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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: 4:25-cv-10305-HSG

PETITIONER'S BRIEF IN SUPPORT OF PRELIMINARY INJUNCTION

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I. MR. DE LA GARZA RESPECTFULLY REQUESTS THAT THE DECEMBER 18 HEARING MOVE FORWARD AS SCHEDULED

Mr. De La Garza, through counsel, understands that Respondents may seek to vacate Thursday's hearing by stating they do not oppose the entry of a Preliminary Injunction by this Court. Mr. De La Garza would oppose the vacatur of the Preliminary Injunction hearing and respectfully requests that the hearing move forward.

First, as outlined below, Mr. De La Garza has several arguments related to the issuance of a Preliminary Injunction, and does not seek a mere extension of the Temporary Restraining Order. Mr. De La Garza would like to be heard on those matters. *See also* Dkt. 15 (noting that Petitioner can raise an issue at the preliminary injunction hearing if he believes it requires further discussion).

Second, Mr. De La Garza believes that an in-person hearing is warranted in this case. This is underscored by Respondents' actions in this litigation and with respect to Petitioner since December 1. Undersigned counsel has spent nearly two weeks meeting and conferring with Respondents' counsel in an attempt to: (1) obtain documents that ICE stated it served on Mr. De La Garza on December 1, but which were not provided to him when he was released, *see* Dkt. 10-1 at ¶ 13 (describing documents); (2) obtain evidence that USCIS had adjudicated Mr. De La Garza's applications, since an ICE officer swore USCIS had denied the applications prior to December 3, *see* Dkt. 10-1 at ¶ 15; and (3) seek further information regarding the misrepresentation in Respondents' Opposition to the TRO that Mr. De La Garza stated he entered the country without inspection on November 18, 2015. *See* Dkt. 10 at 10 n.3.

As to the documents ICE served on Mr. De La Garza on December 1, Respondents finally provided them yesterday (10 days after Petitioner first specifically requested them), and the documents raise numerous additional questions for Petitioner.

As to the USCIS adjudication that had purportedly taken place before December 3, yesterday, Respondent's counsel provided Petitioner with a USCIS notice of denial dated December 12, 2025. This purported denial confirms that the government's prior statements about the USCIS adjudication were incorrect, *see* Dkt. 10-1 at ¶ 15, and the document appears to be an

unlawful, post hoc rationalization of the agency's actions. The December 12 denial was apparently produced in the period during which Respondents repeatedly insisted to Petitioner that they were unable to provide information about any USCIS adjudications.

As to the November 18, 2015 entry and alleged statements to that effect, Respondents' counsel finally informed undersigned counsel yesterday that Respondents would no longer stand by their prior representation. But as of this filing, Mr. De La Garza still has not been provided with an explanation as to why Respondents previously made these statements about Mr. De La Garza. Nor has Mr. De La Garza reviewed the contours of the correction that Respondents intend to make as it has not been provided to him.

Although this Court declined to address the factual discrepancy regarding the November 2015 alleged entry in the issuance of the TRO, because even on Respondents' asserted facts, this Court disagreed with Respondents' position—Respondents' opposition brief and legal position hinged on that entry. *See generally* Dkt. 10.

Mr. De La Garza has brought a habeas petition and complaint for declaratory and injunction relief alleging violations of his due process rights. *See* Dkt. 1. "The fundamental requisite of due process of law is the opportunity to be heard." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970). Moreover, "particularly where credibility and veracity are at issue"—as they are here—"written submissions are a wholly unsatisfactory basis for decision." *Id.* at 269. At this stage, Mr. De La Garza respectfully requests that the December 18, 2025 hearing on his preliminary injunction move forward as scheduled, so that he may present the arguments as set forth below and seek further information regarding the government's actions in this case, particularly regarding their representations which resulted in an illegal arrest and detention of Mr. De La Garza.

II. EVIDENTIARY OBJECTIONS AND CONTESTED FACTS

As stated in Dkts 12, 12-1, and 12-2 (Mr. De La Garza's evidentiary filing), Respondents' opposition to the TRO, as well as Respondents' legal theory underpinning the statute allegedly governing Mr. De La Garza's detention, was based on a fabrication regarding

both Petitioner's statement regarding his date of entry and his manner of entry. Mr. De La Garza intended to raise objections to Respondents' evidence with this filing under the Federal Rules of Evidence and in compliance with Local Rule 7-3(c). However, based on a December 15, 2025 meet and confer with government counsel, Mr. De La Garza understands that the government will likely retract some of its prior assertions in this litigation. Mr. De La Garza is not aware at the time of this filing what the government will say, and how it may seek to alter its prior filings. Accordingly, Mr. De La Garza reserves the right to raise any evidentiary objections at the December 18, 2025 hearing, after review of the government's submission.

