him. *Id.* The officers informed him that he was being arrested for missing his scheduled
5 home supervision appointment the previous day. *Id.* While detained at Mesa Verde, O.A.C.S. is
6 facing sleep, food, and hygiene deprivation. *Id.*

7 O.A.C.S.'s asylum case remains pending. *Id.*

8 LEGAL ARGUMENT

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

20 Furthermore, the requirements for issuing a temporary restraining order without notice are
21 met here. *See* Fed. R. Civ. P. 65(b). O.A.C.S. notified respondents’ counsel on November 24,
22 2025, that he would be filing the motion by email to the U.S. Attorney’s Office email address for
23 habeas petition filings. O.A.C.S. also set out specific facts demonstrating that immediate and
24 irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See*
25 *Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025);
26 *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025
27 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025)(granting ex parte temporary restraining order in
28 similar circumstances).

1 **I. Petitioner Warrants A Temporary Restraining Order**

2 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
3 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
4 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
5 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
6 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). O.A.C.S. is likely
7 to remain in unlawful custody in violation of his due process rights without intervention by this
8 Court. O.A.C.S. will continue to suffer irreparable injury if he continues to be detained without
9 due process.

10 **a. Petitioner is likely to succeed in the merits because Petitioner’s detention**
11 **violates substantive due process.**

12 The Due Process Clause applies to “all ‘persons’ within the United States, including
13 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
14 *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against
15 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
16 exercise of power without any reasonable justification in the service of a legitimate government
17 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from
18 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
19 the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

20 To comply with substantive due process, the government’s deprivation of an individual’s
21 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is
22 “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
23 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
24 (“[T]he government has no legitimate interest in detaining individuals who have been determined
25 not to be a danger to the community and whose appearance at future immigration proceedings can
26 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
27 absent, immigration detention serves no legitimate government purpose and becomes
28 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*

1 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
2 government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-
3 CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after
4 finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates *either* that the
5 government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him”).

6 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
7 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
8 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
9 pursuing and completing deportation proceedings, it could become necessary then to inquire
10 whether the detention is not to facilitate deportation, or to protect against risk of flight or
11 dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019)
12 (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—
13 that is, constitutional challenges to applications of the statute as we have now read it.”).

14 O.A.C.S., who has no criminal record and who is diligently pursuing his immigration
15 case, is neither a danger nor a flight risk. Therefore, his detention is both punitive and not
16 justified by a legitimate purpose, violating his substantive due process rights. Indeed, when
17 Respondents chose to release O.A.C.S. from custody in December of 2023, that decision
18 represented their finding that he was neither a danger nor a flight risk. *See Saravia* at 1176 (N.D.
19 Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release
20 reflects a determination by the government that the noncitizen is not a danger to the community
21 or a flight risk.”). No material changes in circumstances have transpired since to disturb that
22 finding.

23 *First*, because O.A.C.S. had no criminal history, and has had no intervening criminal
24 history or arrests since his release, there is no credible argument that he is a danger to the
25 community.

26 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
27 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
28 F.3d at 990-91. There is no basis to argue that O.A.C.S., who was arrested by Respondents *while*

1 appearing at his scheduled ICE appointment, is a flight risk. Moreover, O.A.C.S. has a viable
2 path toward immigration relief, further mitigating any risk of flight. *See Padilla v. U.S. Immigr.*
3 *and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a
4 legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to
5 remain in the United States). O.A.C.S. concedes that he had technical difficulties with some
6 check-ins and missed few of them, but this fact does not establish that he is a flight risk, given
7 that he has promptly communicated with his officer, ICE, and ISAP appointment. At the time of
8 his arrest, O.A.C.S. had filed his Form I-589, Application for Asylum and Withholding of
9 Removal, and he has every intention of continuing to pursue his applications for immigration
10 relief.

11 In sum, O.A.C.S.'s actions since Respondents first released him confirm that he is neither
12 a danger nor a flight risk. Indeed, his ongoing compliance and community ties compel the
13 conclusion that he is even *less* of a danger or flight risk than when he was initially released.
14 Accordingly, O.A.C.S.'s ongoing detention is unconstitutional, and substantive due process
15 principles require his immediate release.

16 **b. Petitioner is likely to succeed on the merits of his claim that the**
17 **Constitution requires a hearing before a neutral arbiter prior to any re-**
18 **incarceration by ICE.**

19 O.A.C.S. is likely to succeed on his claim that, in his particular circumstances, his current
20 detention is unlawful because the Due Process Clause of the Constitution prevents Respondents
21 from re-arresting him without first providing a pre-deprivation hearing before a neutral
22 adjudicator where the government demonstrates by clear and convincing evidence that there has
23 been a material change in circumstances such that he is now a danger or a flight risk.

24 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
25 release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).
26 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
27 immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640
28 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens.
There, the BIA held that "where a previous bond determination has been made by an immigration

1 judge, no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice,
2 DHS “requires a showing of changed circumstances both where the prior bond determination was
3 made by an immigration judge *and* where the previous release decision was made by a DHS
4 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v.*
5 *Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed
6 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
7 circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent
8 changed circumstances ... ICE cannot redetain Panosyan.”).

