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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

J.E.H.G.,

Petitioner,

v.

Christopher CHESTNUT, Facility Administrator of California City Correctional Facility;

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

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

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

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

Respondents.

No.

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

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

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NOTICE OF MOTION

Petitioner J.E.H.G. 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 her based on an unlawful action by ICE, (2) ordering her immediate release from immigration detention; and (3) from re-arresting J.E.H.G. until she 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 her re-incarceration would be justified because there is clear and convincing evidence establishing that she 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 30th day of November, 2025.

By counsel,

/s/ Natalia Vieira Santanna

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INTRODUCTION

Petitioner, J.E.H.G., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) at Mesa Verde ICE Processing Center ("Mesa Verde") since October 25, 2025, after having complied with the conditions of her release from the custody of the Department of Homeland Security (DHS) since he was granted parole on December 14, 2022. For years, J.E.H.G. has complied with her Intensive Supervision Appearance Program (ISAP), while diligently pursuing asylum before the Executive Office of Immigration Review (EOIR). Her parents have also filed a derivative asylum petition for her with the United States Citizenship and Immigration Services (USCIS), which is currently pending. J.E.H.G. has a valid DHS authorization, and California's driver's license.

J.E.H.G.'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 she is a flight risk or danger to the community, or if her removal is imminent. As a hardworking and loving daughter with no criminal history, J.E.H.G. is not a flight risk or danger. Her petitions remain pending before EOIR and USCIS, and thus, removal is not imminent. Thus, J.E.H.G.'s continued detention without a bond hearing before a neutral decision-maker violates her rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

As a result of her arrest and detention, J.E.H.G. 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 she is likely to succeed on the merits of his due process claims, J.E.H.G. respectfully requests that this Court issue an *ex parte* temporary restraining order ("TRO") immediately releasing her from custody and enjoining the government from re-arresting her 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

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

To maintain this Court's jurisdiction, the Court should also prohibit the government from transferring J.E.H.G. out of this District and removing her from the country until these proceedings have concluded.

STATEMENT OF FACTS AND CASE

Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This "coordinated operation" is "aimed at dramatically accelerating deportations" by arresting people at the courthouse or at the ICE office and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23, 2025, 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 Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html. The Trump administration implemented a policy to drastically increase immigration arrests to a target of at least 3,000 per day. According to White House officials like Stephen Miller, this directive prioritized arrest numbers over the individuals' criminal history, encouraging agents to conduct mass round-ups in public spaces rather than targeted investigations.

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

discouraging people from attending their mandatory hearings or ICE appointments.

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

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

J.E.H.G. fled Peru in 2022 because of p[redacted] *See* Affidavit of J.E.H.G. ("J.E.H.G. Aff."). On or around November 2022, J.E.H.G. presented herself at the Texas-Mexico border port-of-entry with the intention of seeking asylum. *Id.* DHS admitted J.E.H.G. into its custody for a few weeks before determining she had a credible fear of returning to her country, that she is not a danger to the community nor a flight risk, and releasing her pursuant to 8 C.F.R. § 212.5. *Id.*

Upon her release, J.E.H.G. established a life with her parents and brother in Turlock. DHS granted her employment authorization, enabling her to obtain gainful employment at a textile company and support herself. *Id.* She dedicated her time to her family and her passion, singing. Her family and community describe her as a happy, responsible, good-hearted young woman. Exh 4, recommendation letters. J.E.H.G. has never committed any crimes, nor been arrested for any reason. *Id*

J.E.H.G. diligently complied with all requirements imposed by DHS through the Intensive Supervision Appearance Program (ISAP). *Id.* She consistently reported to the ICE office in Stockton and her assigned officers through the mobile reporting app. *See* J.E.H.G. Aff. She followed the instructions diligently, taking and sending photos from her home whenever requested, usually once a month. *Id.* Her officers never told her precisely when to take the picture; she believed it had to be that day the request was made. *Id.* She would receive the notification in

the morning and send the photo in the afternoon due to work. *Id.* Her officer never notified her that she was out of compliance. *Id.* She never received any warnings, threats of arrest, or notices of non-compliance. *Id.*

