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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARLOS ALBERTO DE LA GARZA,

Petitioner-Plaintiff,

v.

SERGIO ALBARRAN, in his official capacity, Acting San Francisco Field Office Director, U.S. Immigration and Customs Enforcement;

TODD M. LYONS, in his official capacity, Acting Director, U.S. Immigration and Customs Enforcement;

KRISTI NOEM, in her official Capacity, Secretary of the U.S. Department of Homeland Security; and

PAMELA BONDI, in her official capacity, Attorney General of the United States,

Respondents-Defendants.

Case No: 3:25-cv-10305-HSG

MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER; POINTS AND AUTHORITIES IN SUPPORT OF MOTION

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, as soon as he may be heard, Petitioner-Plaintiff will and hereby does move, pursuant to Civil L.R. 7-1 and 65-1, for a temporary restraining order, directing that he be immediately released and not re-detained pending further order of this Court. This motion is supported by the following Memorandum of Points and Authorities, by his Petition for Writ of Habeas Corpus/Complaint for Injunctive and Declaratory Relief, Dkt. No. 1, and supporting exhibits, which are being concurrently filed.

As set forth in the Points and Authorities in support of this Motion, Mr. De La Garza asserts that he warrants a temporary restraining order, issued ex parte, due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment and Respondents' gross violation of his rights in arresting him at the conclusion of his interview for permanent residency. The arrest happened without notice and a hearing and in spite of that fact that his application for permanent residency was approvable. As Mr. De La Garza's attached declaration and other documents establishes, he has already suffered irreparable harm as a result of Respondents' illegal arrest and detention, and that will continue absent immediate action from this Court.

Undersigned counsel hereby declares and certifies that on December 1, 2025, immediately after filing this motion with the Court, he emailed Civil Division Chief Pamela Johann at the U.S. Attorney's Office for the Northern District of California to advise her that Petitioner-Plaintiff is filing this motion for a temporary restraining order and seeking relief ex parte. That email also contained copies of (1) the Petition for Writ of Habeas Corpus and Complaint for Injunctive and Declaratory Relief, (2) Motion for Temporary Restraining Order, (3) Declaration of Amalia Wille and Exhibits in Support of Complaint/Petition and Motion for Temporary Restraining Order, (4) Proposed Order on Motion for TRO, (6) Declination of Magistrate Judge Jurisdiction, and (7) Executed Summons.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner-Plaintiff Mr. De La Garza, brings this motion for a temporary restraining order ("TRO") to enjoin Respondents U.S. Immigration and Customs Enforcement ("ICE"), from continuing his detention while he proceeds with his claims before this Court.

II. STATEMENT OF FACTS AND CASE

Undersigned counsel can confirm that Mr. De La Garza was detained at the San Francisco ICE Field Office at the time the habeas petition was filed today, as undersigned counsel Amalia Wille was physically present with him at the ICE office this morning. *See* Declaration of Amalia Wille. The ICE detainee locator as of 3:14 p.m. today reported Mr. De La Garza being "In ICE Custody" and "Current Detention Facility" lists: "Call ICE for Details." *See id.* Even if ICE has or will transfer him out of San Francisco, "it is well-established that 'when the Government moves a habeas petitioner after she properly files a petition naming her immediate custodian, the District Court retains jurisdiction and may direct the writ to any respondent within its jurisdiction who has legal authority to effectuate the prisoner's release.'" *Acosta Roa v. Off. Fulfilling Duties of Field Off. Dir.*, No. 25-CV-07802-RS, 2025 WL 2637565, at *3 n.2 (N.D. Cal. Sept. 12, 2025) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004)).

Mr. De La Garza is fifty-five years old and was born in Mexico. He is a widower and is still in the early stages of grieving the loss of his only child. He resides in Berkeley, California, where he owns a home. He has an extensive network of extended family, neighbors, and church community in the Bay Area who support him. *See* Declaration of Amalia Wille ("Wille Decl.") at Exhibits ("Ex.") E, F.

Mr. De La Garza first came to the United States in the early 1990s. He was deported twice in the 1990s, once in 1994, and once in 1996. Mr. De La Garza has three misdemeanor criminal convictions from the early 1990s—one violation of California Vehicle Code section 23152(a) (driving under the influence), one violation of California Penal Code 484(a) (petty theft), and one violation of California Vehicle Code section 14601.5 (driving on a suspended license). Wille Decl. Ex. E at pp 43-64 (Form I-485 and Form addendum), pp 68-78

(immigration records), pp 79-103 (criminal records). Some court records for Mr. De La Garza reflect the alias "Juan Ramirez," which Mr. De La Garza understands traces to his 1994 petty theft conviction, and has been repeated by authorities over the years. Mr. De La Garza returned to live in the United States in 1996. *See id.*

In 1996, his only child, Carlos Moreno, was born in Oakland, California. Wille Decl. Ex. E at 38. Carlos Jr. was born with cerebral palsy. Carlos Jr.'s parents—Adriana Moreno and Mr. De La Garza—committed themselves to caring for their son at home, and providing him with a loving and stimulating life and home environment. Wille Decl. Ex. E at 136-207 (declaration of Mr. De La Garza and supporting medical evidence and family photos).

Carlos Jr.'s mother, Adriana Moreno, was Mr. De La Garza's life partner. The pair married in Berkeley, California in 2000. Wille Decl. Ex. E at 181. They bought a home together in Berkeley in 2001, where Mr. De La Garza continues to reside today. *Id.,* Wille Decl. Ex. F at 234. In 2001, Mr. De La Garza applied to adjust his immigration status to lawful permanent resident in the United States. He was eligible for permanent residence through a visa petition filed by his wife's family. He fully disclosed his criminal and deportation history to immigration authorities in his application, and they did not disqualify him from permanent residence. Wille Decl. Ex. E at 140, 74-75.