9 ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests
10 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*, 280 F.
11 Supp. 3d at 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
12 (9th Cir. 2018) (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus,
13 under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously
14 released from custody only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d
15 at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

16 ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is
17 also constrained by the demands of due process. *See Hernandez*, 872 F.3d 976, 981 (9th Cir.
18 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
19 requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that ICE
20 should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect
21 O.A.C.S.’s weighty interest in his freedom from unlawful detention.

22 Federal district courts in California have repeatedly recognized that the demands of due
23 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in
24 DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
25 on ICE release, like O.A.C.S., *before* ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F.
26 Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at
27 *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
28 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL

1 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-
2 detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No.
3 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction
4 warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more
5 than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4
6 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest);
7 *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21,
8 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves*
9 *v. Kaiser*, *Jimenez* No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo*
10 *Hinestroza et al. v. Kaiser*, No. 25-CV-07559- JD, 2025 WL 2606983 (N.D. Cal. Sept. 9,
11 2025). *Arzate v. Andrews*, Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025) (The court
12 found Mr. Arzate was likely to succeed on his claim that his re-detention without a new bond
13 hearing violated the Due Process Clause; the court enjoined the government from re-detaining
14 him without first providing a bond hearing where it must prove by clear and convincing evidence
15 that he is a flight risk or a danger to the community); *Pinchi v. Noem*, Slip Copy, 2025 WL
16 1853763 (N.D. Cal. July 4, 2025).

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

21 **1. Petitioner has a protected liberty interest in his conditional release.**

22 The Due Process Clause protects O.A.C.S.'s liberty from immigration custody: "Freedom
23 from imprisonment—from government custody, detention, or other forms of physical restraint—
24 lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533
25 U.S. 678, 690 (2001).

26 Since October 17, 2025, O.A.C.S. has exercised that freedom under DHS's own grant of
27 parole. Accordingly, he retains a weighty liberty interest under the Due Process Clause of the
28 Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-

1 47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
2 482-483 (1972).

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

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

28 In fact, it is well-established that an individual maintains a protectable liberty interest even

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

8 Here, when this Court ““ compar[es] the release in [O.A.C.S.’s case], with the liberty
9 interest in parole as characterized by *Morrissey*,” they bear similar features in liberty interests.
10 *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, O.A.C.S.’s release “enables him to
11 do a wide range of things open to persons,” including to live at home, work, care for his family,
12 for whom he is the financial provider, and “be with family and friends and to form the other
13 enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

14 **2. Petitioner’s liberty interest mandates his release from unlawful**
15 **custody and a hearing before any re-arrest.**

16 O.A.C.S. asserts that, here, (1) where his detention would be civil; (2) where he has been
17 at liberty for almost two years, during which time he has appeared at all of his immigration court
18 hearings and ICE appointments; (3) where he has a viable asylum claim (4) where no change in
19 circumstances exist that would justify his lawful detention; and (5) where the only circumstance
20 that has changed was ICE’s move to arrest as many people as possible under the new
21 administration’s initiative, due process mandates that he be released from his unlawful custody
22 and receive notice and a hearing before a neutral adjudicator *before* any re-arrest or revocation of
23 his custody release.

24 “Adequate, or due, process depends upon the nature of the interest affected. The more
25 important the interest and the greater the effect of its impairment, the greater the procedural
26 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
27 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
28 “balance [O.A.C.S.’s] liberty interest against the [government’s] interest in the efficient

1 It is difficult to see how the government's interest in detaining O.A.C.S. has materially
2 changed since he was released in December 2023, absent any material circumstances indicating
3 he is a danger to the community or a flight risk. The government's interest in detaining O.A.C.S.
4 at this time is extremely low. That ICE has a new policy to make a minimum number of arrests
5 each day under the new administration does not constitute a material change in circumstances or
6 increase the government's interest in detaining him. *See* "Trump officials issue quotas to ICE
7 officers to ramp up arrests," *Washington Post* (January 26, 2025), *available at*:
8 <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>;
9 "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," *Forbes* (June 9,
10 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
11 [sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) ("At the end of May 2025, 'Stephen Miller, a senior
12 White House official, told Fox News that the White House was looking for ICE to arrest 3,000
13 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people
14 in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported
15 the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar
16 year.").

17 Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful
18 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
19 O.A.C.S. does not seek a unique or expensive form of process, but rather a routine hearing
20 regarding whether his release should be revoked and whether he should be re-incarcerated.

21 As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of
22 immigration detention are 'staggering': \$158 each day per detainee, amounting to a total daily
23 cost of \$6.5 million." *Hernandez*, 872 F.3d at 996.