On October 25, 2025, J.E.H.G. appeared for a supervision check-in with ICE. *Id.* At this appointment, DHS accused J.E.H.G. of not complying with the conditions of her release and detained her without giving her any opportunity for an explanation. *Id.*

Allegedly, this detention was due to J.E.H.G. having missed several supervision photo check-ins, which she was unaware she had missed. *Id.* ICE arrested and re-detained J.E.H.G. at this October appointment and promptly transferred her to California City. *Id.*

While detained at California City, J.E.H.G. suffered from food, hygiene, and sleep deprivation. *Id.* She developed hives and pimples on her body. *Id.* She is also dealing with the emotional aftermath of an episode due [redacted] *Id.* J.E.H.G. has sought psychological and officer help from the facility and is currently terrified of retaliation. *Id.*

J.E.H.G. is also suffering from being away from her parents and little brother. *Id.*

J.E.H.G.'s asylum case remains pending with the EOIR. *Id.* In addition, J.E.H.G.'s parents have obtained asylum in this country and have filed a petition for her to get asylum as a derivative. Such a petition is currently pending with USCIS. *Id.*

LEGAL ARGUMENT

J.E.H.G. is entitled to a temporary restraining order if she establishes that she is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical").

Even if J.E.H.G. does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if she raises "serious questions" as to the merits of her claims,

the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, J.E.H.G. overwhelmingly satisfies both standards.

Furthermore, the requirements for issuing a temporary restraining order without notice are met here. *See* Fed. R. Civ. P. 65(b). J.E.H.G. notified respondents' counsel on November 30, 2025, that he would be filing the motion by email to the U.S. Attorney's Office email address for habeas petition filings. J.E.H.G. also set out specific facts demonstrating that immediate and irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025); *J.O.L.R. v Wofford,* 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford,* 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025)(granting ex parte temporary restraining order in similar circumstances).

I. Petitioner Warrants A Temporary Restraining Order

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

a. Petitioner is likely to succeed in the merits because Petitioner's detention violates substantive due process.

The Due Process Clause applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government

objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he 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."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he demonstrates *either* that the government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him").

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

J.E.H.G., who has no criminal record and who is diligently pursuing her immigration case, is neither a danger nor a flight risk. Therefore, her detention is both punitive and not justified by a legitimate purpose, violating her substantive due process rights. Indeed, when Respondents chose

to release J.E.H.G. from custody in November 2022, that decision represented their finding that she was neither a danger nor a flight risk. *See Saravia* at 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). No material changes in circumstances have transpired since to disturb that finding.

First, because J.E.H.G. had no criminal history, and has had no intervening criminal history or arrests since her release, there is no credible argument that she is a danger to the community.*Second*, as to flight risk, the question is whether custody is reasonably necessary to secure a person's appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. There is no basis to argue that J.E.H.G., who was arrested by Respondents *while appearing at her scheduled ICE appointment*, is a flight risk. Moreover, J.E.H.G. has a viable path toward immigration relief, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf't*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). J.E.H.G. concedes that, under am honest belief she was under compliance, she submitted her photo check later in the day after she received the message, but this fact does not establish that she is a flight risk, given that she has promptly communicated with her officer, ICE, and ISAP appointment. At the time of her arrest, J.E.H.G. had filed her Form I-589, Application for Asylum and Withholding of Removal, had a oending derivstive asylum petition, and she has every intention of continuing to pursue her applications for immigration relief.

In sum, J.E.H.G.'s actions since Respondents first released her confirm that she is neither a danger nor a flight risk. Indeed, her ongoing compliance and community ties compel the conclusion that she is even *less* of a danger or flight risk than when she was initially released. Accordingly, J.E.H.G.'s ongoing detention is unconstitutional, and substantive due process principles require her immediate release.

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

J.E.H.G. is likely to succeed on her claim that, in her particular circumstances, her current detention is unlawful because the Due Process Clause of the Constitution prevents Respondents from re-arresting her without first providing a pre-deprivation hearing before a neutral adjudicator where the government demonstrates by clear and convincing evidence that there has been a material change in circumstances such that she is now a danger or a flight risk.