On November 2, 2004, U.S. immigration authorities approved Mr. De La Garza's application for adjustment of status, and he became a lawful permanent resident of the United States. *Id.* On May 2, 2007, Mr. De La Garza was arrested, and as a result, on December 17, 2007, he was convicted of a violation of California Health and Safety Code section 11379(a) (transportation of a controlled substance) and a violation of California Peanl Code 182(a)(1) (conspiracy) in Contra Costa County Superior Court. Those convictions were vacated in their entirety as legally invalid in May 2024 by a Judge of the Superior Court of Contra Costa County, and all charges relating to the incident were dismissed by the district attorney's office. Wille Decl. Ex. E at 88-89.

However, in the intervening time, they caused Mr. De La Garza to lose his permanent residence. In 2008, U.S. Immigration and Customs Enforcement initiated removal proceedings against Mr. De La Garza, and charged him as removable as a noncitizen convicted of a controlled substance violation pursuant to INA § 237(a)(2)(B)(i), 8 U.S.C. § 1227(a)(2)(B)(i), based on the 2007 conviction under California Health and Safety Code section 11379(a). Mr. De La Garza was unrepresented in the removal proceedings before the Immigration Judge. *See* Dkt. 1; *see also* Wille Decl. Ex. E at 140. On June 24, 2008, an Immigration Judge found Mr. De La Garza removable from the United States, and granted him voluntary departure from the United States in lieu of a removal order. *Id.* at 76-77.

On June 24, 2008, Mr. De La Garza voluntarily departed the United States to Mexico. *Id.* at 78. U.S. government records confirm his compliance with the voluntary departure order. *Id.* Two days later, Mr. De La Garza returned to the United States through the port of entry in Nogales, Arizona. He presented his then-still facially valid permanent resident card at the port of entry, which he believed at the time permitted his return to the United States. *See* Dkt. 1; Wille Decl. ¶ 11; Wille Decl. Ex. E at 140. U.S. Customs and Border Protection sent Mr. De La Garza to secondary inspections to review his case, and then admitted him to the United States. Records that Mr. De La Garza obtained from U.S. Customs and Border Protection, via a Freedom of Information Act request, confirm that Mr. De La Garza presented his lawful permanent resident card containing his name and "A number" at the port of entry on June 26, 2008, and that he was inspected and admitted into the United States following a secondary inspection. Wille Decl. Ex. G.

Mr. De La Garza has not departed the United States since his inspection and admission on June 26, 2008. Wille Decl. Ex. E at 140. He resumed his life in Berkeley, California with his wife and son. At this point, Carlos Jr. was eleven years old, and continued to require 24-hour care, 7 days a week, from his parents. Carlos Jr. was dependent in all of his self-care activities, including feeding, dressing, toileting, and bathing. He required total assistance in all the daily transfers necessary in his life, such as transfer from bed to wheelchair, and transfers in and out

of the bathtub and cars. He took nutrition and hydration through a gastrointestinal tube. *See* Wille Decl. Ex. E at 142-207, Ex. F at 232-75, Ex. I.

As Carlos Jr. grew into a young adult and grew heavier, these physical tasks grew increasingly taxing, and Adriana could not manage the physical exertion of all of Carlos Jr.'s transfers by herself. Wille Decl. Ex. I. Mr. De La Garza was an essential part of his son's care. Carlos Jr.'s longtime occupational therapist wrote in a letter dated 2014 of how devoted Mr. De La Garza and Adriana were to their son, and how they encouraged his participation in all kinds of outings and outdoor activities, such as shopping, vacations, and playing soccer. *Id.* at 316-17. The therapist described how Mr. De La Garza participated in his son's therapy sessions, ensured he had proper equipment, and for example frequently helped to fix or otherwise modify his son's wheelchair to ensure it was comfortable and functional. *Id.* Carlos Jr.'s medical doctor at the time wrote that "[c]aring for his son is not an easy job, but Mr. De La Garza is very attentive and accomplished at this. He has been at almost every office [visit] that I have ever had with his son, and he is very involved with his care." *Id.* at 313.

Around 2012, Mr. De La Garza suffered an injury that limited his ability to help with his son, and around the house. This caused Mr. De La Garza to feel depressed, helpless, and totally overwhelmed. This culminated in a mental health crisis for Mr. De La Garza. One day in April 2014, someone called the police because Mr. De La Garza was acting erratically in the Berkeley Aquatic Park, near his home. Mr. De La Garza was arrested for assaulting the police officer who arrived to try to help. Wille Decl. Ex. E at 139-41.

Mr. De La Garza describes this April 2014 arrest as a turning point in his life, and as a wake-up call that he needed to find effective and healthy coping mechanisms to address the extreme stress of his life. He completed counseling and therapy, and has found solace and support through his church, and he has had not been arrested since. *Id.*

Mr. De La Garza's neighbors and community gathered in 2014 to explain to the criminal judge that Mr. De La Garza's behavior on that day in April 2014 was totally out of character. Wille Decl. Ex. I. For example, several neighbors wrote a letter explaining that Mr. De La

Garza "is a loving and caring father to his son with cerebral palsy" and that they were surprised to hear what happened at the Aquatic Park and that they were "sorry for what happened and hope the arresting officer is recovered and doing well." *Id.* at 323. Other care providers and community members attested to how Mr. De La Garza's is "an exemplary father" who shows "extreme dedication and patience to care for a disabled child twenty-four hours a day, seven days per week" who goes "above and beyond trying just to meet the basic needs of his son." *Id.* at 312, 318, 319.

In November 2014, Mr. De La Garza pled no contest to a felony violation of Cal. Penal Code § 245(c) (assault on an officer) in Alameda County Superior Court, relating to the April 2014 incident. Wille Decl. Ex. E at 95-96. In January 2015, the judge of the Alameda County Superior Court sentenced Mr. De La Garza to five years of probation. *Id.* at 97. Mr. De La Garza completed outpatient counseling. *Id.* at 140; Wille Decl. Ex. H at 299. He completed his probation in January 2020.

