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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 J. P.,

13 Petitioner-Plaintiff,

14 v.

15 Ernesto SANTACRUZ JR., Acting Field
16 Office Director of Los Angeles Office of
17 Detention and Removal, U.S. Immigration
18 and Customs Enforcement; U.S.
19 Department of Homeland Security;

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

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

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

28 Respondents-Defendants.

Case No. 8:25-cv-01640

**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

IMMIGRATION HABEAS CASE

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local Rules of this Court, Petitioner-Plaintiff hereby moves this Court for an order enjoining Respondents-Defendants 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, from re-arresting Petitioner J. P. (“J. P.” or “Petitioner”) unless and until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether clear and convincing evidence demonstrates that there has been a material change in circumstances and that he is a danger or a flight risk such that his re-incarceration would be justified.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of E. Katharine Tinto with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order.

Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing his unlawful re-detention absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

Respondents have indicated that they may re-detain Petitioner on Tuesday, July 29, 2025, at a last-minute, in-person appointment that the Intensive Supervision Appearance Program (“ISAP”) has scheduled for him. Re-detention will result in immediate, irreparable injury, not only to Petitioner, whose mental health would deteriorate significantly, but also to his four U.S. citizen children, his U.S. citizen mother, his U.S. citizen siblings, and their families.

Absent immediate relief from this Court, Petitioner’s re-arrest and re-incarceration without notice and a hearing on whether such re-detention is justified

1 would violate his right to Due Process.

2 WHEREFORE, Petitioner prays that this Court grant his request for a
3 temporary restraining order and a preliminary injunction enjoining Respondents
4 from re-arresting him unless and until he is afforded a hearing before a neutral
5 decisionmaker on the question of whether his re-detention would be lawful.

6 Dated: July 27, 2025

Respectfully Submitted,

7 /s/ E. Katharine Tinto

8 E. Katharine Tinto

9 UC IRVINE SCHOOL OF LAW

10 *Pro Bono* Attorney for J. P.
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TABLE OF CONTENTS

I. INTRODUCTION	ii
II. STATEMENT OF FACTS AND CASE	5
III. LEGAL STANDARD	21
IV. ARGUMENT.....	22
A. J. P. WARRANTS A TEMPORARY RESTRAINING ORDER	22
1. J. P. is Likely to Succeed on the Merits of His Claim That in	
This Case the Constitution Requires a Hearing Before a Neutral	
Adjudicator Prior to Any Re-Incarceration by ICE.....	22
2. J. P. will Suffer Irreparable Harm Absent Injunctive Relief....	36
3. The Balance of Equities and the Public Interest Favor Granting	
the Temporary Restraining Order	39
V. CONCLUSION	40

TABLE OF AUTHORITIES

Cases

<i>Alliance for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011)	22, 37
<i>Ariz. Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014)	41, 42
<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	38
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979)	37
<i>Castro-Cortez v. INS</i> , 239 F.3d 1037 (9th Cir. 2001)	37
<i>Chalkboard, Inc. v. Brandt</i> , 902 F.2d 1375 (9th Cir. 1989)	36
<i>Cooper v. Oklahoma</i> , 517 U.S. 348 (1996)	32
<i>Diaz v. Kaiser</i> , 3:25-cv-05071, 2025 WL 1676854 (N.D. Cal. Jun. 14, 2025)	26
<i>Diouf v. Napolitano</i> (“ <i>Diouf II</i> ”), 634 F.3d 1081 (9th Cir. 2011)	37
<i>Doe v. Becerra</i> , No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664 (E.D. Cal. Mar. 3, 2025)	26
<i>Domingo v. Kaiser</i> , No. 25-cv-05893-RFL, 2025 WL 1940179 (N.D. Cal. July 14, 2025)	26
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	40
<i>Enamorado v. Kaiser</i> , No. 25-CV-04072-NW, 2025 WL 1382859 (N.D. Cal. May 12, 2025)	25
<i>Fernandez-Vargas v. Gonzales</i> , 548 U.S. 30 (2006)	37
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992)	32
<i>Gagnon v. Scarpelli</i> , 411 U.S. 778 (1973)	27, 28
<i>Garcia v. Bondi</i> , No. 3:25-cv-05070-JSC, 2025 WL 1676855 (N.D. Cal. Jun. 14, 2025)	25
<i>Garro Pinchi v. Noem</i> , No. 25-cv-05632-RFL, 2025 WL 1853763 (N.D. Cal. July 4, 2025)	26
<i>Gonzalez-Fuentes v. Molina</i> , 607 F.3d 864 (1st Cir. 2010)	28, 29, 31

