

1 Natalia Vieira Santanna
CA Bar No. 337502
2 MI Bar No. P76443
SANTANNA LAW OFFICES
3 PO Box 7528, Oakland, CA 94601
(510) 922-0154 (Telephone)
4 natalia@santannalaw.com (Email)
Attorney for Petitioner

5
6 Otavio Haverroth Silva
CA BAR No. 343846
HS LAW CORP
7 PO Box 90487, San Diego, CA 92169
(510) 241-9336 (Telephone)
8 otavio@legalhs.com (Email)
Attorney for Petitioner

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 N.A.L.C.,

13
14 Petitioner,

15 v.

16 Minga WOFFORD, Field Office Director,
Mesa Verde, Office of Detention and
17 Removal, U.S. Immigrations and Customs
Enforcement, U.S. Department of
18 Homeland Security;

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

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

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

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

27 Respondents.
28

No.

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

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

TABLE OF CONTENTS

<u>TABLE OF CONTENTS</u>	2
<u>TABLE OF AUTHORITIES</u>	3
<u>NOTICE OF MOTION</u>	6
<u>INTRODUCTION</u>	7
<u>STATEMENT OF FACTS AND CASE</u>	8
<u>LEGAL ARGUMENT</u>	10
I. Petitioner Warrants A Temporary Restraining Order.....	12
a. Petitioner is likely to succeed in the merits because Petitioner’s detention violates substantive due process.	13
b. Petitioner is likely to succeed on the merits of his claim that the Constitution requires a hearing before a neutral arbiter prior to any re-incarceration by ICE.....	15
1. Petitioner has a protected liberty interest in his conditional release.	17
2. Petitioner’s liberty interest mandates his release from unlawful custody and a hearing before any re-arrest.....	19
(a) Petitioner’s private interest in his liberty is profound.	21
(b) The government’s interest in re-incarcerating Petitioner without a hearing is low and the burden on the government to refrain from re-arresting him until he is provided a hearing is minimal.	22
(c) Without a due process hearing prior to any re-arrest, the risk of erroneous deprivation of liberty is high.	24
II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief	25
III. The Balance of Equities and the Public Interest Favor Granting this Temporary Restraining Order	26
<u>CONCLUSION</u>	28

TABLE OF AUTHORITIES

CASES

<i>A.H. v. Sessions</i> , 905 F.3d 1137 (9th Cir. 2018)	10
<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	12, 25
<i>Ariz. Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014)	27
<i>Arzate v. Andrews</i> , Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025).....	17
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972).....	25
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979)	25
<i>Caicedo Hinestroza et al. v. Kaiser</i> , No. 25-CV-07559- JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025).....	17
<i>Castro-Cortez v. INS</i> , 239 F.3d 1037 (9th Cir. 2001)	24
<i>Chalkboard, Inc. v. Brandt</i> , 902 F.2d 1375 (9th Cir. 1989)	24
<i>Cnty. of Sacramento v. Lewis</i> , 523 U.S. 833 (1998)	13
<i>Cooper v. Oklahoma</i> , 517 U.S. 348 (1996).....	21
<i>Demore v. Kim</i> , 538 U.S. 510 (2003).....	14
<i>Diouf v. Napolitano</i> (“ <i>Diouf II</i> ”), 634 F.3d 1081 (9th Cir. 2011).....	25
<i>Doe v. Becerra</i> , No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025)	17
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	26
<i>Enamorado v. Kaiser</i> , No. 25-CV-04072-NW, 2025 WL 1382859 (N.D. Cal. May 12, 2025)	16
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992).....	21
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973).....	18
<i>Garcia v. Kaiser</i> , No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025).....	17
<i>Garro Pinchi v. Noem</i> , 2025 WL 1853763 (N.D. Cal. July 4, 2025)	8, 12, 17
<i>Gonzalez-Fuentes v. Molina</i> , 607 F.3d 864 (1st Cir. 2010).....	18, 19, 21
<i>Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City</i> , 415 U.S. 423 (1974)	13
<i>Griffin v. Wisconsin</i> , 483 U.S. 868 (1987).....	21
<i>Haygood v. Younger</i> , 769 F.2d 1350 (9th Cir. 1985).....	19, 20