U.S. Immigration and Customs Enforcement became aware of Mr. De La Garza's April 2014 arrest in Berkeley, California and resulting criminal conviction, and they chose not to take enforcement action against him. *See* Wille Decl. Ex. H.

Records obtained by Mr. De La Garza through a Freedom of Information Act Request for his "A file" reflect that in June 2017, an ICE Deportation Officer from the San Francisco Field Office requested records relating to the arrest from the Berkeley Police Department. The FOIA response also reflects that Mr. De La Garza's "A file" contains certified court records evidencing the conviction, which were court-certified in June 2017. Mr. De La Garza's "A file" further contains confirmation that Mr. De La Garza successfully completed a counseling program in July 2015. *See* Wille Decl. Ex. H; *see also* Wille Decl. ¶ 19.

Mr. De La Garza's wife Adriana was diagnosed with cancer when she was in her early 40s. She went through grueling treatment and fought for her life—and to be present for her son—on top of the enormous family responsibilities she already carried. She received radiation, and a liver transplant. Unfortunately, the cancer returned. She passed away in December 2020 at

the age of 44. She was a U.S. citizen at the time of her death. Wille Decl. Exs E, F (containing death certificate, and letters/declarations from Mr. De La Garza and Adriana's sister describing Adriana's terminal cancer and treatment).

This left Mr. De La Garza as the single parent to Carlos, Jr., who was then 24-years old, and still living at home and was totally dependent on his father for all daily needs and his survival. Mr. De La Garza continued to work every day, day and night to meet his son's extraordinary needs in a profoundly loving way. Mr. De La Garza never let his son's disability prevent Carlos Jr. from enjoying life and knowing that he was loved. Mr. De La Garza took his son on trips to the beach in Texas, to the swimming pool, to the rodeo, and out for nature walks. He threw Carlos Jr. birthday parties with mariachi bands. They got dressed up together. He and his son enjoyed watching sports together, going out to their favorite restaurants, shopping at Carlos Jr.'s favorite stores, exploring the great outdoors, and enjoying their neighborhood in Berkeley, California. *See* Wille Decl. Ex. E at 136-41 (declaration from Mr. De La Garza), Ex. E at 172-79 (Family photos); Ex. F at 232-235 (letter from Mr. De La Garza), 236-62 (more family photos).

Mr. De La Garza continued to be a fixture in his neighborhood in Berkeley, where he is beloved and known by many for his kindness and devotion to his son. As his long-time neighbors explained, Mr. De La Garza would make "extraordinary effort[s]" to push his son in a wheelchair wherever Carlos Jr. wanted to go. Neighbors recall encountering Mr. De La Garza as he was pushing his son over rough terrain, and observing how hard this was. Mr. De La Garza replied, "this is my son and he likes it, so I do it as much as he wants." Wille Decl. Ex. F at 271-72.

Another set of neighbors described: "What always stood out to us was the simple yet powerful gesture of Carlos pushing his son in the wheelchair all around the neighborhood, stopping to appreciate the local foliage together and keeping him actively connected to the neighbors. Never in our 23 years of interacting with Carlos did we ever see him treat his son as different or incapable. To the contrary, under challenging circumstances, Carlos spent his days

giving his son a loving, stimulating life in which he felt deeply appreciated by friends, family, the community and his church." *Id.* at 269-70.

On November 20, 2024, with the assistance of undersigned counsel's office, Mr. De La Garza applied for permanent residence in the United States with U.S. Citizenship and Immigration Services. Wille Decl. Ex. E. His eligibility for adjustment of status was pursuant to the authority of INA § 245(a), 8 U.S.C. § 1255(a), based on a concurrently-filed, immediate relative petition filed by his adult U.S. citizen son, Carlos Jr. He filed an application for a waiver of inadmissibility for his 2014 conviction under California Penal Code § 245(c), pursuant to the authority of INA § 212(h), 8 U.S.C. § 1182(h), based on the hardship that Carlos Jr. would suffer without his father. Wille Decl. Ex. E.

Mr. De La Garza and his son paid $3,165 in filing fees to USCIS for the consideration and adjudication of the applications. Wille Decl. Ex. D (receipt notices). In the applications to USCIS, Mr. De La Garza fully disclosed his immigration and criminal history, and he submitted extensive documentation establishing his eligibility for adjustment of status. He discussed his remorse and rehabilitation relating to the 2014 arrest. He described his son's medical diagnoses needs, and documented his diagnoses of neuromuscular disease, spastic quadriplegic cerebral palsy, asthma, generalized anxiety disorder, fecal and urinary incontinence, neuromuscular disease, GERD, asthma, chronic bronchitis, and neuromuscular scoliosis, among numerous other medical conditions. He described how his son is wheelchair-bound, non-verbal, and at age 28, requires his father's assistance for all daily living activities including eating through a feeding tube, and having his diapers changed. He submitted letters of support from his extended family, his son's medical provider, his pastor and other community members. Wille Decl. Ex. E.

On November 30, 2024, USCIS scheduled Mr. De La Garza to appear at a USCIS Application Support Center in Oakland, California on December 16, 2024, to have his fingerprints and photographs taken so USCIS could process his biometrics. Mr. De La Garza appeared on December 16, 2024, and completed the biometrics processing. Wille Decl. Ex. C. On January 16, 2025, USCIS issued Mr. De La Garza an employment authorization document,

valid through January 2030, based on his pending adjustment of status application. Wille Decl. Ex. B.

Throughout Carlos Jr.'s life, he was frequently hospitalized, as conditions such as common colds could lead to pneumonia and render him gravely ill. These hospitalizations increased in 2025, as Carlos Jr. suffered increasing health complications. During his hospitalizations, Mr. De La Garza stayed by his son's side, 24/7. Wille Decl. Ex. F at 232-35 (Letter from Mr. De La Garza), 267-68 (letter from Mary Moreno).

