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9
10 UNITED STATES DISTRICT COURT
11
12 FOR THE DISTRICT OF ARIZONA
13

14 Amin FAYAZI,

15 Petitioner-Plaintiff,

16 v.

17 John CANTU, Field Office Director of Phoenix
18 Office of Detention and Removal, U.S.
19 Immigrations and Customs Enforcement; U.S.
20 Department of Homeland Security;

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

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

27 Pam BONDI, in her Official Capacity, Attorney
28 General of the United States;

Respondents-Defendants.

Case No.

A- 

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

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NOTICE OF MOTION

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

Dated: December 11, 2025

Respectfully submitted,

/s/ Bianca L. Torres
Bianca L. Torres, Esq.
Attorney for Petitioner-Plaintiff

1 **I. INTRODUCTION**

2 Respondents unlawfully re-detained Petitioner on June 23, 2025. ICE released Petitioner
3 from custody in 2000, to continue his asylum claim. The Petitioner was later granted Withholding
4 of Removal under the Convention Against Torture on February 15, 2001.

5 The Petitioner has lived in liberty for the past two decades, during which time he has
6 established himself as an exemplary resident and an asset to his community. He is a loving and
7 supporting husband and father, and financial provider for his family. The Petitioner has raised his
8 two sons as two exemplary young men.

9 Moreover, since his release the Petitioner has consistently demonstrated his commitment
10 to a law-abiding life, as he has not committed any crimes.

11 By statute and regulation ICE has the authority to detain a non citizen for 90 days of a
12 final removal order to seek a third safe country. INA 241(a)(6), 8 CFR 1241.14(f). ICE must
13 release a non citizen from detention if their removal is not reasonably foreseeable.

14 The Due Process Clause further limit's ICE's re-arrest authority: for there to be due
15 process, individuals released from incarceration have a liberty interest in their freedom, and to
16 protect that interest, including on the particular facts of Petitioner's case, due process mandates
17 that the government release Petitioner from his unlawful detention. That basic principle—that
18 individuals placed at liberty are entitled to process before the government imprisons them—has
19 particular relevance here, where Petitioner's detention was *already* found to be unnecessary to
20 serve its purpose. ICE released him in 2000 so he may pursue his asylum claim out of detention,
21 which he was later granted protection under the Convention Against Torture.

22 Therefore, at a minimum, to lawfully re-arrest Petitioner, the government must first
23 establish, by clear and convincing evidence and before a neutral adjudicator, that he is now a
24 danger to the community or a flight risk, such that his re-incarceration is necessary.

25 Petitioner meets the standard for a temporary restraining order. He will suffer immediate
26 and irreparable harm absent an order from this Court enjoining the government from continuing
27 his unlawful custody and prohibiting the government to re-arrest him at any future time, unless
28 and until he first receives a hearing before a neutral adjudicator, as demanded by the Constitution.

1 Because holding federal agencies accountable to constitutional demands is in the public interest,
2 the balance of equities and public interest are also strongly in Petitioner's favor.

3 **II. STATEMENT OF FACTS AND CASE**

4 Petitioner is a citizen and national of Iran who entered the U.S. in 2000, and has remained in
5 the United States since. On February 15, 2001, he and his wife were granted Withholding of
6 Removal under the Convention Against Torture. On June 23, 2025, ICE detained the Petitioner
7 and his wife in their neighborhood. Upon their arrest, ICE officers did not articulate why the
8 Petitioner was now a flight risk, a danger to his community, or how they had violated any
9 conditions of their release. This is because ICE cannot make such a statement. Over the two
10 decades that the Petitioner has lived in freedom, he has been a devoted husband and father to his
11 sons. He is gainfully employed. He has had no criminal history. Petitioner through counsel has
12 asked ICE to release him through counsel and a request for parole. ICE has denied multiple
13 requests. Additionally, Petitioner was denied bond due to lack of jurisdiction on November 20,
14 2025. Intervention from this Court is therefore required to ensure that the Petitioner is released
15 from his current custody based on his unlawful arrest, returned to his home in Phoenix, Arizona,
16 where ICE can then provide him with a hearing before determining to re-arrest him pursuant to
17 the Due Process Clause of the Fifth Amendment.

18 **III. LEGAL STANDARD**

19 Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to
20 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,
21 that the balance of equities tips in [his] favor, and that an injunction is in the public interest."
22 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int'l Sales Co. v. John D.*
23 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
24 temporary restraining order standards are "substantially identical"). Even if Petitioner does not
25 show a likelihood of success on the merits, the Court may still grant a temporary restraining order
26 if he raises "serious questions" as to the merits of his claims, the balance of hardships tips
27 "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild*
28

1 *Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner
2 overwhelmingly satisfies both standards.