1	<i>Hernandez Nieves v. Kaiser, Jimenez</i> No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025).....	17
2	<i>Hernandez v. Sessions</i> , 872 F.3d 976 (9th Cir. 2017).....	7, 13, 14, 16, 23, 24, 26, 27
3	<i>Hurd v. District of Columbia</i> , 864 F.3d 671 (D.C. Cir. 2017).....	18, 21
4	<i>J.O.L.R. v Wofford</i> , 2025 WL 2718631 (E.D. Cal Sept. 23, 2025).....	8, 12
5	<i>Jackson v. Indiana</i> , 406 U.S. 715 (1972).....	13
6	<i>Johnson v. Williford</i> , 682 F.2d 868 (9th Cir. 1982).....	19, 21
7	<i>Jorge M. F. v. Wilkinson</i> , No. 21-CV-01434-JST, 2021 WL 783561 (N.D. Cal. Mar. 1, 2021).....	16
9	<i>Kentucky Dep’t of Corrections v. Thompson</i> , 490 U.S. 454 (1989)	17
10	<i>Lopez v. Heckler</i> , 713 F.2d 1432 (9th Cir. 1983).....	27
11	<i>Lynch v. Baxley</i> , 744 F.2d 1452 (11th Cir. 1984)	20
12	<i>Mahdawi v. Trump</i> , No. 2:25-CV-389, 2025 WL 1243135 (D. Vt. Apr. 30, 2025).....	13
13	<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976).....	20, 22, 23
14	<i>Matter of Sugay</i> , 17 I&N Dec. 647 (BIA 1981).....	15, 16
15	<i>Melendres v. Arpaio</i> , 695 F.3d 990 (9th Cir. 2012).....	26
16	<i>Morrissey v. Brewer</i> , 408 U.S. 471 (1972)	18, 19, 20, 21, 22, 24
17	<i>Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.</i> , 743 F.2d 1365 (9th Cir. 1984).....	25
18	<i>Nielsen v. Preap</i> , 586 U.S. 392 (2019)	14
19	<i>Ortega v. Bonnar</i> , 415 F. Supp. 3d 963 (N.D. Cal. 2019)	16
20	<i>Padilla v. U.S. Immigr. and Customs Enf’t</i> , 704 F. Supp. 3d 1163 (W.D. Wash. 2023)	14
21	<i>Panosyan v. Mayorkas</i> , 854 F. App’x 787 (9th Cir. 2021).....	16
22	<i>Preap v. Johnson</i> , 831 F.3d 1193 (9th Cir. 2016).....	25
23	<i>Preminger v. Principi</i> , 422 F.3d 815 (9th Cir. 2005).....	27
24	<i>R.D.T.M. v Wofford</i> , 2025 WL 2617255 (E.D. Cal Sept. 9, 2025)	8, 12
25	<i>Ramirez Clavijo v. Kaiser</i> , No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025)	17
26	<i>Romero v. Kaiser</i> , No. 22-cv-02508-TSH, 2022 WL 1443250 (N.D. Cal. May 6, 2022)	16
27		
28		