In May 2025, Carlos Jr. became gravely ill with pneumonia, and was hospitalized. His situation deteriorated rapidly, and he was forcibly intubated, and later placed in a medically-induced coma for several weeks. The doctors eventually informed Mr. De La Garza that the only way to save Carlos Jr.'s life was with a tracheostomy, a procedure they completed in late May. *Id.*

During their extensive hospital stays, the hospital staff was not trained in Carlos Jr.'s extraordinarily specific needs, and Mr. De La Garza did not leave his son's side, and provided him with around-the-clock-care. He continued to lift his son in and out of the hospital bed, and change his diaper. *Id.*

Carlos Jr. was discharged from the hospital and then re-hospitalized during the summer of 2025. Mr. De La Garza observed that his son disliked the tracheostomy tube, and Mr. De La Garza would remind his son that it was just temporary, and was to help him breathe better. By the end of July 2025, Carlos Jr. seemed to have more energy, and was able to go outside again. *Id.*

On August 2, 2025, Mr. De La Garza took his son for a walk in their west Berkeley neighborhood, and they picked apples together. *Id. See also id.* at 262 (last picture of Mr. De La Garza with his son, picking apples, before his death). That night, at home, Carlos Jr. stopped breathing. Mr. De La Garza called an ambulance. When the paramedics arrived, they informed him that Carlos Jr. had passed away. Mr. De La Garza's describes that his "world crashed in on [him] at that moment." Wille Decl. Ex. F at 232-35.

Carlos Jr. is now buried next to his mother at a cemetery in El Cerrito, California. In a letter he later wrote to USCIS, Mr. De La Garza stated that he wants "to be able to visit [his] late wife and son's place of rest and bring them flowers." Just the thought of being sent to Mexico and never being able to do that again "breaks [his] soul." *Id.*

Mr. De La Garza's immigration applications (Form I-130, I-485, and I-601) were still pending at USCIS at the time of Carlos Jr.'s death. Pursuant to a statute enacted in 2009, because Mr. De La Garza resided in the United States at the time of his son's death, and continues to reside in the United States he "shall have" his I-130 visa petition and "any related applications, adjudicated notwithstanding the death" of his son. INA § 204(l), 8 U.S.C. § 1154(l).

On October 8, 2025, Mr. De La Garza sent a letter to USCIS explaining his son's death, and requesting that USCIS approve his applications pursuant to INA § 204(l). Wille Decl. Ex. F (full copy of USCIS submission). He submitted new letters of support from family members and other community members. He explained that his late-wife's family, who are U.S. citizens and lawful permanent residents, live in the San Francisco Bay Area, and they are the only family he has left. His sister-in-law wrote that "Mr. De La Garza has lost his family in the cruelest of ways yet he never gave up." She wrote to USCIS: "I would put my life on the line to prove how much he has evolved and what an asset he is to this country." A family friend wrote that the twin blows of losing his wife and his only child "would break most people, yet [Mr. De La Garza] has remained steadfast, grounded in faith, and deeply connected to his family and community in the United States." His neighbors attested to how Mr. De La Garza remains an important community member who makes contributions to those around him. He is a skilled mechanic and repair person and has helped his neighbors with their car and with home improvement projects. He plants flowers to beautify the neighborhood, of his own accord. His neighbors describe him as "always a smiling, happy presence." He "is a very pleasant, cooperative, and responsible man and has a strong moral character." Mr. De La Garza suffers from his own chronic health conditions as well now, including chronic back pain and insomnia

due to the constant care he was providing for his son. His medical providers here in the United States are trying to help him manage those conditions. *Id.*

Mr. De La Garza wrote to USCIS: "Now that my son is no longer here, given I have a lifetime of experience with such severe disability I would love to work in a field where I can be of service to people like him, those who need so much love and care. So many people like my son are abandoned or surrendered because of their condition. I want to continue helping people like him and I would like to do it in this country. I kindly ask for your understanding and compassion in considering my request to restore my permanent residency." Wille Decl. Ex. F at 232-35.

On October 27, 2025, USCIS scheduled Mr. De La Garza to appear for an interview related to his application for adjustment of status on December 1, 2025. Wille Decl. Ex. A. An in-person interview is typically the final step in adjudication of an application for adjustment of status. Wille Decl. ¶ 8.

Mr. De La Garza appeared at the USCIS San Francisco Field Office on December 1, 2025 for his interview. Wille Decl. ¶ 9 .He answered all questions from USCIS regarding his application and the interview was completed. The interviewing officer indicated that she had all documents that she needed and asked Mr. De La Garza to sign the application, which he did. *Id.* ¶ 11. Immediately after, the USCIS Acting Field Office Director, Officer Passage, walked in to the interview room with two ICE agents. The ICE agents stated that since his application was not being approved by USCIS, that they were taking Mr. De La Garza into custody. *Id.* ¶ 12. Ms. Wille, attorney for Mr. De La Garza who was present at the interview, asked Officer Passage what documents were allegedly missing such that the case could not be approved and he provided no answer. *Id.* ¶ 12. Officer Passage stated that Mr. De La Garza's application for adjustment of status would likely be administratively closed. *Id.* Ms. Wille provided the ICE agents with a G-28 to demonstrate her representation of Mr. De La Garza before ICE, which at first they refused to accept, but then ultimately did. The ICE agents indicated they had a warrant

and Ms. Wille asked to see it. The ICE agents responded that it was upstairs, and as of the filing of the petition and this motion, undersigned counsel has not seen an arrest warrant. *Id.*

The ICE agents handcuffed Mr. De La Garza in the USCIS office and escorted him to the 5th floor without Ms. Wille. Ms. Wille was later permitted to sit in on an interview of Mr. De La Garza about basic biographic information, in which Mr. De La Garza cooperated. *Id.* ¶ 12-15.