3 **ARGUMENT**

4 **A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER**

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

13 **1. Petitioner is Likely to Succeed on the Merits of His Claim That in This**
14 **Case the Constitution Requires a Hearing Before a Neutral Adjudicator**
15 **Prior to Any Re-Incarceration by ICE**

16 Petitioner is likely to succeed on his claim that, in his particular circumstances, his current
17 detention is unlawful because the Due Process Clause of the Constitution prevents Respondents
18 from re-arresting him without first providing a pre-deprivation hearing before a neutral
19 adjudicator where the government demonstrates by clear and convincing evidence that there has
20 been a material change in circumstances such that he is now a danger or a flight risk. The
21 Petitioner’s particular circumstances, pursuant to INA § 241(a)(6), 8 C.F.R. §1241.14(f), the
22 Department of Homeland Security must remove or release a detained alien within 90 days of a
23 final order of removal when removal is not reasonably foreseeable.

24 Courts analyze procedural due process claims such as this one in two steps: the first asks
25 whether there exists a protected liberty interest under the Due Process Clause, and the second
26 examines the procedures necessary to ensure any deprivation of that protected liberty interest
27 accords with the Constitution. *See Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454,
28 460 (1989).

a. Petitioner Has a Protected Liberty Interest in His Conditional Release

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

Since 2000, Petitioner exercised that freedom under the ICE's decision granting him release from custody. Accordingly, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release

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

9 In fact, it is well-established that an individual maintains a protectable liberty interest even
10 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
11 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
12 considerations support the notion that an inmate released on parole by mistake, because he was
13 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
14 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
15 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
16 (internal quotation marks and citation omitted).

17 Here, when this Court compares the release in the Petitioner’s case with the liberty interest
18 in parole as characterized by *Morrissey*,” they bear similar features in liberty interests. *See*
19 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enables him to do
20 a wide range of things open to persons,” including to live at home, work, care for his family, for
21 whom he is the financial provider, and “be with family and friends and to form the other enduring
22 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

23 The Petitioner is proud and responsible employee, and a financial provider for his two
24 sons. He has not committed any crimes for the past two decades since his release from custody.
25 He was granted Withholding of Removal under the Convention Against Torture.

26 **b. Petitioner’s Liberty Interest Mandates His Release from Unlawful**
27 **Custody And A Hearing Before any Re-Arrest**

28 The Petitioner asserts that, here, (1) where his detention would be civil; (2) where he has

1 been at liberty for two decades, during which time he has complied with all conditions of release
2 and served as the financial provider for his family; (3) where he has been granted relief, with
3 Withholding of Removal and; (4) where no change in circumstances exist that would justify his
4 lawful detention; combined with ICE's move to arrest as many people as possible under the new
5 administration's initiative, due process mandates that he be released from his unlawful custody
6 and receive notice and a hearing before a neutral adjudicator *prior* to any re-arrest or revocation
7 of his custody release.

8 "Adequate, or due, process depends upon the nature of the interest affected. The more
9 important the interest and the greater the effect of its impairment, the greater the procedural
10 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d
11 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
12 "balance [Petitioner's] liberty interest against the [government's] interest in the efficient
13 administration of" its immigration laws to determine what process he is owed to ensure that ICE
14 does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in
15 *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first,
16 the private interest that will be affected by the official action; second, the risk of an erroneous
17 deprivation of such interest through the procedures used, and the probative value, if any, of
18 additional or substitute procedural safeguards; and finally the government's interest, including
19 the function involved and the fiscal and administrative burdens that the additional or substitute
20 procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*,
21 424 U.S. 319, 335 (1976)).

22 The Supreme Court "usually has held that the Constitution requires some kind of a hearing
23 *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127
24 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the
25 only remedies the State could be expected to provide" can post-deprivation process satisfy the
26 requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the
27 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in
28 preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally

1 to do the impossible by providing predeprivation process,” can the government avoid providing
2 pre-deprivation process. *Id.*

3 Because, in this case, the provision of a pre-deprivation hearing is both possible and
4 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Petitioner
5 with notice and a hearing *prior* to any re-incarceration and revocation of his bond. *See Morrissey*,
6 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S.
7 at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d
8 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
9 proceedings may not constitutionally be held in jail pending the determination as to whether they
10 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of
11 [Petitioner’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

12 **i. Petitioner’s Private Interest in His Liberty is Profound**

13 Under *Morrissey* and its progeny, individuals conditionally released from serving a
14 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
15 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
16 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to
17 constitutional due process before he is re-incarcerated—apply with even greater force to
18 individuals like Petitioner, who have been released pending civil removal proceedings, rather than
19 parolees or probationers who are subject to incarceration as part of a sentence for a criminal
20 conviction. Parolees and probationers have a diminished liberty interest given their underlying
21 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
22 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
23 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
24 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,
25 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest
26 even though he is under conditional release.

1 *minimis* burden on the government, because the government routinely provides this sort of hearing
2 to individuals like Petitioner.

3 As immigration detention is civil, it can have no punitive purpose. The government's only
4 interests in holding an individual in immigration detention can be to prevent danger to the
5 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*,
6 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for
7 detaining Petitioner when he was released from ICE custody in 2000, and since has lived at liberty
8 as a financial provider for his family, without any criminal infractions. Furthermore, he was
9 already granted relief from an Immigration Judge.