1	<i>Saravia v. Sessions</i> , 280 F. Supp. 3d 1168 (N.D. Cal. 2017).....	10, 14, 15, 16
2	<i>Singh v. Andrews</i> , 2025 WL 1918679 (E.D. Cal. July 11, 2025)	8
3	<i>Singh v. Holder</i> , 638 F.3d 1196 (9th Cir. 2011)	21
4	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.</i> , 240 F.3d 832, 839 n.7 (9th Cir. 2001)	12
5	<i>Tumba Huamani v. Francis</i> , No. 25-cv-8110 (S.D.N.Y. Nov. 4, 2025).....	17
6	<i>U.S. v. Knights</i> , 534 U.S. 112 (2001).....	21
7	<i>United States ex rel. Bey v. Connecticut Board of Parole</i> , 443 F.3d 1079 (2d Cir. 1971)	23
8	<i>Valle del Sol Inc. v. Whiting</i> , 732 F.3d 1006 (9th Cir. 2013).....	27
9	<i>Vargas v. Jennings</i> , No. 20-CV-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23, 2020)	16
10	<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008)	12
11	<i>Wolff v. McDonnell</i> , 418 U.S. 539 (1974).....	13
12	<i>Young v. Harper</i> , 520 U.S. 143 (1997)	18
13	<i>Youngberg v. Romeo</i> , 457 U.S. 307 (1982).....	20
14	<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001).....	7, 13, 17, 21, 22, 25
15	<i>Zepeda v. I.N.S.</i> , 753 F.2d 719 (9th Cir. 1983)	27
16	<i>Zinerman v. Burch</i> , 494 U.S. 113 (1990).....	20

STATUTES

17	8 C.F.R. § 236.1	15, 17
18	8 U.S.C. § 1226(b)	15
19	Fed. R. Civ. P. 65(b)	12

CONSTITUTIONAL PROVISIONS

20	U.S. Const. amend. V.....	7, 15
----	---------------------------	-------

NOTICE OF MOTION

Petitioner N.A.L.C. 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 N.A.L.C. until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

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

Respectfully submitted this 18th day of December 2025.

By counsel,

/s/ Natalia Santanna

Natalia Vieira Santanna
Attorney for Petitioner
Bar #P76443 (Michigan)/ Bar #337502 (California)
PO Box 75281
Phone: (510) 922-0154
Email: natalia@santannalaw.com

/s/ Otavio Haverroth Silva

Otavio Haverroth Silva
Attorney for Petitioner
Bar #343846 (California)
PO Box 90487
Phone: (510) 241-9336
Email: otavio@legalhs.com

INTRODUCTION

Petitioner, N.A.L.C. has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) at Mesa Verde ICE Processing Center (“Mesa Verde”) since August 2025, after having complied with the conditions of his release from the custody of the Department of Homeland Security (DHS) since he was granted parole in October 2023. During this period, he appeared for his immigration hearings, timely filed his Form I-589 Application for Asylum and for Withholding of Removal on October 28, 2024, maintained a stable residence in Buffalo, New York, worked consistently in construction, and cleaning jobs to support his family members in Venezuela and to build a life with his U.S. citizen girlfriend, [REDACTED] He was originally released from border custody under an order of release in INA § 240 removal proceedings, reflecting DHS’s determination that he was neither a danger to the community nor a flight risk.

N.A.L.C.’s current detention may be permitted under the Constitution and Immigration and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that he is a flight risk or danger to the community, or if his removal is imminent. As a hardworking son and father with no criminal history in either Venezuela or the United States, N.A.L.C. is not a flight risk or danger. His asylum case remains pending before EOIR. His next hearing is scheduled for December 18, 2025, in Bakersfield, California, and thus removal is not imminent. Thus, N.A.L.C.’s continued detention without a bond hearing before a neutral decision-maker violates his rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

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

1 this emergency relief reflects the substantial obstacles Petitioner faced in securing counsel while
2 in immigration detention, and not any lack of diligence on his part.

3 In light of this irreparable harm, and because he is likely to succeed on the merits of his
4 due process claims, N.A.L.C. respectfully requests that this Court issue an *ex parte* temporary
5 restraining order (“TRO”) immediately releasing him from custody and enjoining the government
6 from re-arresting him absent the opportunity to contest that arrest at a hearing before a neutral
7 decision maker. Confronted with substantially identical facts and legal issues, this and other
8 courts in this circuit have recently granted the exact relief Petitioner seeks. *See J.O.L.R. v*
9 *Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL
10 2617255 * 11 (E.D. Cal Sept. 9, 2025); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal.
11 July 4, 2025), converted to preliminary injunction at ___ F. Supp. 3d ___, 2025 WL 2084921 (N.D.
12 Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025)
13 (granting preliminary injunction).