To undersigned counsel's knowledge, Mr. De La Garza is currently still being detained by ICE at 630 Sansome Street, the same building in which his adjustment of status interview occurred. As of 3:14 p.m. today, in the online ICE detainee locator (locator.ice.gov), Mr. De La Garza is reported as being "In ICE Custody" and "Current Detention Facility" lists: "Call ICE for Details." Wille Decl. ¶ 17. On information and belief, his application for adjustment of status is approvable and remains unadjudicated. *See id.* at 12.

III. ARGUMENT

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a TRO, Mr. De La Garza must demonstrate that (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Even if he does not show a likelihood of success on the merits, the Court may still grant a TRO if Mr. De La Garza raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

A. MR. DE LA GARZA IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM THAT HE MUST BE IMMEDIATELY RELEASED AND AFFORDED NOTICE AND A HEARING PRIOR TO ANY SUBSEQUENT RE-ARREST

1. Mr. De La Garza's Protected Liberty Interest

In Mr. De La Garza's particular circumstances, the sudden and arbitrary deprivation of his liberty at his adjustment of status interview—where he voluntarily appeared in order to *follow* the immigration laws—violated the Due Process Clause of the Constitution.

"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). The Supreme Court has long held that civil detention must not be punitive or arbitrary, and generally must rest on an individualized determination of the necessity for detention accompanied by fair procedural safeguards.

In the immigration setting, civil detention is justified only where it serves its purpose of effectuating removal or protecting against danger during the removal process and is accompanied by adequate procedural safeguards. *Zadvydas*, 533 U.S. at 690-91. In *Zadvydas*, the Court interpreted the statute governing detention after a final order of removal to require the release of a noncitizen whose removal is not "reasonably foreseeable." *Id.* at 699-701. In doing so, the Court reaffirmed that, as with other types of civil detention, immigration detention can only be imposed with strong procedural safeguards to ensure that it serves a legitimate purpose. *See, e.g., id.* at 691-92 (noting that preventive detention based on dangerousness is permissible "only when limited to specially dangerous individuals and subject to strong procedural protections," and holding that the administrative process available to noncitizens with final orders of removal was inadequate).

The Court carved out a narrow exception to the general rule that civil detention must be accompanied by an individualized hearing in *Demore v. Kim*, 538 U.S. 510 (2003) ("*Kim*"). In *Kim*, the Court upheld Section 1226(c) against a facial challenge to the statute, in a case where the noncitizen was detained within a day of his release from criminal incarceration. *Id.* at 513-14; *see also* Brief for Petitioner at 4, *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), 2002 WL 31016560.

The *Kim* Court pointed to evidence that deportable noncitizens with criminal convictions

"often committed more crimes before being removed" and frequently "absconded prior to the completion of [] removal proceedings." *Id.* at 518-20. It held, based on this factual record, that "Congress, justifiably concerned that deportable criminal [noncitizens] who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers, may require that [such noncitizens] be detained for the brief period necessary for their removal proceedings." *Id.* at 513; *see also id.* at 526 (noting the "narrow" nature of the mandatory detention statute).

Because the noncitizen in *Kim* brought a facial challenge and, in any event, was detained promptly for removal proceedings, the Court had no occasion to address the constitutionality of the statute as applied to a noncitizen detained by ICE years after release from criminal custody, as is the case here. Indeed, the Court in *Nielsen v. Preap,* 139 S. Ct. 954 (2019), made clear that as-applied constitutional challenges remain available to such individuals. 139 S. Ct. at 972. Moreover, while the *Kim* Court assumed that the duration of mandatory detention would be "brief," Mr. De La Garza faces lengthy detention while he pursues the multi-step process of re-adjusting his immigration status. *Kim*, 538 U.S. at 513 (authorizing mandatory detention for "brief period").

For many years preceding today's sudden immigration arrest—including ten years after the conviction that now subjects him to mandatory detention under the Immigration and Nationality Act—Mr. De La Garza has exercised his freedom. ICE has acquiesced to Mr. De La Garza's liberty following his criminal conviction by allowing him to live at his home in Berkeley, California and contribute to his family and community, even after they became aware of his 2014 criminal conviction. *See* Wille Decl. ¶ 19, Ex. H.

In addition, Mr. De La Garza voluntarily presented extensive information about himself, including his immigration history and criminal history, in paperwork that was submitted to USCIS, an entity of DHS, well over a year ago. Wille Decl. Ex. D, E. He appeared for fingerprinting, which again provided an opportunity for DHS to confirm Mr. De La Garza's presence and his immigration and criminal history. *Id.* at Ex. C. DHS took no action to arrest Mr.

De La Garza during the course of over a year while his application was pending—once again acquiescing to his liberty. Then suddenly, and without any process whatsoever, DHS handcuffed him after he voluntarily appeared for his interview for permanent residence, and completed the interview. Wille Decl. at ¶ 4-15. The only explanation DHS offered for the detention was that Mr. De La Garza did not have immigration status. *Id.* But of course, Mr. De La Garza was present that day as part of his application for immigration status, consistent with the Immigration and Nationality Act. An individual like Mr. De La Garza who has lived peaceably and conducted himself responsibly in the community for years following his criminal conviction and release from criminal custody, and who has affirmatively applied to legalize his status according with the immigration laws which render him eligible, should not be held in immigration custody at all, as neither possible justification for civil confinement is actually present in Mr. De La Garza's case.