III. ARGUMENT

A. Mr. De La Garza is Not a Danger or a Flight Risk, and the Government Has Not Argued Otherwise

As this Court has already found, Mr. De La Garza has made a sufficient showing as to likelihood of success on the merits of his claim that his detention without process was illegal. Dkt. 11. Mr. De La Garza's arrest was illegal on at least two grounds: (1) it was pursuant to a detention authority that does not authorize his detention, *see* Dkt. 11 at 5-7, and (2) it violated his procedural due process rights, *see id. See also* Dkt. Nos. 1, 8 (articulating due process grounds).

Mr. De La Garza wishes to highlight at the preliminary injunction stage that Respondents "have not come close to showing that" Mr. De La Garza is dangerous or a flight risk "and in fact, have hardly even tried." *See Bernal v. Albarran*, No. 25-CV-09772-RS, 2025 WL 3281422, at *6 (N.D. Cal. Nov. 25, 2025). At the moment of arresting Mr. De La Garza on December 1, ICE stated only that he was being arrested because he did not have immigration status. Dkt. 7 at p. 4. None of the three ICE officers identified by the government in their prior filings as being familiar with Mr. De La Garza's case (Officers DeLong, Remullah, and Jerome) made any assertions that Mr. De La Garza presents a danger or a flight risk. *See* Dkts. 10-1, 10-2. Nor did the government's briefing to this Court make any such arguments. *See* Dkt. 10.

And after this Court's TRO, DHS issued Mr. De La Garza paperwork informing him that the agency had released Mr. De La Garza on his own recognizance "[i]n accordance with section

236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations." Dkt. 14-1. As Judge Seeborg recently explained, the regulations at 8 C.F.R. § 236.1(c)(8) entail an agency determination that the individual is not a danger or a flight risk. *Bernal*, 2025 WL 3281422, at *5. Further, in accord with ICE's instructions, and in accord with this Court's denial of Mr. De La Garza request that he not be required to appear at an ICE check-in, Mr. De La Garza appeared at an ICE check-in on December 8, 2025. *See* attached Declaration of Amalia Wille and Exhibit. His appearance at the site of his illegal arrest one week after that arrest further confirms he is not a flight risk.

"[T]he government may *never* detain an individual that enjoys the protection of the Due Process Clause without a legal basis to do so." *Bernal*, 2025 WL 3281422, at *6. "[G]iven the government's conduct, the substantial liberty interests held by" Mr. De La Garza "and the fact that the government has no evidence and does not contend that [he] presents [a] risk of flight or to public safety," the Court should re-affirm in the preliminary injunction a *pre*-deprivation bond hearing is warranted before Mr. De La Garza can again be deprived of his liberty by Respondents. *See Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *12 (N.D. Cal. Sept. 12, 2025).

B. The Government Should Bear the Burden by Clear and Convincing Evidence at Any Future Custody Hearing

In issuing a Temporary Restraining Order, this Court enjoined and restrained Respondents from re-detaining Mr. De La Garza "without notice and a pre-deprivation hearing before a neutral decisionmaker." Dkt. 11 at 10. The TRO's discussion of the equitable factors states that "[t]he only potential injury Respondents face is a short delay in detaining Petitioner if a neutral decisionmaker ultimately finds by a preponderance of the evidence that his detention is necessary to prevent danger to the community or that he presents a flight risk." *Id.* at 8. Petitioner respectfully submits that, when issuing a preliminary injunction, the Court should order that at any future custody hearing, the government must prove by clear and convincing evidence that Mr. De La Garza is a flight risk or danger to the community such that his re-

detention is warranted. Such a burden is consistent with Ninth Circuit precedent and the weight of authority in this District, and is required by due process.