14 To maintain this Court’s jurisdiction, the Court should also prohibit the government from
15 transferring N.A.L.C. out of this District and removing him from the country until these
16 proceedings have concluded.

17 **STATEMENT OF FACTS AND CASE**

18 Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
19 targeting people who are in regular removal proceedings in immigration court, many of whom
20 have pending applications for asylum or other relief. This “coordinated operation” is “aimed at
21 dramatically accelerating deportations” by arresting people at the courthouse or at the ICE office
22 and placing them into expedited removal. *See* Arelis R. Hernández & Maria Sacchetti,
23 “Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push,” Wash. Post
24 (May 23, 2025), available at:
25 <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>;
26 *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, “How ICE is Seeking to Ramp
27 Up Deportations Through Courthouse Arrests,” N.Y. Times (May 30, 2025), available at:
28

1 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
2 administration implemented a policy to drastically increase immigration arrests to a target of at
3 least 3,000 per day. *See* Greg Graziosi, “ICE has seen a dramatic jump in arrests since Stephen
4 Miller’s decree – but still well below his stated goal,” *The Independent* (December 4, 2025),
5 available at: [https://www.the-independent.com/news/world/americas/us-politics/ice-arrests-data-](https://www.the-independent.com/news/world/americas/us-politics/ice-arrests-data-stephen-miller-b2878376.html)
6 [stephen-miller-b2878376.html](https://www.the-independent.com/news/world/americas/us-politics/ice-arrests-data-stephen-miller-b2878376.html). According to White House officials like Stephen Miller, this
7 directive prioritized arrest numbers over the individuals’ criminal history, encouraging agents to
8 conduct mass roundups in public spaces rather than targeted investigations. *Id.*; *see also* Affidavit
9 of Natalia Vieira Santanna (“Santanna Aff.”).

10 As a result, arrests of non-citizens have surged – and more than half of those arrested had
11 no criminal record. *See* Albert Sun, “Most Immigrants Arrested in City Crackdowns Have No
12 Criminal Record,” *N.Y. Times* (December 4, 2025), available at:
13 <https://www.nytimes.com/interactive/2025/12/04/us/ice-arrests-criminal-records-data.html#>. This
14 focus on quantity over public safety led to a new and aggressive tactic: systematically arresting
15 immigrants at courthouses and ICE appointments, regardless of the status of their legal cases.
16 This has created a climate of fear, discouraging people from attending their mandatory hearings
17 or ICE appointments. DHS’s aggressive tactics (including the arrests of U.S. citizens) and failure
18 to abide by statutes and judicial orders continue to be the subject of ongoing congressional
19 investigations. *See* Marianne LeVine, “Democrats lambaste Noem, demand she resign at
20 combative congressional hearing,” *The Washington Post* (December 11, 2025), available at:
21 <https://www.washingtonpost.com/immigration/2025/12/11/noem-dhs-congress-house-hearing/>;
22 *see also* Santanna Aff.

23 In addition, individuals are now held for extended periods, sometimes days, in temporary
24 holding cells that are not designed for overnight or prolonged detention, often under inhumane
25 conditions. Government officials have justified these harsh conditions not as a matter of
26 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
27 detention. This drastic increase in apprehensions has resulted in a demand for legal services that
28

1 far exceeds the availability of competent legal counsel. *Id.*

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

6 N.A.L.C. fled Venezuela in 2023 because of severe political persecution and threats to his
7 life due to his opposition to the government of Nicolás Maduro and his support for opposition
8 candidate Edmundo González. *See* Affidavit of N.A.L.C. ("N.A.L.C. Aff"). He participated in
9 protests, helped organize demonstrations, and as a result was threatened, beaten, and, on at least
10 one occasion, kidnapped and held for several days, during which he was chained, beaten, and
11 threatened with death if he reported what had been done to him. *Id.* ¶ 9; *see also* Asylum
12 Application of N.A.L.C. - first page ("Asylum App."), *attached as* Exhibit 6.