24 Alternatively, providing O.A.C.S. with a hearing before this Court (or a neutral decision-
25 maker) regarding release from custody is a routine procedure that the government provides to
26 those in immigration detention facilities daily. At that hearing, the Court would have the
27 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
28 But there is no justifiable reason to re-incarcerate O.A.C.S. before such a hearing takes place. As

1 the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest in
2 being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
3 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
4 revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

5 Releasing O.A.C.S. from unlawful custody and enjoining O.A.C.S.’s re-arrest until ICE
6 (1) moves for a custody re-determination before an IJ and (2) demonstrates by clear and
7 convincing evidence that O.A.C.S. is a flight risk or danger to the community is far *less* costly
8 and burdensome for the government than keeping him detained. *Hernandez*, 872 F.3d at 996.

9 **(c) Without a due process hearing prior to any re-arrest, the
10 risk of erroneous deprivation of liberty is high.**

11 Releasing O.A.C.S. from unlawful custody and providing O.A.C.S. a pre-deprivation
12 hearing would decrease the risk of him being erroneously deprived of his liberty. Before O.A.C.S.
13 can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at
14 which the government is held to show that there has been sufficiently changed circumstances;
15 such circumstances that ICE’s June 2021 release should be altered or revoked because clear and
16 convincing evidence exists to establish that O.A.C.S. is a danger to the community or a flight
17 risk.

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

1 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf*
2 *II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

3 Due process also requires consideration of alternatives to detention at any custody
4 redetermination hearing that may occur. The primary purpose of immigration detention is to
5 ensure a noncitizen’s appearance during removal proceedings: *Zadvydass*, 533 U.S. at 697.
6 Detention is not reasonably related to this purpose if there are alternatives to incarceration that
7 could mitigate the risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly,
8 alternatives to detention must be considered in determining whether O.A.C.S.’s reincarceration is
9 warranted

10 As the above-cited authorities show, O.A.C.S. is likely to succeed on his claim that the
11 current arrest and detention that ICE effected on November 3, 2025, are unlawful. The Due
12 Process Clause requires notice and a hearing before a neutral decision-maker before any
13 reincarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding
14 this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

15 **II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief**

16 O.A.C.S. will suffer irreparable harm if he remains detained after being deprived of his
17 liberty and subjected to unlawful incarceration by immigration authorities without being provided
18 the constitutionally adequate process that this motion for a temporary restraining order seeks.
19 Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193,
20 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial
21 has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and
22 it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat’l Ctr. for*
23 *Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth
24 Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to
25 immigration detention,” including “subpar medical and psychiatric care in ICE detention
26 facilities, the economic burdens imposed on detainees and their families as a result of detention,
27 and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872
28 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention

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

7 O.A.C.S. established a life in California. O.A.C.S. established a life in Bakersfield,
8 California for almost two years. O.A.C.S. Aff. To help cover basic needs, he worked as a
9 landscaper. *Id.* He is considered a pillar in his community, which includes his family, sister, and
10 friends. *Id.* The detention has caused him severe emotional distress knowing that his family is
11 struggling to survive without him. The financial and emotional hardship on his loved ones, due to
12 O.A.C.S.'s detention, has been severe. Every additional day O.A.C.S. spends in unlawful
13 detention subjects him and others to further irreparable harm.

14 As detailed *supra*, O.A.C.S. contends that his re-arrest, absent a hearing before a neutral
15 adjudicator, violates his due process rights under the Constitution. It is clear that “the deprivation
16 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695
17 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a
18 temporary restraining order is necessary to prevent O.A.C.S. from suffering irreparable harm by
19 being subject to unlawful and unjust detention.

20 **III. The Balance of Equities and the Public Interest Favor Granting this Temporary**
21 **Restraining Order**

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

24 First, the balance of hardships strongly favors O.A.C.S. The government cannot suffer
25 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*
26 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in
27 any legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the
28 government cannot allege harm arising from a temporary restraining order or preliminary

1 injunction ordering it to comply with the Constitution.

2 Further, any burden imposed by requiring the ICE to release O.A.C.S. from unlawful
3 custody and refrain from re-arrest unless and until he is provided a hearing before a neutral is
4 both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained.
5 *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of
6 affording fair procedures to all persons, even though the expenditure of governmental funds is
7 required.”).

8 A temporary restraining order is in the public interest. First and most importantly, “it
9 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
10 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
11 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
12 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
13 effectively be granted permission to detain O.A.C.S. in violation of the requirements of Due
14 Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a
15 party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695
16 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an
17 injunction that ensures that individuals are not deprived of their liberty and held in immigration
18 detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v.*
19 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated
20 when a constitutional right has been violated, because all citizens have a stake in upholding the
21 Constitution.”).

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

24 CONCLUSION

25 For all the above reasons, this Court should find that O.A.C.S. warrants a temporary
26 restraining order and a preliminary injunction ordering that Respondents (1) release him from his
27 unlawful custody; (2) refrain from re-arresting him unless and until he is afforded a hearing
28 before a neutral adjudicator on whether a change in custody is justified by clear and convincing

1 evidence that he is a danger to the community or a flight risk; and (3) refrain from sending him to
2 any place outside of the United States.

3 Respectfully submitted this 26th day of November, 2025.

4 By counsel,

5 /s/ Natalia Vieira Santanna

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