1	<i>Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No.</i>	
2	<i>70 of Alameda City</i> , <u>415 U.S. 423</u> (1974).....	23
3	<i>Guillermo M. R. v. Kaiser</i> , No. 25-CV-05436-RFL, <u>2025 WL 1983677</u> (N.D. Cal.	
4	July 17, 2025).....	25
5	<i>Haygood v. Younger</i> , <u>769 F.2d 1350</u> (9th Cir. 1985).....	30, 31
6	<i>Hernandez Gomez v. GEO Group, Inc.</i> , No. 1:22-cv-00868-ADA-CDB (E.D. Cal.	
7	July 13, 2022).....	9, 40
8	<i>Hernandez v. Sessions</i> , <u>872 F.3d 976</u> (9th Cir. 2017)	24, 35, 38, 42
9	<i>Hurd v. District of Columbia</i> , <u>864 F.3d 671</u> (D.C. Cir. 2017)	28, 31
10	<i>J.P. v. Garland</i> , <u>685 F.Supp.3d 943</u> (N.D. Cal. Aug. 7, 2023)	16, 36
11	<i>Johnson v. Williford</i> , <u>682 F.2d 868</u> (9th Cir. 1982)	28, 31
12	<i>Jones v. Blanas</i> , <u>393 F.3d 918</u> (9th Cir. 2004)	31
13	<i>Jorge M. F. v. Wilkinson</i> , No. 21-CV-01434-JST, <u>2021 WL 783561</u> (N.D. Cal.	
14	Mar. 1, 2021).....	25
15	<i>Kentucky Dep’t of Corrections v. Thompson</i> , <u>490 U.S. 454</u> (1989).....	26
16	<i>Lopez v. Heckler</i> , <u>713 F.2d 1432</u> (9th Cir. 1983)	41
17	<i>Lynch v. Baxley</i> , <u>744 F.2d 1452</u> (11th Cir. 1984).....	31
18	<i>Mathews v. Eldridge</i> , <u>424 U.S. 319</u> (1976)	passim
19	<i>Matter of Sugay</i> , <u>17 I&N Dec. 647</u> (BIA 1981)	4, 23, 24, 25
20	<i>Melendres v. Arpaio</i> , <u>695 F.3d 990</u> (9th Cir. 2012)	40, 42
21	<i>Mendez v. ICE</i> , No. 3:23-cv-00829-TLT (N.D. Cal. Mar. 10, 2023).....	12, 13, 40
22	<i>Meza v. Bonnar</i> , <u>2018 WL 2554572</u> (N.D. Cal. June 4, 2018)	25
23	<i>Morrissey v. Brewer</i> , <u>408 U.S. 471</u> (1972).....	passim
24	<i>Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.</i> , <u>743 F.2d 1365</u> (9th Cir. 1984)	38
25	<i>Ortega v. Bonnar</i> , <u>415 F. Supp. 3d 963</u> (N.D. Cal. 2019).....	25, 27, 31
26	<i>Panosyan v. Mayorkas</i> , <u>854 F. App’x 787</u> (9th Cir. 2021)	24
27	<i>Preap v. Johnson</i> , <u>831 F.3d 1193</u> (9th Cir. 2016)	37
28	<i>Preminger v. Principi</i> , <u>422 F.3d 815</u> (9th Cir. 2005)	42

1	<i>Romero v. Kaiser</i> , No. 22-cv-02508-TSH, 2022 WL 1443250 (N.D. Cal. May 6,	
2	2022)	25
3	<i>Saravia v. Barr</i> , 280 F. Supp. 3d 1168 (N.D. Cal. 2017), <i>aff'd sub nom. Saravia for</i>	
4	<i>A.H. v. Sessions</i> , 905 F.3d 1137 (9th Cir. 2018).....	4, 24
5	<i>Singh v. Andrews</i> , No. 25-cv-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025)	
6		26
7	<i>Singh v. Holder</i> , 638 F.3d 1196 (9th Cir. 2011).....	32
8	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.</i> , 240 F.3d 832 (9th Cir. 2001) .	22
9	<i>Valdez v. Joyce</i> , No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18,	
10	2025)	26
11	<i>Valle del Sol Inc. v. Whiting</i> , 732 F.3d 1006 (9th Cir. 2013)	41
12	<i>Vargas v. Jennings</i> , No. 20-CV-5785-PJH, 2020 WL 5074312 (N.D. Cal. Aug. 23,	
13	2020)	25
14	<i>Wesa v. Engleman</i> , No. 2:25-cv-03413-WLH-DTB, 2025 WL 2005224 (C.D. Cal.	
15	June 6, 2025).....	27, 28
16	<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	22
17	<i>Young v. Harper</i> , 520 U.S. 143 (1997).....	27, 28
18	<i>Youngberg v. Romeo</i> , 457 U.S. 307 (1982).....	31
19	<i>Zadvydas v. Davis</i> , 533 U.S. 678 (2001).....	27, 32, 33, 37
20	<i>Zepeda Rivas v. Jennings</i> , Case No. 3:20-cv-2731 (N.D. Cal filed 2020).....	40
21	<i>Zepeda v. I.N.S.</i> , 753 F.2d 719 (9th Cir. 1983)	41
22	<i>Zinerman v. Burch</i> , 494 U.S. 113 (1990)	30, 31
23	<u>Statutes</u>	
24		
25	8 U.S.C. § 1226(b)	4, 23
26	8 U.S.C. § 1226(c)	36

1 Regulations

2 8 C.F.R. § 236.1(c)(9) 4, 23, 35

3 Rules

4 Fed. R. Civ. P. 65(b)..... 23

5 Other Authorities

6
7 California Department of Justice (“Cal DOJ”), 2025 Report: Immigration
8 Detention in California—A Comprehensive Review with a Focus on Mental
9 Health (rev. May 2025)..... 38

10 DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of
11 ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) 38

1 **I. INTRODUCTION**

2 Petitioner-Plaintiff J. P. (“J. P.” or “Petitioner”), by and through undersigned
3 counsel, hereby files this motion for a temporary restraining order and preliminary
4 injunction to enjoin the U.S. Department of Homeland Security’s (“DHS” or “the
5 Department”), U.S. Immigration and Customs Enforcement (“ICE”) from re-
6 arresting him unless and until he is afforded notice and a hearing before a neutral
7 decisionmaker on the question of whether his bond should be revoked because ICE
8 establishes by clear and convincing evidence that he is a danger to the community
9 or a flight risk.