The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

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

ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is also constrained by the demands of due process. *See Hernandez*, 872 F.3d 976, 981 (9th Cir.

2017) ("the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process"). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect J.E.H.G.'s weighty interest in her freedom from unlawful detention.

Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on ICE release, like J.E.H.G., *before* ICE re-detains him. *See, e.g.*, *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*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *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 at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Ramirez Clavijo v. Kaiser,* No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025)*; Garcia v. Kaiser,* No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025)*; Hernandez Nieves v. Kaiser, Jimenez* No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025)*; Caicedo Hinestroza et al. v. Kaiser,* No. 25-CV-07559- JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Arzate v. Andrews,* Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025) (The court found Mr. Arzate was likely to succeed on his claim that his re-detention without a new bond hearing violated the Due Process Clause; the court enjoined the government from re-detaining him without first providing a bond hearing where it must prove by clear and convincing evidence that he is a flight risk or a danger to the community); *Pinchi v. Noem*, Slip Copy, 2025 WL 1853763 (N.D. Cal. July 4, 2025).

Courts analyze procedural due process claims, such as this one, in two steps: the first asks

whether a protected liberty interest exists under the Due Process Clause, and the second examines the procedures necessary to ensure that 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).

1. Petitioner has a protected liberty interest in her conditional release.

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

Since December 2022, J.E.H.G. has exercised that freedom under DHS's own grant of parole. Accordingly, she retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* 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.* In turn, "[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 occasions. *See, e.g., Young v. Harper*, 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 v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony

probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also, e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *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 release in [J.E.H.G.'s case], with the liberty interest in parole as characterized by *Morrissey*,'" they bear similar features in liberty interests. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, J.E.H.G.'s release "enables her to do a wide range of things open to persons,'" including to live at home, work, care for his family, for whom he is the financial provider, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

2. Petitioner's liberty interest mandates her release from unlawful custody and a hearing before any re-arrest.

J.E.H.G. asserts that, here, (1) where her detention would be civil; (2) where she has been at liberty for over three years, during which time she has appeared at all of her immigration court

hearings and ICE appointments; (3) where she has a viable asylum claim (4) where no change in circumstances exist that would justify her lawful detention; and (5) where the only circumstance that has changed was ICE's move to arrest as many people as possible under the new administration's initiative, due process mandates that she be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator *before* any re-arrest or revocation of her custody release.

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [J.E.H.G.'s] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test outlined in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if 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 v. Eldridge*, 424 U.S. 319, 335 (1976)).

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). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can the post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing predeprivation process," can the government

avoid providing pre-deprivation process. *Id.*

Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide J.E.H.G. with notice and a hearing *prior* to any reincarceration and revocation of her release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *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). Under *Mathews*, "the balance weighs heavily in favor of [J.E.H.G.'s] liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

(a) Petitioner's private interest in his liberty is profound.

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles her to constitutional due process before she is re-incarcerated—apply with even greater force to individuals like J.E.H.G., who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the context of criminal parolees, the courts have held that they cannot be re-arrested without a due process hearing, during which they can raise any claims they may have regarding why their reincarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, J.E.H.G. retains a truly weighty liberty interest even though she is under a form of conditional release.

What is at stake in this case for J.E.H.G. is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing a non-citizen from custody and be able to take away his physical freedom, i.e., his "constitutionally

protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

(b) The government's interest in re-incarcerating Petitioner without a hearing is low and the burden on the government to refrain from re-arresting her until he is provided a hearing is minimal.

The government's interest in maintaining an unlawful detention without a due process hearing is low, and when weighed against J.E.H.G.'s significant private interest in her liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping her in unlawful custody; (2) re-arresting J.E.H.G. unless and until the government demonstrates to a neutral adjudicator by clear and convincing evidence that she is a flight risk or danger to the community; and (3) removing her from the United States in violation of an agency order and district court injunction. It becomes abundantly clear that the *Mathews* test favors J.E.H.G. when the Court considers that the process she seeks—notice and a hearing regarding whether release from custody should be revoked—is a standard course of action for the government. Providing J.E.H.G. with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that J.E.H.G. is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like J.E.H.G.