At least one Court in this District has recognized that the Constitution's Due Process Clause prevents the sudden arrest and detention that occurred in Mr. De La Garza's case. *E.g.*, *Amezquita Diaz v. Albarran*, No. 3:25-CV-09837-JSC, 2025 WL 3214972 (N.D. Cal. Nov. 18, 2025) (ordering a noncitizen's immediate release from DHS custody where he was arrested without process at an adjustment of status interview in San Francisco). There, the Court ordered the petitioner released immediately because it was the last uncontested status preceding the controversy. *Id.* at * 3. In that case, the arrest was illegal as it was pursuant to an erroneous interpretation of the detention statutes under the INA. Here as of yet, Respondents have failed to confirm their statutory detention authority, but regardless, the arrest was illegal as it violated Mr. De La Garza's right to procedural due process. *See id.*[1]

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[1] Ms. Wille asked the arresting ICE officers what detention authority was being used to detain Mr. De La Garza, and ICE did not provide any. They stated only that he was being arrested because he did not have immigration status. Wille Decl. ¶ 13. At approximately 11:51am today, ICE emailed Ms. Wille two documents which are attached as Wille Decl. Ex. J. One document confirms that ICE is detaining Mr. De La Garza and will not be releasing him. A second document is an unserved Notice to Appear, which charges Mr. De La Garza as "an alien present

2. **Mr. De La Garza's Right to a Hearing Prior to Detention**

"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 *Morrisey v Brewer*, 408 U.S. 471, 481-82 (1972)). This Court must "balance [Mr. De La Garza'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 set forth 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 post-deprivation process

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in the United States who has not been admitted or paroled." This is inaccurate in Mr. De La Garza's case as he was inspected and admitted to the United States. Wille Decl. Ex. G. It is undersigned counsel's understanding that where ICE asserts that an individual who they charge as being present without being inspected and admitted, the detention authority they claim is pursuant to mandatory detention under 8 U.S.C. 1225(b). *See Amezquita Diaz*, 2025 WL 3214972. Numerous courts have found DHS's interpretation of the detention statutes to be incorrect. *See, e.g*, *Amezquita Diaz*, 2025 WL 3214972, at * 2 (collecting cases). Here, there is an additional problem, as the factual allegations are not even correct. Regardless of the statutory detention authority, Mr. De La Garza's constitutional claim that his detention violated Due Process succeeds.

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 was both possible and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Mr. De La Garza with notice and a hearing *prior* to any incarceration. *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 [Mr. De La Garza's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

What is at stake in this case for Mr. De La Garza is his freedom: one of the most profound individual interests recognized by our constitution and, more plainly, by virtue of being human. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Thus, it is clear there is a profound private interest at stake in this case, which must be weighed heavily when determining what process Mr. De La Garza is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35; *see also e.g.*, *Pham v. Becerra*, 717 F.Supp.3d 877, 886 (N.D. Cal. 2024) (stating that a person's "liberty interest persists no matter the length of detention").

Here, without notice, the Government ripped Mr. De La Garza, in the midst of his grief from the loss of his son, from his home, family and community. The explanation he was given for his arrest was that his application wasn't being approved right then. The Acting Field Office Director for USCIS refused to explain what documents or information was missing such that his application could not be approved. ICE agents refused to provide their statutory authority for detention, did not reference his decade-old criminal conviction from which he has totally

rehabilitated, or claim that he was a flight risk or a danger such that they needed to detain him. *See* Wille Decl. This type of arbitrary detention smacks of injustice—particularly where (1) Respondents were aware of Mr. De La Garza's presence in the United States since 2008, when they inspected and admitted him to the United States, (2) Respondents were aware of his criminal conviction as of at least 2017, and (3) Respondents waited until the end of his year-long process of affirmatively applying for lawful status, for which he was eligible, to arrest him. It is exactly the type of erroneous deprivation of liberty that the Due Process clause protects.

Ultimately, ICE's decision to allow Mr. De La Garza to live in the community after his conviction undermines any credible claim that he poses a danger to anyone. Mr. De La Garza affirmatively disclosed his complete criminal and immigration history to USCIS in November 2024 when he applied for permanent residence – and Respondents have continued to acquiesce to his life in the community over the past year. And the fact that ICE apprehended him in the midst of Mr. De La Garza's participation in the legal immigration process undermines any credible claim that he poses a flight risk. He was present today at the government building where he was arrested in order to attempt to comply with the immigration laws. As such the risk of an erroneous deprivation is high. *See e.g., Singh v. Andrews*, -- F.Supp.3d --, 2025 WL 1918679, at *7 (E.D. Cal. July 11, 2025); *see also Garcia v. Andrews,* 2025 WL 1927596, at *5 (E.D. Cal. July 14, 2025) (finding the risk of erroneous deprivation considerable on substantially similar facts).

Correspondingly, the process Mr. De La Garza seeks—release and a hearing before this Court prior to any re-detention—would add serious value. As described above, Mr. De La Garza is not statutory eligible for a bond hearing under 8 U.S.C. § 1226(c), and likewise if the government erroneously alleges Mr. De La Garza is subject to 8 U.S.C. § 1225. Absent this Court's intervention, Mr. De La Garza's mandatory detention will not be reviewed by this Court,

or any neutral arbiter.[2]

Finally, the government's interest in detaining Mr. De La Garza without process is low. First, as immigration detention is civil, it can serve no 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.[3] In this case, the government cannot plausibly assert that it had a sudden interest in detaining Mr. De La Garza in December 2025 due to facts that occurred years ago. *See, e.g.*, *Guillermo M.R. v. Kaiser*, 2025 WL 1810076, at *2 (N.D. Cal. June 30, 2025) (noting the government waiting *six weeks* to arrest petitioner "demonstrates their lack of urgency.")

Moreover, the "fiscal and administrative burdens" that release from custody, unless and until a pre-deprivation bond hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35; *see e.g.*, *Garcia*, 2025 WL 1927596, at *5. Mr. De La Garza does not seek a unique or expensive form of process, but rather his release from custody until a hearing can occur before this Court to determine whether he constitutes a danger or flight risk such that his civil detention is constitutional.