10 The Department previously incarcerated J. P. for 21 months pending
11 resolution of his immigration case. He was incarcerated for most of that period in
12 Bakersfield, California, at the Mesa Verde ICE Processing Center (“Mesa Verde”),
13 an immigration jail operated by private prison contractor GEO Group, Inc.
14 (“GEO”). On February 10, 2023, J. P. filed a habeas petition based on his
15 unconstitutionally prolonged detention. His habeas petition was granted on August
16 7, 2023, and the judge ordered the government to provide J. P. with a bond hearing
17 in Immigration Court, where DHS would bear the burden to show by clear and
18 convincing evidence that J. P. was a danger to society or flight risk in order to
19 continue his detention. At his bond hearing, an Immigration Judge (“IJ”)
20 determined that the Department could not meet its burden and found that J. P. was
21 neither a flight risk nor a danger. The IJ ordered J. P.’s release from custody on the
22 minimum bond possible, \$1,500, specifying in the bond order that his release should
23 “not [] include ankle/electronic monitoring.”

24 On September 5, 2023, at J. P.’s first Order of Supervision appointment with
25 ICE after his release, ICE told him he would not be required to check in with them
26 after that date. Instead, he was enrolled in the Intensive Supervision Appearance
27 Program (“ISAP”). He made one in-person visit to ISAP approximately two weeks
28 later, and was then told he would only be required to complete virtual check-ins

1 going forward. He has been in compliance with his virtual check-ins since then,
2 which consist of him logging into an application on his cellular phone on a specific
3 date each month, answering a few questions, and taking a “selfie” photo of himself.

4 On August 17, 2023, an IJ granted J. P.’s application for deferral of removal
5 under the Convention Against Torture (“dCAT”). The Department appealed the
6 grant, and his appeal is currently pending before the Board of Immigration Appeals
7 (“BIA”).

8 On June 5, 2025, J. P. submitted his application for a U Visa to U.S.
9 Citizenship and Immigration Services (“USCIS”) based on labor-related crimes he
10 suffered while working inside of the Mesa Verde detention center, employed by
11 GEO in their “Voluntary Work Program,” earning just \$1 per day to clean the
12 dormitories and bathrooms.

13 Over the last two years in which he has lived at liberty, J. P. has reunited with
14 his four U.S. citizen children, his two U.S. citizen sisters and their families, and his
15 U.S. citizen mother, with whom he has been living. J. P. has been working and
16 spending time with his family, including regularly accompanying his mother to
17 mass and to visit his father’s grave, and providing her physical and emotional
18 support as she lives with a thyroid condition and erratic blood pressure. J. P. has
19 also been pursuing education and better employment opportunities, including
20 enrolling in a Department of Rehabilitation program to earn a Class A driver license
21 and being accepted to Santa Ana College, where he hopes to enroll in a program for
22 formerly incarcerated students.

23 On Friday, July 18, 2025, J. P. was stopped by police in Tustin, Orange
24 County, CA, allegedly for having “tinted windows.” He was dragged from his
25 vehicle, assaulted, and ended up in the emergency room at Orange County Global
26 Medical Center for approximately five hours. Unbeknownst to J. P.’s family or
27 attorney, who had attempted to visit him at the hospital, J. P. was snuck out of the
28 hospital by police and booked into jail in the early hours of July 19, 2025. On

1 Saturday, July 19, at approximately 10:10 a.m., J. P. was released. No charges have
2 since been filed against J. P.

3 On Thursday, July 24, 2025, around 4:00 pm, J. P. received a call from a
4 representative of ISAP, telling him he needed to visit the ISAP office in-person to
5 “meet his new counselor.” When J. P. inquired about why he was required to come
6 in, the ISAP representative told him that his supervision was switching to once-
7 every-four-months in person, while maintaining his virtual check-ins via mobile
8 phone application. J. P. further inquired about why the change in his check-ins was
9 occurring, and the ISAP representative told him he did not know but suggested it
10 might be to “make room for other cases.” He asked J. P. to come in as soon as the
11 following day or Monday, and as early in the day as possible.

12 On Friday, July 25, 2025, at 8:33 am, J. P.’s immigration attorney, Ms.
13 Kathleen Kavanagh, emailed ICE Deportation Officer Samuel Chairez, inquiring
14 about whether ICE intended to detain J. P. when he reports to ISAP. At 2:07 p.m.
15 on the same date, Deportation Officer Chairez called Ms. Kavanagh and informed
16 her that J. P. was required to go in for a “case review” due to his July 18th arrest.
17 Deportation Officer Chairez indicated that there was a possibility J. P. would be
18 taken into custody, and that he needed to report in order to discuss his case.

19 In recent months, ICE has engaged in highly publicized arrests of individuals
20 who presented no flight risk or danger, often with no prior notice that anything
21 regarding their status was amiss or problematic, whisking them away to faraway
22 detention centers without warning.¹

23
24
25 ¹ See, e.g., McKinnon de Kuyper, N.Y. Times, *Mahmoud Khalil’s Lawyers Release*
26 *Video of His Arrest* (Mar. 15, 2025),
27 [https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-](https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html)
28 [arrest.html](https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html) (Mahmoud Khalil, arrested in New York and transferred to Louisiana);
CNN, *What we know about the Tufts University PhD student detained by federal*
agents (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk->

1 J. P. now faces the prospect of ICE unilaterally stripping him of his liberty
2 on July 29, 2025, tearing him away from his family and community, and keeping
3 him detained under mandatory detention with no opportunity for a neutral
4 adjudicator to review his case. He also faces the very real possibility of being
5 transferred outside of California with little or no notice, far away from his family,
6 community, and attorneys, or even being unlawfully deported to Mexico, a country
7 where he fears torture and death.

8 By statute and regulation, as interpreted by the BIA, ICE has the authority to
9 re-arrest a noncitizen and revoke their bond *only where* there has been a change in
10 circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. §
11 236.1(c)(9)**Error! Bookmark not defined.**; *Matter of Sugay*, 17 I&N Dec. 647,
12 640 (BIA 1981)**Error! Bookmark not defined.** The government has further
13 clarified in litigation that any change in circumstances must be "material." *Saravia*
14 *v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for*
15 *A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)**Error! Bookmark not defined.**
16 (emphasis added). That authority, however, is proscribed by the Due Process Clause
17 because it is well-established that individuals released from incarceration have a
18 liberty interest in their freedom. In turn, to protect that interest, on the particular
19 facts of J. P.'s case, due process requires notice and a hearing, *prior to any*
20 *revocation of his conditional release on bond*, at which he is afforded the
21 opportunity to advance his arguments as to why his bond should not be revoked.