As immigration detention is civil in nature, it cannot serve a punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See*

Zadvydas, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining J.E.H.G. when she was released after a DHS' [arole in 2022, and since has lived at liberty with her community, without any criminal or civil traffic infractions.

In December 2022, DHS officers determined that J.E.H.G. was not a flight risk or a danger to the community, and there are no material changes in circumstances to undermine that determination. *See Morrissey*, 408 U.S. at 482 ("'It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom'") (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

It is difficult to see how the government's interest in detaining J.E.H.G. has materially changed since she was released in December 2022, absent any material circumstances indicating she is a danger to the community or a flight risk. The government's interest in detaining J.E.H.G. at this time is extremely low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government's interest in detaining him. *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), *available at*: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," Forbes (June 9, 2025), 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 White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

Moreover, the "fiscal and administrative burdens" that her immediate release and a lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. J.E.H.G. does not seek a unique or expensive form of process, but rather a routine hearing

regarding whether his release should be revoked and whether she should be re-incarcerated.

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

Alternatively, providing J.E.H.G. with a hearing before this Court (or a neutral decision-maker) regarding release from custody is a routine procedure that the government provides to those in immigration detention facilities daily. At that hearing, the Court would have the opportunity to determine whether circumstances have changed sufficiently to justify her re-arrest. But there is no justifiable reason to re-incarcerate J.E.H.G. before such a hearing takes place. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483.

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

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

Releasing J.E.H.G. from unlawful custody and providing J.E.H.G. a pre-deprivation hearing would decrease the risk of her being erroneously deprived of his liberty. Before J.E.H.G. can be lawfully detained, she must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances; such circumstances that ICE's December 2022 release should be altered or revoked because clear and convincing evidence exists to establish that J.E.H.G. is a danger to the community or a flight risk.

The procedure J.E.H.G. seeks—a hearing in front of a neutral adjudicator at which the government must prove by clear and convincing evidence that circumstances have changed to

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

Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings: *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to incarceration that could mitigate the risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether J.E.H.G.'s reincarceration is warranted

As the above-cited authorities show, J.E.H.G. is likely to succeed on her claim that the current arrest and detention that ICE effected on October 25, 2025, are unlawful. The Due Process Clause requires notice and a hearing before a neutral decision-maker before any reincarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

J.E.H.G. will suffer irreparable harm if she remains detained after being deprived of her liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193,

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

Upon her release, J.E.H.G. established a life with her parents and brother in Turlock. DHS granted her employment authorization. She worked at a textile company. *Id.* She dedicated her time to her family and her passion, singing. Her family and community describe her as a happy, responsible, good-hearted young woman. Exh 4, recommendation letters. J.E.H.G. has never committed any crimes, nor been arrested for any reason. *Id.* While detained at California City, J.E.H.G. developed hives and pimples on her body. *Id.* She is also dealing with the emotional aftermath of [redacted]

As detailed *supra*, J.E.H.G. contends that his re-arrest, absent a hearing before a neutral adjudicator, violates his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a

temporary restraining order is necessary to prevent J.E.H.G. from suffering irreparable harm by being subject to unlawful and unjust detention.

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

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

First, the balance of hardships strongly favors J.E.H.G. 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."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring the ICE to release J.E.H.G. from unlawful custody and refrain from re-arrest unless and until she is provided a hearing before a neutral is both *de minimis* and clearly outweighed by the substantial harm she will suffer if she remains 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.").

A temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain J.E.H.G. in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration

detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

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

CONCLUSION

For all the above reasons, this Court should find that J.E.H.G. warrants a temporary restraining order and a preliminary injunction ordering that Respondents (1) release her from his unlawful custody; (2) refrain from re-arresting her unless and until she is afforded a hearing before a neutral adjudicator on whether a change in custody is justified by clear and convincing evidence that she is a danger to the community or a flight risk; and (3) refrain from sending him to any place outside of the United States.

Respectfully submitted this 30th day of November, 2025.

By counsel,

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