13 In around September 2023, N.A.L.C. crossed the border into the United States near
14 Brownsville, Texas, with the intention of seeking protection in the United States. N.A.L.C. Aff. ¶
15 3. DHS held him in border and immigration custody until October 2023, when officers
16 determined that he was not a danger to the community or a flight risk and released him on his
17 own recognizance, after placing him in removal proceedings under INA § 240. *Id.* ¶ 4; *see also*
18 Exhibit 1,2.

19 Upon his release, N.A.L.C. relocated to Buffalo, New York. N.A.L.C. Aff. ¶ 5. He lived
20 with friends at [REDACTED] and spent most of his time with his U.S. citizen
21 girlfriend, [REDACTED] with whom he has been in a committed relationship for
22 approximately one and a half years. *Id.* ¶ 5. They planned to marry in October 2025, but the
23 wedding could not take place because he was arrested and detained again in August 2025. *Id.* ¶ 5;
24 *see also* Letters of support, *attached as* Exhibit 5.

25 While living in Buffalo, N.A.L.C. worked in construction and cleaning jobs. He used his
26 earnings to support himself and to send money to his daughters and his father in Venezuela, who
27 depend on him financially. N.A.L.C. Aff. ¶ 8. He has never committed any crimes and has never
28

1 been arrested for any reason other than immigration custody. *Id.* ¶ 8. Letters and information
2 gathered from his girlfriend, friends, and community attest to his reliability, strong work ethic,
3 and good character. *See* Exh. 5.

4 N.A.L.C. has diligently complied with all requirements of his removal proceedings. He
5 received a Notice to Appear placing him in INA § 240 proceedings and appeared for his Master
6 Hearings. *See* Exh. 4; N.A.L.C. Aff. ¶ 10. On October 28, 2024, N.A.L.C. timely filed his Form I-
7 589 (Application for Asylum and for Withholding of Removal), given his fear of return to
8 Venezuela because of the persecution and death threats he received, and he was awaiting further
9 hearings on his asylum application when he was arrested and detained again. *See* Exh. 6;
10 N.A.L.C. Aff. ¶ 9.

11 On August 7, 2025, N.A.L.C. was detained by immigration agents in Buffalo, NY while
12 he was returning from work in a company vehicle with his co-workers. José, who had a valid
13 driver's license, was driving. *Id.* ¶ 11. The agents stopped the company vehicle, approached, asked
14 the occupants for documents, and then placed N.A.L.C. and others in handcuffs. *Id.* ¶ 11. Even
15 though he was in removal proceedings and had been attending his hearings, they did not present a
16 judicial warrant, did not inform him that he had violated any condition, and did not clearly
17 explain why he was being arrested. *Id.* ¶ 11.

18 He was first taken to an ICE office in New York, then moved to the Buffalo Federal
19 Detention Facility in Batavia, transferred through additional detention centers, including in
20 Louisiana and other states, and ultimately relocated to Mesa Verde, where he is currently
21 detained. *Id.* ¶ 12. During these transfers, he was shackled by his feet, hands, and waist. *Id.* ¶ 12.
22 The trips were long, uncomfortable, and extremely stressful. *Id.* ¶ 12.