Release from custody until ICE (1) moves for a bond re-determination before this Court and (2) demonstrates by clear and convincing evidence that warrants his detention is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit

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[2] Petitioner acknowledges that two courts in this district have ordered post-deprivation bond hearings in cases similar to this one, *See Perera v. Jennings*, 598 F. Supp. 3d 736 (N.D. Cal. 2022), *appeal dismissed sub nom. Perera v. Kaiser*, No. 22-15898, 2022 WL 17587149 (9th Cir. Sept. 21, 2022); *Pham v. Becerra*, 717 F. Supp. 3d 877 (N.D. Cal. 2024), *appeal pending*, Ninth Circuit Case No. 24-5712. Those cases are distinguishable. Most critically, the petitioners in those cases only sought post deprivation process so the courts were not considering the claims raised here. Moreover, unlike the petitioners in *Pham* and *Perera*, who were arrested at their homes and were not affirmatively seeking immigration benefits, Mr. De La Garza was illegally arrested at an interview over a year after he affirmatively applied for his permanent residency. Respondents can simply not credibly allege that Mr. De La Garza's detention is necessary.

[3] Mr. De La Garza acknowledges that, in some instances, detention *may* be lawful for a brief period to effectuate removal.

noted in 2017, "[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 v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

The burden of proof at a future detention hearing regarding Mr. De La Garza should be placed on the government. The government should bear the burden of proving by clear and convincing evidence that Mr. De La Garza poses a danger or flight risk to justify his detention. *Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (quoting *Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018)) (collecting cases); *Dubon Miranda v. Barr*, 463 F. Supp. 3d 632, 646 (D. Md. 2020) (citation omitted); *see also Ameen v. Jennings*, No. 22-CV-00140-WHO, 2022 WL 1157900, at *5 (N.D. Cal. Apr. 19, 2022) (same); *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1057 (N.D. Cal. Apr. 14, 2021) (same); *Rajnish v. Jennings*, No. 3:20-CV-07819-WHO, 2020 WL 7626414, at *8 (N.D. Cal. Dec. 22, 2020) (same); *Vargas v. Wolf*, No. 2:19-CV-02135-KJD-DJA, 2020 WL 1929842, at *8 (D. Nev. Apr. 21, 2020) (same); *Manpreet Singh v. Barr*, 400 F. Supp. 3d 1005, 1018 (S.D. Cal. 2019) (same); *Perera,* 598 F. Supp. 3d at 746-47 (same); *Pham*, 717 F. Supp. 3d 877 (same).

And, the specific facts and context of Mr. De La Garza's case demonstrate why, to avoid an erroneous deprivation of liberty, the government must bear the burden at a bond hearing. On the facts of his case "it would be improper to ask [Mr. De La Garza] to share equally with society the risk of error when the possibly injury to [him]—deprivation of liberty—is so significant." *See Perera*, 598 F. Supp. 3d at 747 (cleaned up).

* * *

In sum, if the government truly believes Mr. De La Garza is a flight risk or danger to the community, despite overwhelming evidence to the contrary, "the government presumably has a basis for doing so grounded in evidence [and] [i]t need only present clear and convincing evidence to [this Court], as prosecutors do every day across the country, even in the most serious of criminal cases." *See Rajnish*, 2020 WL 7626414, at *8.

As numerous other courts have concluded, petitioner is entitled to pre-deprivation process

because he is faced with grave harm that could be guarded with minimal cost to the government. *Singh v. Andrews*, --- F. Supp. 3d ---, 2025 WL1918679, at * 8 (E.D. Cal. July 11, 2025) (citing, for example, *Ortega v. Bonnar*, 415 F. Supp.3d 963, 970 (N.D. Cal. 2019). As a result, "Petitioner's immediate release is required to return him to the status quo ante—the last uncontested status which preceded the pending controversy." *Singh*, 2025 WL1918679, at *10; *see also e.g.*, *Acosta Roa v. Off. Fulfilling Duties of Field Off. Dir.*, No. 25-CV-07802-RS, 2025 WL 2637565 (N.D. Cal. Sept. 12, 2025) (granting immediate release on temporary restraining order); *Cordero Pelico v. Kaiser*, No. 25-CV-07286-EMC (EMC), 2025 WL 2494426 (N.D. Cal. Aug. 29, 2025) (granting immediate release on ex parte TRO); *Aceros v. Kaiser*, No. 25-cv-06924, 2025 WL 2453968, at *3 (N.D. Cal. Aug. 16, 2025) (granting temporary restraining order); *Alva v. Kaiser*, No. 25-cv-06676, 2025 WL 2294917, at *3 (N.D. Cal. Aug. 7, 2025) (same); *Ramirez-Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2097467, at *4 (N.D. Cal. July 25, 2025) (same); *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025) (granting temporary restraining order requiring release of asylum seeker and a pre-detention bond hearing before re-arrest); *Singh*, 2025 WL 1918679, at *10 (granting preliminary injunction); *Doe v. Becerra*, No. 25-cv-647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025) (granting temporary restraining order); *see also Diaz v. Kaiser*, 2025 WL 1676854 (N.D. Cal June 14, 2025) (granting temporary restraining order requiring pre-detention hearing before re-detention of noncitizen out of custody five years); *Garcia v. Bondi*, No. 25-cv-5070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025) (granting temporary restraining order requiring pre-detention hearing before re-detention of noncitizen out of custody six years); *Enamorado v. Kaiser*, No. 25-cv-4072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025).

Here, this means that Mr. De La Garza must be restored to the same liberty he experienced prior to his illegal arrest—i.e., Respondents-Defendants should be enjoined from placing an ankle monitor on Mr. De La Garza or otherwise restricting his freedom while his case proceeds through this Court.

3. Any Pre-Deprivation Hearing Should Be Before this Court

First, this Court's authority to conduct such a hearing is well established and incident to this court's federal habeas jurisdiction. *See* 8 U.S.C. §§ 2243, 2246, 2247; Rules 1(b), (6), (7), (8) of the Rules Governing Section 2254 Cases in the United States District Courts, *available at* https://www.uscourts.gov/file/27805/download; *see also Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36, 41 n. 1 (N.D. Cal. 2020) (collecting cases); *Leslie v. Holder*, 865 F. Supp. 2d 627, 633 (M.D. Pa. 2012) ("there is nothing extraordinary or novel about the practice of conducting bail hearings in connection with federal immigration habeas corpus proceedings); *Mapp v. Reno*, 241 F.3d 221, 229 (2d Cir. 2001) (holding that the "district court acted within its power when it considered whether petitioner was entitled to release on bail"); *Cf. Roman v. Wolf*, 977 F.3d 935 (9th Cir. 2020) ("Once a constitutional right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.")