Petitioner acknowledges that this Court has used "preponderance of the evidence" language when discussing immigration re-detention bond hearings. *See* Dkt. 11 at 8; *Orozco Acosta v. Bondi*, No. 25-CV-09601-HSG, 2025 WL 3229097, at *5 (N.D. Cal. Nov. 19, 2025). However, the Court's reference to a "preponderance" standard has been contained in the Court's analysis of the equitable factors at issue for preliminary relief, not in the course of deciding the issue of what burden should apply at such hearings. *Id.* Moreover, when the Court used the "preponderance" language in *Orozco Acosta*, it cited to two decisions, *Pinchi v. Noem* and *Calderon v. Kaiser*, both of which held that the government must bear the burden of proof by clear and convincing evidence at a future bond hearing. *See Orozco Acosta*, 2025 WL 3229097, at *5; *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037-38 (N.D. Cal. 2025) ("The government may not re-detain Ms. Garro Pinchi during the pendency of these proceedings without providing her with a pre-detention bond hearing before a neutral immigration judge. Ms. Garro Pinchi may not be detained unless the government demonstrates at such a bond hearing, by clear and convincing evidence, that she is a flight risk or a danger to the community and that no conditions other than her detention would be sufficient to prevent such harms"); *Calderon v. Kaiser*, No. 5:25-cv-06695-AMO, 2025 WL 2430609, at *5 (N.D. Cal. Aug. 22, 2025) (same).[1]

These decisions stem from the reasoning in the Ninth Circuit's *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). In *Singh*, the Ninth Circuit held that the government must justify detention by clear and convincing evidence at a bond hearing for a noncitizen subject to prolonged

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[1] Judge Chen also used "preponderance" language when discussing the equitable factors in *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *14 (N.D. Cal. Sept. 12, 2025). There too, however, the Court cited to *Pinchi*, 792 F. Supp. 3d at 1037-38, which found that the government should bear the burden by clear and convincing evidence. Moreover, Judge Chen recently granted a preliminary injunction in which he ordered the government to bear the burden by clear and convincing evidence at a future bond hearing. *Claros v. Albarran*, No. 25-CV-09473-EMC, 2025 WL 3458888, at *8 (N.D. Cal. Dec. 2, 2025). It may be that cases that use the "preponderance" language are ones in which the parties did not raise issues relating to the burden, and thus the Court was never called upon to decide.

detention. 638 F.3d at 1200. As the Ninth Circuit explained, the Supreme Court has "repeatedly reaffirmed" the principle that due process requires a "heightened burden of proof" on the government in civil proceedings that implicate individual interests that are "particularly important and more substantial than mere loss of money." *Id.* at 1204 (quoting *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996)). Where the "possible injury to the individual" is so significant, the individual should not "share equally with society the risk of error." *Id.* at 1203-04 (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979)). As Judge Orrick explained in *Rajnish v. Jennings*, "*Singh* directly leads to the conclusion that, at bond hearings for noncitizens in removal proceedings, the government must bear the burden of proof by clear and convincing evidence." 2020 WL 7626414, at * 6 (N.D. Cal. 2020). *See also* Dkt. 8 at 25 (collecting cases).

Contrary to the government's assertion, Dkt. 10 at 31, no case has displaced the Ninth Circuit's due process analysis in *Singh* that a "heightened burden of proof" on the government is required in civil proceedings where "possible injury to the individual" is "significant." *See Singh*, 638 F.3d at 1203-04; *cf. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 n.4 (9th Cir. 2022) (expressly declining to abrogate *Singh*). In *Aleman Gonzalez*, a case involving individuals detained pursuant to 8 U.S.C. § 1231(a)(6), the Ninth Circuit held that *Singh*'s burden-of-proof rule was a constitutional due process holding that survives the Supreme Court's statutory interpretation holding in *Jennings v. Rodriguez*, 583 U.S. 281 (2018). *See Aleman Gonzalez v. Barr*, 955 F.3d 762, 781 (9th Cir. 2020), *rev'd on other grounds*, 142 S. Ct. 2057 (2022).

Although Respondents attempt to rely on intervening Ninth Circuit and Supreme Court case law to argue otherwise, *see* Dkt. 1 at 31, Respondents fail to mention that "the Supreme Court has never addressed the issue of what due process requires at a constitutionally required, remedial bond hearing." *Pham v. Becerra,* 717 F. Supp. 3d 877, 887 (N.D. Cal. 2024). And the Ninth Circuit's decision in *Rodriguez Diaz* makes clear that, under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the question of who should carry the burden at a bond hearing is fact specific and is informed by the particular context of each case. *Rodriguez Diaz*, 53 F.4th at 1210-11. Indeed, following *Rodriguez Diaz*, District Courts have continued to place the burden on the government at remedial bond hearings, by clear and convincing evidence. *E.g.*, *Pham,* 717 F.