23 N.A.L.C.'s asylum case remains pending. Prior to his re-detention, he diligently appeared
24 at all scheduled hearings in his removal proceedings. *Id.* ¶¶ 6, 7, 12. He attended Master Calendar
25 Hearings on October 30, 2024, and June 25, 2025, both held before the Buffalo Immigration
26 Court, as well as a subsequent Master Calendar Hearing on October 30, 2025, before the Mesa
27 Verde ICE Processing Center. *Id.* ¶¶ 6, 7, 12. His next hearing is currently set for December 18,
28

2025. *See* Automatic Case Information for N.A.L.C., *attached as* Exhibit 7.

LEGAL ARGUMENT

N.A.L.C. is entitled to a temporary restraining order if he establishes that he is “likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if N.A.L.C. does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he 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 (9th Cir. 2011). As set forth in more detail below, N.A.L.C. overwhelmingly satisfies both standards.

Furthermore, the requirements for issuing a temporary restraining order without notice are met here. *See* Fed. R. Civ. P. 65(b). N.A.L.C. notified respondents’ counsel on December 18, 2025, that he would be filing the motion by email to the U.S. Attorney’s Office email address for habeas petition filings. N.A.L.C. also set out specific facts demonstrating that immediate and irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See Pinchi v. Noem*, 2025 WL 1853763 (N.D. Cal. July 4, 2025); *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025)(granting ex parte temporary restraining order in similar circumstances).

I. Petitioner Warrants A Temporary Restraining Order

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). N.A.L.C. is likely

1 to remain in unlawful custody in violation of his due process rights without intervention by this
 2 Court. N.A.L.C. will continue to suffer irreparable injury if he continues to be detained without
 3 due process.

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

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

14 To comply with substantive due process, the government’s deprivation of an individual’s
 15 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is
 16 “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
 17 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
 18 (“[T]he government has no legitimate interest in detaining individuals who have been determined
 19 not to be a danger to the community and whose appearance at future immigration proceedings can
 20 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
 21 absent, immigration detention serves no legitimate government purpose and becomes
 22 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*
 23 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
 24 government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-
 25 CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after
 26 finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates *either* that the
 27 government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him”).

28 The Supreme Court has recognized that noncitizens may bring as-applied challenges to

1 detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
2 (2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in
3 pursuing and completing deportation proceedings, it could become necessary then to inquire
4 whether the detention is not to facilitate deportation, or to protect against risk of flight or
5 dangerousness, but to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019)
6 (“Our decision today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—
7 that is, constitutional challenges to applications of the statute as we have now read it.”).

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

16 *First*, because N.A.L.C. had no criminal history and has had no intervening criminal
17 history or arrests since his release, there is no credible argument that he is a danger to the
18 community.

19 *Second*, as to flight risk, the question is whether custody is reasonably necessary to secure
20 a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872
21 F.3d at 990-91. There is no basis to argue that N.A.L.C. who was arrested by Respondents *while*
22 *appearing at his scheduled ICE appointment*, is a flight risk. Moreover, N.A.L.C. has a viable
23 path toward immigration relief, further mitigating any risk of flight. *See Padilla v. U.S. Immigr.*
24 *and Customs Enf’t*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a
25 legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to
26 remain in the United States). N.A.L.C. is not a flight risk, given that he has promptly
27 communicated with his officer, ICE, and ISAP appointment. At the time of his arrest, N.A.L.C.
28

1 had filed his Form I-589, Application for Asylum and Withholding of Removal, and he has every
2 intention of continuing to pursue his applications for immigration relief.

3 In sum, N.A.L.C.'s actions since Respondents first released him confirm that he is neither
4 a danger nor a flight risk. Indeed, his ongoing compliance and community ties compel the
5 conclusion that he is even *less* of a danger or flight risk than when he was initially released.
6 Accordingly, N.A.L.C.'s ongoing detention is unconstitutional, and substantive due process
7 principles require his immediate release.