22 That basic principle—that individuals placed at liberty are entitled to process

23 _____
24
25 detained-what-we-know/index.html (Rumeysa Ozturk, arrested in Boston and
26 transferred to Louisiana); Kyle Cheney & Josh Gerstein, Politico, *Trump is seeking*
27 *to deport another academic who is legally in the country, lawsuit says*, (Mar. 19,
28 2025), <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

1 before the government imprisons them—has particular force here, where J. P.’s
2 previous mandatory detention was *already* found to be unnecessary to serve its
3 purpose. An IJ previously found that he need not be incarcerated to prevent flight
4 or to protect the community, and circumstances have not materially changed that
5 would justify re-arrest.

6 Therefore, at a minimum, in order to lawfully re-arrest J. P., the Government
7 must first establish, by clear and convincing evidence and before a neutral
8 adjudicator, that there has been a material change in circumstances and that J. P. is
9 a danger or a flight risk, such that his re-incarceration is necessary.

10 J. P. meets the standard for a temporary restraining order. He will suffer
11 immediate and irreparable harm absent an order from this Court enjoining the
12 government from arresting him at his ISAP check-in on Tuesday, July 29, 2025,
13 unless and until he first receives a hearing before a neutral adjudicator, as demanded
14 by the Constitution. Because holding federal agencies accountable to constitutional
15 demands is in the public interest, the balance of equities and public interest are also
16 strongly in J. P.’s favor.

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

18 **J. P.’s Childhood and Background**

19 J. P. is 36 years old and has lived in the United States since he was less than
20 one year old. *See* Authenticating Declaration of E. Katharine Tinto (“Tinto Decl.”),
21 Exh. H (Prior Habeas Declaration of J. P.) ¶ 1. He is the father of four United States
22 citizen children (ages 21, 17, 16, and 15). *Id.* ¶ 2. He grew up in Santa Ana,
23 California, with his mother, father, and two siblings. *Id.* ¶ 3.

24 While J. P. was growing up, inside the home, his father battled with alcohol
25 abuse for much of J. P.’s childhood and was largely absent from the home, working
26 to keep the family afloat. *Id.* Outside the home, J. P.’s childhood was plagued with
27 poverty and violence. The neighborhood in Santa Ana where J. P. grew up was
28

1 infested with gangs. *Id.* ¶ 4. J. P. witnessed violence, drug activity, and prostitution
2 on a regular basis. *Id.*

3 Unfortunately, J. P. could not escape the influence of his surroundings, made
4 even more difficult by the fact that many of his cousins and extended family
5 members were also in gangs. *Id.* ¶¶ 6-9. When J. P. was just 15 years old, he became
6 a father. *Id.* ¶ 11. He struggled with the new emotions and responsibilities of teenage
7 parenthood and feared he had disappointed his parents. *Id.* With his father working
8 long hours and without any brothers, young J. P. sought male companionship and
9 role models outside the home, where gang culture dominated, and he began
10 associating with his neighborhood gang. *Id.* ¶¶ 10-13.

11 Beginning as a juvenile, J. P. was arrested several times for gang-related
12 activities like vandalism, petty theft, burglary, joy riding, buying/selling a stolen
13 vehicle, and driving without a license. *Id.* ¶ 20.

14 On March 5, 2010, J. P. was charged with a homicide that had occurred three
15 years prior. *Id.* ¶ 21. He was accused of shooting a person at a party that he never
16 attended. *Id.* While J. P. acknowledges and regrets his many wrongdoings and poor
17 choices as a youth and young adult, he has always maintained his innocence in this
18 matter. *Id.* ¶¶ 20-22; *see also Id.* ¶¶ 23-27.

19 J. P. spent five-and-a-half years in pre-trial detention at county jail, fighting
20 the case. *Id.* ¶ 22. On the verge of trial, where he faced the possibility of a life
21 sentence, J. P. was offered a plea to voluntary manslaughter with a 16-year sentence.
22 *Id.* ¶ 30. Though J. P. still wanted to go to trial, at the urging of both his attorney
23 and his dying father, he agreed to take the deal. *Id.* ¶¶ 30-32.

24 During J. P.'s pre-trial custody, confronted with precarious gang politics and
25 23 hours in a cell by himself to reflect on his life choices, J. P. ultimately decided
26 to leave the gang and disassociated in December 2010. *See id.* ¶¶ 34-52.

27 After J. P. dropped out of the gang, he committed himself to change. *Id.* ¶ 53.
28 Though he had already graduated high school, he pursued a GED while in county

1 jail, the *only* programming available there. *Id.* The Educator for the Inmates
2 Recovering Education Program in county jail wrote of J. P.:

3 “Mr. [J. P.] has distinguished himself as a very positive influence in the
4 classroom and as a student who has a very serious desire to learn. Both of
5 these qualities are very admirable considering the environment in which he
6 has decided to contribute to his personal growth.”

7 Tinto Decl., Exh. TT (William Nash Letters).

8 While in prison, J. P. participated in various rehabilitation groups and
9 programming geared toward self-reflection, accepting responsibility for prior
10 behaviors, and trauma recovery. Tinto Decl., Exh. H ¶¶ 54-59.