Supp. 3d at 887 (collecting cases); *Garcia Mariagua v. Chestnut*, No. 1:25-cv-01744-DJC-CSK, 2025 WL 3551700, at *5 (E.D. Cal. Dec. 11, 2025) (same).

The Ninth Circuit's burden discussion in *Rodriguez Diaz* turned on the existence of certain statutory protections for § 1226(a) detainees who are denied release at a bond hearing. 53 F.4th at 1210-11. Those protections are unavailable when an individual is subject to mandatory detention under the statute, as the government argues here. *See* Dkt. 10. And notably, "*Rodriguez Diaz* recognized that even where such statutory protections are available, greater protections may be constitutionally necessary in individual cases where the risk of an erroneous deprivation of liberty is particularly high." *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, 2025 WL 2935630, at *13 (N.D. Cal. Oct. 15, 2025). Accordingly, "*Rodriguez Diaz* addressed circumstances entirely different from those presented here, in which [Mr. De La Garza] lack[s] the procedural protections available following a denial of release under § 1226(a) and face[s] a high risk of the erroneous deprivation of physical liberty." *Id.* (ordering a heightened burden at a pre-deprivation bond hearing for individuals arrested by ICE at their immigration court hearings).

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 by clear and convincing evidence. Mr. De La Garza's interest in his liberty is profound: (1) he has resided many years in Berkeley, California, (2) he has rehabilitated following his criminal convictions, (3) he devoted his life to caring for his disabled son, (4) his wife and son are buried in El Cerrito, and (4) he has deep and lasting family and community ties in the Bay Area. *See* Dkts. 1, 8, 11, 12-2. Respondents have not contested that ICE knew about Mr. De La Garza's presence in the United States, and his criminal history, for *years*, and they took no enforcement action against him. Dkt. 1 ¶ 50; Dkt. 7 at 5, ¶ 19; Dkt. 7-1 at 79-100. *See also* Dkt. 11 at 7. This indicates the agency has known Mr. De La Garza poses no danger. Then, nearly a year after Mr. De La Garza had applied for permanent residence and voluntarily appeared at multiple in-person appointments in order to comply with immigration laws, ICE suddenly detained him without any process, and held him for days without his prescription medication, which caused him great suffering. Dkt. 1

at ¶¶56-60, 68-71; Dkt. 7 at 8-18; Dkt. 12-1 ¶¶ 3-4; Dkt. 12-2 ¶¶ 16-18. *See also* Dkt. 11 at 7. Finally, as argued *supra*, Respondents have made no argument to this Court that Mr. De La Garza is a danger or a flight risk. *See* Dkts. 10, 10-1, 10-2.

This case involves an especially acute risk of error without robust procedural protections, in light of the government's record of lying about Mr. De La Garza. The government's record of arrest contained false assertions about Mr. De La Garza's statements in an interview at which his counsel was present, as well as false allegations about his most recent entry to the United States. Dkt. 10-2 (Form I-213); Dkt. 12-1 ¶¶ 5-16 (Amalia Wille Declaration); Dkt. 12-2 ¶¶ 23-27 and attached Facebook Posts (Mary Moreno Declaration). Another ICE officer perpetuated those false statements through a declaration to this court. Dkt. 10-1 ¶¶ 12, 14. While it is Mr. De La Garza's understanding that now, weeks later, Respondents seek to amend those representations, it is critical to recognize that it was *those misrepresentations* that formed the basis of the government's legal justification for his detention in this Court. Dkt. 10-1 ¶ 12; Dkt. 10 at 7, 8, 16, 25, 26, 28.

On these facts, "it would be improper to ask [Mr. De La Garza] to share equally with society the risk of error when the possible injury to [him]—deprivation of liberty—is so significant." *See Perera v. Jennings*, 598 F. Supp. 3d 736, 747 (N.D. Cal. 2022) (cleaned up). *See also Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025) ("Considering the substantial private interest at stake, the risk of erroneous deprivation through the procedures used, and the government's relatively lesser interest in this case, the Court finds that the Due Process Clause requires a predeprivation bond hearing where the government bears the burden of proving by clear and convincing evidence that petitioner is a flight risk or danger to the community.").

For all of these reasons, Petitioner requests that this Court clarify the burden at any pre-deprivation hearing, and hold that Respondents cannot re-detain Mr. De La Garza unless they demonstrate by clear and convincing evidence that he is a flight risk or a danger to the community and that no conditions other than his detention would be sufficient to prevent such harms.