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

11 N.A.L.C. is likely to succeed on his claim that, in his particular circumstances, his current
12 detention is unlawful because the Due Process Clause of the Constitution prevents Respondents
13 from re-arresting him without first providing a pre-deprivation hearing before a neutral
14 adjudicator where the government demonstrates by clear and convincing evidence that there has
15 been a material change in circumstances such that he is now a danger or a flight risk. U.S. Const.
16 amend. V.

17 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
18 release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).
19 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
20 immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640
21 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens.
22 There, the BIA held that "where a previous bond determination has been made by an immigration
23 judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice,
24 DHS "requires a showing of changed circumstances both where the prior bond determination was
25 made by an immigration judge *and* where the previous release decision was made by a DHS
26 officer." *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
27 *Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed
28 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed

1 circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) (“Thus, absent
2 changed circumstances ... ICE cannot redetain Panosyan.”).

3 ICE has further limited its authority as described in *Sugay*, and “generally only re-arrests
4 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*, 280 F.
5 Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
6 (9th Cir. 2018) (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus,
7 under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously
8 released from custody only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d
9 at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

10 ICE’s power to re-arrest a noncitizen who is at liberty following a release from custody is
11 also constrained by the demands of due process. *See Hernandez*, 872 F.3d 976, 981 (9th Cir.
12 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
13 requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that ICE
14 should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect
15 N.A.L.C.’s weighty interest in his freedom from unlawful detention.

16 Federal district courts in California have repeatedly recognized that the demands of due
17 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in
18 DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
19 on ICE release, like N.A.L.C. *before* ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F.
20 Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at
21 *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
22 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL
23 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-
24 detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No.
25 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction
26 warranted preventing re-arrest at plaintiff’s ICE interview when he had been on bond for more
27 than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4
28

(E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*, *Jimenez* No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo Hinestroza et al. v. Kaiser*, No. 25-CV-07559- JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Arzate v. Andrews*, Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025) (The court found Mr. Arzate was likely to succeed on his claim that his re-detention without a new bond hearing violated the Due Process Clause; the court enjoined the government from re-detaining him without first providing a bond hearing where it must prove by clear and convincing evidence that he is a flight risk or a danger to the community); *Pinchi v. Noem*, 2025 WL 1853763 (N.D. Cal. July 4, 2025).

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

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

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

Since October 2023, N.A.L.C. has exercised that freedom under DHS's own grant of parole. *See* 8 C.F.R. § 236.1. *See also Tumba Huamani v. Francis*, No. 25-cv-8110 (S.D.N.Y. Nov. 4, 2025) (holding that a noncitizen previously released on her own recognizance under INA § 236(a) exercises a protected conditional liberty interest and that DHS must actually exercise discretion and provide due process before re-detention). 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.

1 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

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

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

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

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

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

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

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

1 administration of” its immigration laws to determine what process he is owed to ensure that ICE
2 does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test outlined in
3 *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
4 “first, the private interest that will be affected by the official action; second, the risk of an
5 erroneous deprivation of such interest through the procedures used, and the probative value, if
6 any, of additional or substitute procedural safeguards; and finally the government’s interest,
7 including the function involved and the fiscal and administrative burdens that the additional or
8 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
9 *Eldridge*, 424 U.S. 319, 335 (1976)).

10 The Supreme Court “usually has held that the Constitution requires some kind of a
11 hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
12 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
13 are “the only remedies the State could be expected to provide” can the post-deprivation process
14 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one
15 of the variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible
16 in preventing the kind of deprivation at issue” such that “the State cannot be required
17 constitutionally to do the impossible by providing predeprivation process,” can the government
18 avoid providing pre-deprivation process. *Id.*

19 Because, in this case, the provision of a pre-deprivation hearing is both possible and
20 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide N.A.L.C.
21 with notice and a hearing *prior* to any reincarceration and revocation of his release. *See*
22 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinerman*, 494 U.S. at 985; *see*
23 *also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th
24 Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not
25 constitutionally be held in jail pending the determination as to whether they can ultimately be
26 recommitted). Under *Mathews*, “the balance weighs heavily in favor of [N.A.L.C.’s] liberty” and
27 requires a pre-deprivation hearing before a neutral adjudicator.
28

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

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

What is at stake in this case for N.A.L.C. is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing a non-citizen from custody and be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

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

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

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

As immigration detention is civil in nature, it cannot serve a punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining N.A.L.C. when he was released after a DHS' determination in 2021, and since has lived at liberty with his community, without any criminal or civil traffic infractions.