11 J. P. also earned acceptance to the Susanville Training Center for firefighting.
12 *Id.* ¶ 59. Once there, he completed four weeks of grueling training and passed his
13 tests on the first attempt. *Id.* ¶ 60. J. P. served as an inmate firefighter from April
14 2020 until October 2021, fighting some of the worst wildfires in California’s
15 history. *Id.* His fire captain wrote of him:

16 “Mr. [J. P.] was very helpful and motivated while working under my
17 supervision He was always positive and came to work ready to do
18 whatever need to be done that day. It was a pleasure to have Mr. [J. P.] on
19 my fire crew.”

20 Tinto Decl., Exh. OO (Fire Captain Letter). J. P. considers his firefighting service,
21 along with his four children, his “proudest accomplishment.” Tinto Decl., Exh. H
22 ¶¶ 61-63.

23 On October 29, 2021, J. P. was arrested by ICE upon his release from prison
24 on parole. *Id.* ¶ 66. ICE incarcerated him first in McFarland, California, at the
25 Golden State Annex, an immigration jail operated by private prison contractor GEO
26 Group. Declaration of Kathleen Kavanagh (“Kavanagh Decl.”) ¶ 6. Approximately
27 one month later, he was transferred to Mesa Verde, also operated by GEO, and
28

1 where J. P. was detained until August 23, 2023—with the exception of a brief period
2 in March 2023, *see infra. Id.*

3
4 **Punitive Detention Conditions, J. P.’s Advocacy,**
5 **and Retaliation Suffered**

6 During the more than 21 months that J. P. was incarcerated by ICE in civil
7 immigration custody, he was subjected to even more punitive conditions of
8 confinement than he experienced while serving his criminal sentence. Tinto Decl.,
9 Exh. H ¶¶ 72-77. Immigrants detained at the Mesa Verde and ICE’s neighboring
10 detention center, Golden State Annex, have raised the alarm about the deplorable
11 conditions within the facilities and the appalling treatment of individuals detained
12 there, including consistent exposure to toxic dust, wholly inadequate medical care,
13 and retaliation for speaking out against such conditions.² In an October 2021 survey,
14 people detained at Golden State Annex and Mesa Verde reported that GEO Group,
15 the private contractor operating both facilities, regularly serves inedible, expired,
16 and inadequate food.³

17 In June 2022, detained workers, including J. P., waged a labor strike to protest
18 hazardous working conditions and negligible wages.⁴ *Id.* ¶ 75. On July 13, 2022, a

20
21 ² DHS Office for Civil Rights and Civil Liberties (“CRCL”) Complaint: “First
22 Amendment Retaliation Against Individuals in Immigration Detention in
23 California” (Aug. 26, 2021),
[https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20_0.p](https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20_0.pdf)
24 [df.](https://www.aclunc.org/sites/default/files/OCRCL%20complaint.08.26.21%20_0.pdf)

25 ³ California Collaborative for Immigrant Justice, *Starving for Justice: The Denial*
26 *of Proper Nutrition in Immigration Detention* (Apr. 2022),
[https://www.ccijjustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6d](https://www.ccijjustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf)
27 [c3.pdf](https://www.ccijjustice.org/_files/ugd/733055_c43b1cbbdda341b894045940622a6dc3.pdf) (noting that individuals at Mesa Verde reported receiving insects, hair,
and/or other foreign objects in their meals).

28 ⁴ Jhaval Romero, Farida, *Immigrant Detainees Strike Over Working Conditions,*
California Regulators Investigate (June 22, 2022),

1 group of immigrants detained at Golden State Annex and Mesa Verde Detention
2 Facility filed a complaint for declaratory and injunctive relief and damages against
3 GEO Group based on claims related to wage theft and forced labor. *See Hernandez*
4 *Gomez v. GEO Group, Inc.*, No. 1:22-cv-00868-ADA-CDB, ECF 24 (E.D. Cal. July
5 13, 2022). The lawsuit, in which J. P. is a plaintiff, further alleges, among other
6 things, that GEO fails to “maintain minimum standards of cleanliness and
7 sanitation,” leaving detained individuals to live in “intolerably filthy conditions,
8 with mold growing in the showers, a stench emanating from the restrooms, and pest
9 [*sic*] running.” *Id.* at ¶ 9. The litigation remains pending.⁵

10 Detained workers at Mesa Verde also filed a complaint with the DHS Office
11 of Civil Rights and Civil Liberties (“CRCL”) on September 12, 2022, alleging
12 retaliation against detained people participating in collective action seeking to
13 redress poor conditions.⁶ Subsequent to the filing of the complaint and other official
14 complaints that followed, U.S. Congressmembers wrote *three* letters to then-
15 Secretary of DHS and then-Acting Director of ICE, requesting an investigation into
16 the “disturbing conditions and abusive and retaliatory behavior”⁷ toward detained

17
18 [https://www.kqed.org/news/11917597/immigrant-detainees-strike-over-working-](https://www.kqed.org/news/11917597/immigrant-detainees-strike-over-working-conditions-california-regulators-investigate)
19 [conditions-california-regulators-investigate.](https://www.kqed.org/news/11917597/immigrant-detainees-strike-over-working-conditions-california-regulators-investigate)

20 ⁵ Similar cases have been filed, including in the Central District of California,
21 *Novoa v. GEO Group*, No. EDCV 17-2514-JBG (SHKx), 2022 WL 2189626 (C.D.
22 Cal. Jan. 25, 2022). This litigation is pending, but the court preliminarily
23 recognized plaintiffs (detained workers in ICE facilities) as employees of the
24 private contractor GEO Group under California State law *Id.* at *17 (“[T]he Court
finds that the evidence supports an employer-employee relationship between GEO
and detainees.”).

25 ⁶ CRCL Complaint: “Retaliation Against Individuals in Immigration Detention at
26 Mesa Verde Detention Facility and Golden State Annex” (Sept. 12, 2022),
<https://www.ccijustice.org/laf-09-12-2022-mv-gsa>.