C. Section 1226(e) Does Not Deprive this Court of Jurisdiction to Hold a Custody Hearing or Review a Custody Hearing by an Immigration Judge

In granting Mr. De La Garza's Motion for a Temporary Restraining Order in part, this Court held that it "would not have the authority to review the immigration judge's determination whether Mr. De La Garza was a danger to the community or flight risk" in the event that Respondents seek a pre-detention hearing before an immigration judge. *See* Dkt. 18 at 9. In reaching that conclusion, this Court relied on the language of 8 U.S.C. § 1226(e). *See id.* Mr. De La Garza respectfully submits that, when issuing a preliminary injunction, the Court should make clear that Ninth Circuit precedent provides for review, by this Court, of any custody decision by an immigration judge. As the Ninth Circuit articulated in *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024), the immigration judge's determination as to dangerousness is a mixed question of law and fact that district courts may review under an abuse of discretion standard.[2] Moreover, the "government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). A habeas court, separate and apart from its ability to review the ultimate determinations of danger and flight risk, also has jurisdiction to review constitutional and legal questions de novo. *See* 8 U.S.C. § 1252(a)(2)(D); *see also Martinez,* 124 F.4th at 782 (noting that § 1226(e) does not apply to constitutional claims or questions of law); *Singh*, 638 F.3d at 1202.

In addition, Mr. De La Garza respectfully requests that the Court, in issuing a Preliminary Injunction, reconsider Mr. De La Garza's request for this Court to hold a pre-detention hearing should the government wish to re-detain Mr. De La Garza. Mr. De La Garza acknowledges that this request is not "routine," Dkt. 18 at 9, and apologizes to the extent his prior pleadings suggested otherwise. But, even among the scores of illegal arrests and detentions that come

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[2] Although the Court was not called on to review flight risk in *Martinez*, the Ninth Circuit's analysis as to dangerousness would apply equally to flight risk. *See Y.S.G. v. Andrews*, No. 2:25-CV-1884-SCR, 2025 WL 2979309, at *8 (E.D. Cal. Oct. 22, 2025) (relying on *Martinez* to find that the question of flight risk and danger are mixed questions of law and fact that are reviewed under an abuse of discretion standard).

before this Court and others nearly daily, Mr. De La Garza's case stands out. He was arrested while following the established legal procedures to seek lawful status in this country, and his arrest and detention were predicated on statements that Respondents now seek to recant. As of this filing, Mr. De La Garza has not seen Respondents' new submission that may disavow its prior statements. Even so, Mr. De La Garza has not been provided any assurance that the government will not seek to rely on the prior false statements at a re-detention hearing in immigration court.

Moreover, Mr. De La Garza has serious concerns that a pre-detention hearing before an immigration judge would be fair. As this Court is aware, "[a] neutral judge is one of the most basic due process protections." *Reyes-Melendez v. INS*, 342 F.3d 1001, 1006 (9th Cir. 2003). This Court, authorized under Article III of the Constitution, vested with life tenure, serves as a co-equal branch with the legislative and executive branch under the United States Constitution. By contrast, the current Executive Branch has made clear its view that immigration judges are at-will employees who serve at the pleasure of the Executive.[3] In 2025, Attorney General Bondi has fired many dozens of immigration judges—especially in San Franscisco, which governs Mr. De La Garza's place of residence—without giving a reason, other than that Article II of the United States Constitution permits it. *See The DOJ has been firing judges with immigrant defense backgrounds*, NPR, Nov. 6, 2025 (noting that NPR had independently identified 70 IJs who had received termination notices from the Trump administration)[4]; Transcript, Episode 868, *The Hand that Rocks the Gavel*, This American Life, Sept. 19, 2025 (quoting an IJ termination letter that reads, "pursuant to Article II of the Constitution, the attorney general has decided to remove you from your position")[5].

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[3] Mr. De La Garza also notes that Attorney General Bondi, who oversees all immigration judges, is a Respondent in this action, *see* Dkt. 1, lending further support to the notion that her employees could not be "neutral arbiters" here.

[4] Available from https://www.npr.org/2025/11/06/g-s1-96437/trump-immigration-judges-fired (accessed Dec. 15, 2025).

[5] Available from https://www.thisamericanlife.org/868/transcript (accessed Dec. 15, 2025).