Second, any re-detention hearing in Mr. De La Garza's case should take place in this Court because "federal courts are the arbiters of constitutional rights such as those at issue in" Mr. De La Garza's petition. *See L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405 (E.D.N.Y. 2025). In *L.G.M.*, a court within the Eastern District of New York held that a noncitizen's bond hearing should take place before the District Court, rather than before an immigration judge, based on the constitutional rights at stake, and due to the unique circumstances of that petitioner's case, including a complicated immigration history, and a complicated ICE detention history. *Id.* at 406. There, the court emphasized that while federal courts "certainly defer[] to the immigration courts with respect to their areas of expertise and jurisdiction—including decisions to 'commence proceedings, adjudicate cases, or execute removal orders,' . . . neither the IJ nor the BIA has 'jurisdiction to decide constitutional issues.' *Id.* (quoting 8 U.S.C. § 1252(g); *Ozturk v. Hyde*, 136 F.4th 382, 400 (2d Cir. 2025)). Similarly here, at issue here is whether the government may deprive Mr. De La Garza of his constitutionally protected liberty interest and incarcerate

him as he continues to pursues his legal challenge to his removal from the United States. *See* Dkt. 15 at 9.

B. MR. DE LA GARZA WILL SUFFER IRREPERABLE HARM ABSENT INJUNCTIVE RELIEF

Mr. De La Garza is currently suffering irreparable harm due to his detention and thus, a TRO ordering his immediate release is necessary to prevent more irreparable harm.

First, Mr. De La Garza's detention has caused Mr. De La Garza irreparable harm because "any "loss of liberty is fundamental and substantial." *Perera v. Jennings*, 2021 WL 2400981, at *5 (N.D. Cal. 2021). The harm is particularly clear here, as Mr. De La Garza has recently lost his son for whom we was a full time care-taker. *See* Wille Decl. at Exh. F. As Mr. De La Garza describes, "My heart is shattered as Carlos was my everything." *Id.* Forcing Mr. De La Garza to grieve from jail is particularly cruel. As the Ninth Circuit has held—after noting the subpar medical and psychiatric care in ICE detention facilities, as well as the abuse of detainees at the hands of guards—anyone subject to immigration detention suffers "irreparable harm." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

Second, "[t]he 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)). As detailed above, Mr. De La Garza is likely to succeed on his claim that his arrest violated his due process rights under the Constitution. As such, he has "carried [his] burden as to irreparable harm." *Hernandez*, 872 F.3d at 995.

C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING A TRO

Where the government is the opposing party, balancing the equities and the public interest merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, the balance of equities weighs strongly in favor of Mr. De La Garza. Mr. De La Garza faces grave hardships absent a TRO. Absent injunctive relief, he faces detention in violation of his constitutional rights, separation from the only family that remains, as well his community, in addition to severe

psychological harm, as he grieves the loss of his son inside the walls of a detention center. *See* Wille Dec. at Ex F. at 232-75. Faced with "preventable human suffering, [the Ninth Circuit has] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor.'" *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983). This Court should find the same.

The public like wise has a strong interest in ensuring that Mr. De La Garza is not re-detained as "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)). Without an injunction, the government's egregious conduct in violation of the Constitution would be sanctioned. Like all other individuals, the government is not simply free to ignore the law.

Moreover, a TRO serves the public interest by avoiding "indirect hardship to [Mr. De La Garza's] family [and community] members" which here would be substantial. *See also Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) (finding that courts may consider hardship to families when determining public interest). Mr. De La Garza is "has been the primary source of stability and support . .. for [his] family here in the United States." *See* Wille Dec. at Ex F at 267-75 (letters from Mr. De La Garza's family and neighbors).

In addition, a TRO favors the public interest because it allows Mr. De La Garza to continue contributing productively to his community. Mr. De La Garza is known for helping his neighbors in Berkeley. Several of them write that they want him "to be able to stay here permanently and continued to contribute his skills and generosity to our neighborhood and community." Wile Decl., Ex F at 269-72. The pastor of his church in Oakland writes that Carlos "serv[es] the community" and assists at home meetings. *Id.* at 275. The public therefore has a strong interest in Mr. De La Garza continuing to be at liberty. *Cf. Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Morrisey v Brewer*, 408 U.S. 471, 484 (1972))

(finding that for released prisoners and parolees, "society has a stake in whatever may be the chance of restoring the individual to normal and useful life" and that society thus "has an interest in not having parole revoked" erroneously (internal brackets omitted)).

The government, on the other hand, cannot suffer harm from an injunction that simply requires it to follow the law. *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."). Here, specifically, the government cannot claim harm from a TRO that releases Mr. De La Garza and enjoins it from re-arresting him to comply with the Constitution. *See supra*, Section III(A) *supra* (explaining why Mr. De La Garza's detention violates due process).

IV. CONCLUSION

For the foregoing reasons, Mr. De La Garza respectfully requests that the Court enter a TRO immediately releasing Mr. De La Garza and enjoining ICE from re-arresting him pending further order of this Court.

Dated: December 1, 2025

Respectfully submitted,

s/Amalia Wille
Amalia Wille

s/Judah Lakin
Judah Lakin

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ATTESTATION PURSUANT TO CIVIL L.R. 5.1(i)(3)

As the filer of this document, I attest that concurrence in the filing was obtained from the other signatories. Executed on this 1st day of December 2025 in Oakland, California.

s/Judah Lakin
Judah Lakin
Attorney for Petitioner