27 ⁷ Press Release: “Lofgren, Padilla, Correa, CA Dems Call for DHS Investigation of
28 CA Detention Centers Following Allegations of Abusive & Retaliatory Behavior
Toward Detainees” (Sept. 14, 2022), <https://lofgren.house.gov/media/press->

1 individuals, and calling for termination of ICE’s contracts with GEO Group upon
2 confirmation of the allegations in the official complaints.^{8,9} DHS and ICE officials
3 never responded with an investigation or review of GEO’s practices or detention
4 conditions.

5 On August 28, 2022, J. P. was returning to his dorm from the recreation yard
6 when he underwent a compulsory pat-down search by a GEO officer. Tinto Decl.,
7 Exh. H ¶ 76. Unlike the regular searches J. P. was accustomed to, this pat down
8 made J. P. feel extremely uncomfortable. *Id.* The officer caressed the front of his
9 chest in an unusual manner, and then used both of his hands to rub the outside of J.
10 P.’s thighs and both knees. *Id.* J. P. reported it to his attorney soon thereafter. *Id.* He
11 promptly filed a Prison Rape Elimination Act (“PREA”) complaint with Mesa
12 Verde about the incident. *Id.* On September 15, 2022, J. P. made a report to the
13 Bakersfield Police Department. *Id.* As it became clear that GEO officers had begun
14 conducting abusive pat-downs on a widespread basis, J. P. joined several other
15 individuals detained at Mesa Verde who were subject to sexually abusive pat-downs
16 in filing a complaint with CRCL on January 17, 2023.¹⁰ *Id.* ¶ 77.

17 J. P. suffered retaliation for his advocacy. On June 28, 2022, J. P. and 16

18
19 releases/lofgren-padilla-correa-ca-dems-call-dhs-investigation-ca-detention-
20 centers.

21 ⁸ Congressional Letter to DHS and ICE (May 4, 2023),
22 [https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-](https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/5.4.23%20Final%20Detention%20Centers%20Conditions%20Letter_0.pdf)
23 [document/5.4.23%20Final%20Detention%20Centers%20Conditions%20Letter_0.](https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/5.4.23%20Final%20Detention%20Centers%20Conditions%20Letter_0.pdf)
24 pdf.

25 ⁹ Congressional Letter to DHS and ICE (Oct. 8, 2024),
26 [https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-](https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/10.8.24%20-%20Letter%20-%20Dangerous%20Conditions%20at%20GEO%20Detention%20Centers.pdf)
27 [document/10.8.24%20-%20Letter%20-](https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/10.8.24%20-%20Letter%20-%20Dangerous%20Conditions%20at%20GEO%20Detention%20Centers.pdf)
28 [%20Dangerous%20Conditions%20at%20GEO%20Detention%20Centers.pdf.](https://lofgren.house.gov/sites/evo-subsites/lofgren.house.gov/files/evo-media-document/10.8.24%20-%20Letter%20-%20Dangerous%20Conditions%20at%20GEO%20Detention%20Centers.pdf)

29 ¹⁰ CRCL Complaint: “Sexually Abusive Pat-Downs Against Individuals in
30 Immigration Detention at Mesa Verde Detention Facility” (Jan. 17, 2023)
31 [https://www.aclunc.org/sites/default/files/2023.01.17_Sexually_Abusive_Pat-](https://www.aclunc.org/sites/default/files/2023.01.17_Sexually_Abusive_Pat-Downs_Complaint_REDACTED.pdf)
32 [Downs_Complaint_REDACTED.pdf.](https://www.aclunc.org/sites/default/files/2023.01.17_Sexually_Abusive_Pat-Downs_Complaint_REDACTED.pdf)

1 others signed a declaration informing GEO Group that they were joining a work
2 stoppage by detained workers at Mesa Verde over their \$1 per day pay rate. *Id.* ¶
3 75. On June 30, 2022, two days after signing the June 28 declaration, J. P. was
4 placed in solitary confinement. *Id.* J. P. did not receive a disciplinary hearing until
5 July 7, 2022, in violation of ICE’s Performance-Based National Detention
6 Standards (PBNDS)’s requirement that disciplinary hearings take place within 72
7 hours absent extraordinary circumstances. *Id.*; see ICE PBNDS 3.1(V)(E),
8 <https://www.ice.gov/detain/detention-management/2011>. Ultimately, J. P. was
9 found guilty of engaging in a group demonstration and conduct that
10 disrupts/interferes with the security or operation of the facility, and he was
11 penalized with loss of commissary for 15 days. *Id.* He spent over a week in solitary
12 confinement before the determination at his disciplinary hearing, at which point he
13 was transferred back to general population. *Id.*

14 On December 30, 2022, Sameer Ashar, an attorney at the UC Irvine School
15 of Law’s Workers and Tenants Law and Organizing Clinic filed a charge with the
16 National Labor Relations Board (“NLRB”) on behalf of J. P. *Id.* ¶ 79; see also Tinto
17 Decl., Exh. N. The complaint charged GEO Group with interfering with,
18 restraining, and coercing J. P. in the exercise of his rights guaranteed under the
19 National Labor Relations Act. Tinto Decl., Exh. H ¶ 79. On January 6, 2025, the
20 NLRB issued a formal complaint against GEO for retaliating against J. P. for his
21 labor organizing activities.¹¹ On February 18, 2025, following a change in
22

23 ¹¹ Hussain, Shuhauna, Los Angeles Times, *Prison company retaliated against*
24 *detained immigrants, labor board says* (Jan. 22, 2025),
25 [https://www.latimes.com/business/story/2025-01-22/inmates-protested-work-](https://www.latimes.com/business/story/2025-01-22/inmates-protested-work-conditions-geo-prison-company-retaliated-labor-board-says)
26 [conditions-geo-prison-company-retaliated-labor-board-says](https://www.latimes.com/business/story/2025-01-22/inmates-protested-work-conditions-geo-prison-company-retaliated-labor-board-says) (“GEO Group
27 punished detainees housed at its detention center in Bakersfield who signed a
28 petition and participated in a work stoppage to protest wages and other working
conditions, federal labor regulators alleged in a Jan. 6 complaint by a regional
NLRB office in Los Angeles.”).