In October 2023, DHS officers determined that N.A.L.C. was not a flight risk or a danger to the community and there are no material changes in circumstances to undermine that determination. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971)).

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

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

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

24 Alternatively, providing N.A.L.C. with a hearing before this Court (or a neutral decision-
25 maker) regarding release from custody is a routine procedure that the government provides to
26 those in immigration detention facilities daily. At that hearing, the Court would have the
27 opportunity to determine whether circumstances have changed sufficiently to justify his re-arrest.
28

1 But there is no justifiable reason to re-incarcerate N.A.L.C. before such a hearing takes place. As
 2 the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest in
 3 being able to return [a parolee] to imprisonment without the burden of a new adversary criminal
 4 trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in
 5 revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

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

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

12 Releasing N.A.L.C. from unlawful custody and providing N.A.L.C. a pre-deprivation
 13 hearing would decrease the risk of him being erroneously deprived of his liberty. Before N.A.L.C.
 14 can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at
 15 which the government is held to show that there has been sufficiently changed circumstances;
 16 such circumstances that ICE’s October 2023 release should be altered or revoked because clear
 17 and convincing evidence exists to establish that N.A.L.C. is a danger to the community or a flight
 18 risk.

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

1 the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
2 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf*
3 *II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

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

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

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

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

9 N.A.L.C. established a life in Buffalo, New York. Before he was detained, he lived with
 10 friends and spent most of his time with his U.S. citizen girlfriend,  He worked full time
 11 in construction, and cleaning jobs to support himself and send money to his daughters and his
 12 father in Venezuela, who depend on him financially. N.A.L.C. has never committed any crime
 13 and has never been arrested for any reason. He is currently detained at Mesa Verde. Before his
 14 detention, he was one of the main financial providers for his family in Venezuela and an
 15 important source of emotional support for his girlfriend, who also cares for her mother with
 16 dementia. His detention has caused him intense emotional suffering, knowing that the people he
 17 loves are struggling to manage expenses and daily life without him. The financial and emotional
 18 difficulties faced by his loved ones because of his detention have been severe. Every additional
 19 day that N.A.L.C. spends in unlawful detention subjects him and his family to even greater
 20 irreparable harm.

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

27 **III. The Balance of Equities and the Public Interest Favor Granting this Temporary** 28 **Restraining Order**

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

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

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

15 A temporary restraining order is in the public interest. First and most importantly, “it
16 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
17 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
18 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
19 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
20 effectively be granted permission to detain N.A.L.C. in violation of the requirements of Due
21 Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a
22 party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695
23 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an
24 injunction that ensures that individuals are not deprived of their liberty and held in immigration
25 detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v.*
26 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated
27 when a constitutional right has been violated, because all citizens have a stake in upholding the
28

1 Constitution.”).

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

4 **CONCLUSION**

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

11 Respectfully submitted this 18th day of December 2025.

12 By counsel,

13 /s/ Natalia Santanna

14 Natalia Vieira Santanna

15 Attorney for Petitioner

16 Bar #P76443 (Michigan)/ Bar #337502 (California)

17 PO Box 75281

18 Phone: (510) 922-0154

19 Email: natalia@santannalaw.com

/s/ Otavio Haverroth Silva

Otavio Haverroth Silva

Attorney for Petitioner

Bar #343846 (California)

PO Box 90487

Phone: (510) 241-9336

Email: otavio@legalhs.com