Numerous fired immigration judges have stated to the press that, under the Trump administration, they were instructed to rule favorably on ICE's motions. Transcript, Episode 868, *The Hand that Rocks the Gavel*, This American Life, Sept. 19, 2025; *Judges See An Immigration Court Gutted from Inside*, Law360, Oct. 31, 2025[6]. The firings have created a culture of fear, with pressure for immigration judges to rule in favor of the Executive's immigration agenda, which includes fast-tracking deportations, and increasing arrests and incarceration of noncitizens—or risk losing their jobs. *Former judges given inside look at immigration court upheaval*, NBC Bay Area, Oct. 20, 2025[7]; *Former judges say mass firings could undermine immigration court system*, *KPBS*, Oct. 1, 2025[8].

The Executive has used the firings to re-make the immigration judge corps. In August, the Department of Justice lowered the prerequisites to qualify for temporary immigration judge positions and eliminated the requirement that applicants have immigration experience. 90 FR 41883 (Aug. 28, 2025). In recent months, the Department of Justice has hired new immigration judges of its choosing, many from the military, to replenish the ranks. *Trump replaces fired immigration judges with military lawyers*, LiveNOW Fox, Oct. 4, 2025[9]. In addition, Respondent DOJ has also launched a campaign to hire new IJs that advertises the position as "deportation judges" and describes it as an opportunity to "[b]ring the hammer down on criminal illegal aliens . . . Defend your communities, your very way of life." Gutierrez, Hilda and Michael Bott, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area, Nov. 25, 2025[10]. At least one district court—who was not called upon to conduct a

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[6] Available from https://www.law360.com/pulse/articles/2381003/judges-see-an-immigration-court-gutted-from-inside (accessed Dec. 15, 2025).
[7] Available from https://www.nbcbayarea.com/investigations/former-judges-inside-look-immigration-court-upheaval/3965734/ (accessed Dec. 15, 2025).
[8] Available from https://www.kpbs.org/news/politics/2025/10/01/former-judges-say-mass-firings-could-undermine-immigration-court-system (accessed Dec. 15, 2025).
[9] Available from https://www.livenowfox.com/news/trump-military-lawyers-immigration-judges (accessed Dec. 15, 2025).
[10] Available from https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/.

pre-deprivation hearing as the petitioner did not request it—nonetheless "expresse[d] serious doubt as to whether the use of Immigration Officers to make factual findings and determinations comports with due process." *Qazi v. Albarran*, No. 2:25-CV-02791-TLN-CSK, 2025 WL 3033713, at *6 n.2 (E.D. Cal. Oct. 10, 2025).

Further, the Board of Immigration Appeals—also purportedly a "neutral" adjudicatory body—has similarly been re-made by the Executive to serve President Trump's immigration enforcement agenda. The BIA has long lacked independence in that the BIA's decisions are reviewable by the Attorney General. 8 C.F.R. § 1003.1(h); *see generally* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743 (2024). But the current administration has turbo-charged using the BIA as an immigration enforcement tool. Although it faced high numbers of pending cases, in April 2025, the Department of Justice purged BIA members by downsizing the body from 28 members to 15. 90 FR 15525 (Apr. 14, 2025). Since then, DOJ has hired new, and often temporary, replacements.

Meanwhile, the substance of BIA's decision-making has further underscored its lack of independence. Since January 20, the BIA and the Attorney General have issued an unprecedented cascade of published opinions. Those decisions bind immigration judges nationwide, and all of them have sided with the Department of Homeland Security—64 so far since January 20, compared with 14 precedent decisions issued in all of 2024, for example (which were a mix of decisions that were both favorable, and unfavorable, to noncitizens). *See* AG/BIA Precedent Decisions, Vol. 29 (4085-), available at https://www.justice.gov/eoir/volume-29 (accessed Dec. 15, 2025). *Compare* U.S. DOJ, Executive Office for Immigration Review, *BIA Precedent Decisions, Vol. 28*, available at https://www.justice.gov/eoir/volume-28 (accessed Dec. 15, 2025). ICE's 100% success rate in precedential opinions at the BIA extends to matters of immigration detention and facilitates

ICE's ability to detain noncitizens without scrutiny. *E.g.*, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (holding that noncitizens who entered without inspection are subject to mandatory detention regardless of their length of presence in the United States); *Matter of Akhmedov*, 29 I&N Dec. 166 (BIA 2025) (vacating immigration judge's grant of release on bond, and holding that no amount of bond could mitigate flight risk where DHS argued that the noncitizen had presented inconsistent evidence regarding his address history); *Matter of Choc-Tut*, 29 I&N Dec. 48 (BIA 2025) (vacating immigration judge's grant of release on bond, and ordering noncitizen detained without bond, after state court judge found the noncitizen to not be a danger).