1 presidential administration, the NLRB withdrew the complaint. Kavanagh Decl. ¶
2 18.

3 On February 17, 2023, J. P. and approximately 80 other individuals escalated
4 their labor strike to a hunger strike, after GEO refused to make any changes or
5 address any of their demands. *See* Declaration of Petitioner (“J. P. Decl.”) ¶ 10.
6 Throughout the hunger strike, the threat of solitary confinement was held over the
7 strikers’ heads, and as punishment, GEO took away arts and crafts, observation of
8 religious time and rituals, movies, and yard time. *Id.* ¶ 11. As a result of this
9 retaliation, on February 23, 2023, J. P. and others filed a civil rights class action
10 lawsuit against ICE and GEO Group, arguing that retaliation against the strikers
11 violated their right to peacefully speak out against mistreatment and violated their
12 right to petition the government for redress of their grievances. *See* First Amended
13 Complaint, *Mendez v. ICE*, No. 3:23-cv-00829-TLT (N.D. Cal. Mar. 10, 2023).

14 On March 7, 2023, nineteen days into J. P.’s hunger strike and only a few
15 days after the filing of *Mendez*, J. P. and three other hunger strikers were violently
16 extracted from their dormitory by GEO staff and ICE officers dressed in military
17 gear. J. P. Decl. ¶¶ 13-17. J. P. was initially thrown to the floor, and several officers
18 jumped on top of him. *Id.* ¶¶ 15-16. He was forced into a hog tie position, and
19 ultimately handcuffed. *Id.* ¶ 16. After being placed in a holding cell as his hands
20 turned blue from the tightness of the handcuffs, J. P. was ultimately taken out of the
21 facility and put into a van with three other hunger strikers. *Id.* ¶ 18. He was never
22 told where he was being taken. *Id.* ¶ 19.

23 Eventually, the van arrived at an airport in Victorville, California. *Id.* ¶ 20.
24 At the airport, J. P. and the others were told by ICE agents that if they did not
25 “comply,” ICE would use a full body restraint on them. *Id.* J. P. and the other hunger
26 strikers were then forcibly put onto a plane, handcuffed and with ankle shackles. *Id.*

1 J. P. still had no idea where he was being taken. *Id.*

2 Several hours later, the plane landed in El Paso, Texas, and J. P. was taken to
3 the El Paso ICE Processing Center. *Id.* ¶ 21. There, he received a medical exam
4 from a doctor that told him she was going to submit an order to force feed him—a
5 form of torture¹²—if he continued his hunger strike. *Id.* ¶ 22. After this threat of
6 torture, J. P. decided to end his hunger strike, and he was returned to Mesa Verde
7 in California on March 14, 2023, where he continued his labor strike until his release
8 in August 2023. *Id.* ¶ 23.

9 J. P. was severely traumatized from the treatment he endured in ICE
10 detention, and since his release, has been living with acute symptoms of his mental
11 health conditions—both PTSD and Persistent Depressive Disorder—that were
12 exacerbated by his time in detention. *See* Tinto Decl., Exh. J (Psychological
13 Evaluation). In her psychological evaluation of J. P., Ms. Gullo found:

14 “The impact of [J. P.’s mistreatment in immigration detention] has caused
15 [J. P.] to experience trauma-induced symptoms of daily intrusive memories,
16 physiological reactivity to these memories, avoidance of thoughts, feelings,
17 and external reminders of the experiences, ongoing fears for his safety,
18 difficulty sleeping, difficulties with concentration, difficulties socializing,
19 and changes in mood including depression and irritability, consistent with
20 diagnoses of **Post Traumatic Stress Disorder (PTSD) and Persistent**
21 **Depressive Disorder with intermittent major depressive episodes,**
22 **current episode severe.”**

23 *Id.* (emphasis in original).

24
25 ¹² World Medical Association, “Policy Tag: Forced Feeding” (Apr. 2021),
26 <https://www.wma.net/policy-tags/forced-feeding/> (“Force-feeding and any other
27 forms of coercion constitute a form of torture and is contrary to medical ethics.”);
28 Aviva Stahl, “When Force-Feeding Is Torture” (Mar. 8, 2023),
<https://www.thenation.com/article/society/force-feeding-torture-prison-video/>.

1 In addition to his own advocacy, J. P. supported other people in detention in
2 any way that he could. Tinto Decl., Exh. H ¶ 80. He helped translate English-
3 language documents for monolingual Spanish-speakers, directed individuals who
4 were struggling to understand their immigration proceedings to *pro se* legal
5 materials and available legal services, shared words of encouragement with people
6 who were struggling emotionally, promoted COVID-19 vaccine information
7 efforts, and repeatedly called attention to the poor conditions he and others in civil
8 detention face at Mesa Verde. *Id.*

9 J. P. took his growth extremely seriously while incarcerated and in
10 immigration detention, always seeking support for himself however he could. *Id.* ¶
11 81. One such support he sought out and has maintained was through a community
12 organization that supports individuals in detention. Their coordinator wrote in
13 support of J. P.'s release on bond, and subsequently, his U Visa application, sharing,
14 "[O]f the [approximately 150 detained] people I have had the opportunity to talk
15 with [J. P.] is an individual who exemplifies the possibility of change and the
16 goodness of humanity." Tinto Decl., Exh. Y (Susan Lange Letter). Spending over a
17 decade incarcerated for a crime he did not commit was harrowing, but J. P. credits
18 the time he served with allowing space for a spiritual awakening. Tinto Decl., Exh.
19 H ¶¶ 82-86.