10 It is difficult to see how the government's interest in detaining Petitioner has materially
11 changed since he was released in 2000 or granted relief in 2001, absent any circumstances
12 indicating he is a danger to the community or a flight risk. The government's interest in detaining
13 Petitioner at this time is extremely low. That ICE has a new policy to make a minimum number
14 of arrests each day under the new administration does not constitute a material change in
15 circumstances or increase the government's interest in detaining him.¹

16 Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful
17 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
18 Petitioner does not seek a unique or expensive form of process. As the Ninth Circuit noted in
19 2017, which remains true today, "[t]he costs to the public of immigration detention are
20 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5 million."
21 *Hernandez*, 872 F.3d at 996. Petitioner has already been granted relief since February 15, 2001,

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23 ¹ *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January
24 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests,"
25 *Forbes* (June 9, 2025), <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> ("At the end of May 2025, 'Stephen
26 Miller, a senior White House official, told Fox News that the White House was looking for ICE to
27 arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than
28 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a
day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests
in a calendar year.").

1 which has not been reopened by the Immigration Judge to date. ICE's unlawful action of placing
2 him in custody is more of a financial burden than releasing him and providing any pre-custody
3 hearing before any future re-arrest occurs.

4 In the alternative, providing Petitioner with a hearing before this Court (or a neutral
5 decisionmaker) regarding release from custody is a routine procedure that the government
6 provides to those in immigration jails on a daily basis. At that hearing, the Court would have the
7 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
8 But there is no justifiable reason to re-incarcerate Petitioner prior to such a hearing taking place.
9 As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest
10 in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
11 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
12 revoking parole without some informal procedural guarantees." 408 U.S. at 483.

13 **iii. Without a Due Process Hearing Prior to Any Re-Arrest, the**
14 **Risk of an Erroneous Deprivation of Liberty is High, and**
15 **Process in the Form of a Constitutionally Compliant**
16 **Hearing Where ICE Carries the Burden Would Decrease**
17 **That Risk**

18 Releasing Petitioner from unlawful custody and providing Petitioner a pre-deprivation
19 hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner
20 can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which
21 the government is held to show that there has been sufficiently changed circumstances; that ICE's
22 is going to remove the Petitioner within the reasonably foreseeable future.

23 The procedure Petitioner seeks—a hearing in front of a neutral adjudicator at which the
24 government must prove by clear and convincing evidence that circumstances have changed to
25 justify his detention *before* any re-arrest—is much more likely to produce accurate determinations
26 regarding factual disputes, such as whether a certain occurrence constitutes a "changed
27 circumstance." See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when
28 "delicate judgments depending on credibility of witnesses and assessment of conditions not
subject to measurement" are at issue, the "risk of error is considerable when just determinations

1 are made after hearing only one side”). “A neutral judge is one of the most basic due process
2 protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other*
3 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that
4 the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
5 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf*
6 *II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

13 As the above-cited authorities show, Petitioner is likely to succeed on his claim that the
14 current arrest and detention that ICE effectuated on June 23, 2025, is unlawful. The Due Process
15 Clause require notice and a hearing before a neutral decisionmaker *prior to any* re-incarceration
16 by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus
17 also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

18 **2. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief**

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

1 the economic burdens imposed on detainees and their families as a result of detention, and the
2 collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at
3 995. The government itself has documented alarmingly poor conditions in ICE detention centers.
4 *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE
5 Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental
6 health and safety standards; staffing shortages affecting the level of care detainees received for
7 suicide watch, and detainees being held in administrative segregation in unauthorized restraints,
8 without being allowed time outside their cell, and with no documentation that they were provided
9 health care or three meals a day).²

10 Petitioner has been out of ICE custody for more than two decades. During that time, he
11 has worked hard to establish a stable life for himself, his wife, and his children. He has an asset
12 to his community. Since his release in 2000, he has not violated the law. Continued detention is
13 bound to result in irreversible harm not only to Petitioner but will also significantly affect his wife
14 and two sons, particularly his youngest son who is only sixteen years old. Because Petitioner is a
15 business owner and a financial provider for his family, the implications of his detention are
16 profoundly impactful.

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

23 **3. The Balance of Equities and the Public Interest Favor Granting the** 24 **Temporary Restraining Order**

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

27 _____
28 ² Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
(last accessed Feb. 6, 2024).

1 First, the balance of hardships strongly favors Petitioner. The government cannot suffer
2 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*
3 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed
4 in any legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the
5 government cannot allege harm arising from a temporary restraining order or preliminary
6 injunction ordering it to comply with the Constitution.

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

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

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

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6 **IV. CONCLUSION**

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

13 Dated: December 11, 2025

Respectfully submitted,

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/s/ Bianca L. Torres
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Attorney for Petitioner