D. The Court Should Reaffirm that the Remaining Preliminary Injunction Factors Favor Petitioner

As this Court has already found, Mr. De La Garza has demonstrated a likelihood of irreparable injury in the absence of preliminary relief because he suffered an unconstitutional deprivation of his liberty. Dkt. 11 at 7. In addition, Mr. De La Garza suffers from chronic back pain and insomnia as a result of years of caring for his son at all hours. Dkt. 7-1 at 67. Since the TRO, Mr. De La Garza has presented evidence that he was denied his prescription medication while detained by ICE, and as a result he was unable to sleep, and suffered physically and mentally. Dkt. 12-1 ¶¶ 3-4; Dkt. 12-2 ¶¶ 16-18. Thus, "as a practical matter, [Mr. De La Garza] is likely to suffer serious medical consequences if re-detained." *Salcedo Aceros*, 2025 WL 2637503, at *13. *See also Hernandez*, 872 F.3d at 994 (recognizing the "irreparable harms imposed on anyone subject to immigration detention," including "subpar medical and psychiatric care in ICE detention facilities").

Finally, as this Court concluded, "the balance of the equities and the public interest[] also weigh heavily in favor of granting temporary relief." Dkt. 11 at 7. This has only intensified since the TRO's issuance, as Mr. De La Garza continues to believe that DHS lied about key facts in his case to serve its detention and deportation agenda. In addition to harming Mr. De La Garza, the government has undermined the public trust. *See, e.g.,* Ryan Goodman, et. al., *The "Presumption of Regularity" in Trump Administration Litigation*, Just Security (Nov. 20, 2025), available at

https://www.justsecurity.org/120547/presumption-regularity-trump-administration-litigation/ (collecting court rulings on the erosion of the presumption of regularity during the Trump administration).

Respondents have argued that the government "has a compelling interest in the steady enforcement of its immigration laws," Dkt. 10 at 23. But the procedure the government followed here to summarily detain Mr. De La Garza when he "dutifully appear[ed]" for his permanent resident card interview totally undermined that interest. *See Salcedo Aceros*, 025 WL 2637503, at *14 (finding the public interest favored a preliminary injunction in a courthouse arrest case). Mr. De La Garza's arrest appears to be part of a new DHS policy of arresting individuals at their green card interviews. *See, e.g.*, Miriam Jordan, *Green Card Interviews End in Handcuffs for Spouses of U.S. Citizens* (Nov. 26, 2025), The New York Times, available at https://www.nytimes.com/2025/11/26/us/trump-green-card-interview-arrests.html. "The public interest is in enforcing *all* the immigration laws, including the laws governing adjustment of status." *Franco v. Meyer*, No. 1:25-CV-01620-DAD-CKD, 2025 WL 3280782, at *2-*3 (E.D. Cal. Nov. 25, 2025) ("The Court rejects arrest and detention practices predicated on manipulating the laws that Congress has passed. Congress did not intend its carefully considered adjustment of status process for a select group of aliens to become a mechanism for 'gotcha' law enforcement") (quoting *You, Xiu Qing v. Nielsen*, 321 F. Supp. 3d 451, 464–66 (S.D.N.Y. 2018)). Therefore, "[i]f anything, it is the Government that has thrown into turmoil the steady enforcement of immigration law" through repeated, illegal arrests. *Cf. Salcedo Aceros*, 2025 WL 2637503, at *14.

IV. CONCLUSION

For the foregoing reasons and for those set forth in his motion and petition, Mr. De La Garza respectfully requests that the Court enter a preliminary injunction providing that Respondents may not re-detain Mr. De La Garza during the pendency of these proceedings without providing him with a pre-detention bond hearing before a neutral adjudicator. This Court should order that Respondents may not detain Mr. De La Garza unless Respondents demonstrate

at such a bond hearing, by clear and convincing evidence, that he is a flight risk or a danger to the community such that no conditions other than his detention would be sufficient to prevent such harms.

Dated: December 16, 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 16th day of December 2025 in Oakland, California.

s/Judah Lakin
Judah Lakin
Attorney for Petitioner