20 J. P.'s Removal Proceedings Before EOIR

21 After ICE detained J. P. on October 29, 2021, DHS filed a Motion to
22 Recalendar J. P.'s immigration proceedings (which had, years earlier, been taken
23 off the Los Angeles Immigration Court's active calendar via "administrative
24 closure") on or about November 1, 2021. Kavanagh Decl. ¶ 6.

25 On or about December 30, 2021, J. P. entered into a representation agreement
26 with his *pro bono* immigration attorney, Kathleen Kavanagh. *Id.* ¶ 2. She entered
27 her notice of appearance before the Immigration Court on January 13, 2022. *Id.* ¶
28 7.

1 J. P. filed his Application for Asylum, Withholding, and protection under the
2 Convention Against Torture on March 28, 2022. *Id.* After six master calendar
3 hearings since being detained, J. P. had two individual hearings at which he
4 presented his applications for relief, including his own testimony and the testimony
5 of two expert witnesses. *Id.*

6 On June 23, 2022, the IJ denied all relief in an oral decision and ordered J.
7 P.'s removal to Mexico. *Id.*

8 J. P. timely filed his appeal of the IJ's decision on July 26, 2022. *Id.* ¶ 8.

9 On March 7, 2023, the BIA sustained J. P.'s appeal in part and remanded his
10 case to the IJ for a new decision on his application for protection under the
11 Convention Against Torture. *Id.* The IJ held an additional individual hearing on
12 June 21, 2023, and took the matter under consideration. *Id.* ¶ 9.

13 On August 17, 2023, the IJ granted J. P.'s application for deferral of removal
14 under the Convention Against Torture ("dCAT"). *Id.* ¶ 9. DHS appealed the grant,
15 and that appeal is currently pending before the BIA. *Id.*; Tinto Decl., Exh. D (EOIR
16 Case Status).

17 On June 5, 2025, J. P. submitted his application for a U Visa to U.S.
18 Citizenship and Immigration Services ("USCIS") based on labor-related crimes he
19 suffered while working inside of the Mesa Verde detention center, employed by
20 GEO in their "Voluntary Work Program," earning just \$1 per day to clean the
21 dormitories and bathrooms, and based on his cooperation with law enforcement and
22 substantial harm suffered as a result of the crimes. *Id.* ¶ 19.

23 **J. P.'s Prior Habeas Petition, Bond Hearing,**
24 **and Release from Custody**

25 After enduring approximately 15 months of ICE detention, on February 10,
26 2023, J. P. filed a habeas petition challenging his detention as unconstitutionally
27 prolonged. Kavanagh Decl. ¶ 10. His habeas petition was granted on August 7,
28 2023, and the judge ordered the government to provide J. P. with a bond hearing in

1 Immigration Court, where DHS would bear the burden to show by clear and
2 convincing evidence that J. P. was a danger to society or flight risk in order to
3 continue detaining him. *See J.P. v. Garland*, 685 F.Supp.3d 943 (N.D. Cal. Aug. 7,
4 2023).

5 At J. P.'s bond hearing on August 18, 2023, an Immigration Judge ("IJ")
6 determined that the Department could not meet its burden and found that J. P. was
7 neither a flight risk nor a danger. Kavanagh Decl. ¶ 13. The IJ ordered J. P.'s release
8 from custody on the minimum bond possible, \$1,500, specifying in the bond order
9 that his release should "not [] include ankle/electronic monitoring." *Id.*; Tinto Decl.,
10 Exh. A (IJ Bond Order).

11 J. P. was released by ICE on August 23, 2023, and served with an Order of
12 Supervision instructing him to check in on September 5, 2023. Kavanagh Decl. ¶
13 14; Tinto Decl., Exh. B (Order of Supervision). Upon reporting to ICE as instructed
14 on that date, J. P. and his attorney were told that he would not be required to check
15 in with ICE going forward. Kavanagh Decl. ¶ 14. Instead, he was enrolled in the
16 Intensive Supervision Appearance Program ("ISAP") later that day. *Id.* He has been
17 in compliance with his check-ins since then, which, after just one in-person visit to
18 the ISAP office, have consisted of him logging into an application on his cellular
19 phone every four weeks, from home, answering a series of questions, and taking a
20 "selfie." *Id.*; *see also* J. P. Decl. ¶ 43. On April 14, 2025, J. P. obtained a letter
21 signed by Deportation Officer Samuel Chairez confirming that he was in
22 compliance with all reporting requirements and terms of his Order of Supervision.
23 *See* Tinto Decl., Exh. C (ICE Letter Confirming Supervision Compliance)

24 **J. P.'s life after release from custody**

25 In the nearly two years since J. P. was released from ICE custody, he has
26 resided continuously at his family's home in Santa Ana, California. J. P. Decl. ¶¶ 1,
27 4. He lives with and provides crucial support to his mother, two sisters, and two
28 nephews, all of whom are U.S. citizens. *Id.* ¶¶ 33-37. He has worked hard to rebuild

1 his life after prolonged incarceration and family separation, including working to
2 support himself and his family, pursuing employment development and educational
3 opportunities, and seeking to contribute to his community. *Id.* ¶¶ 39-41.

4 J. P. supports his 61-year-old mother emotionally, physically, and financially.
5 He accompanies her to church and to visit his father's grave. *Id.* ¶ 34. She has
6 thyroid and blood pressure conditions that make her highly susceptible to stress,
7 which has been especially difficult for her to manage in the current immigration
8 enforcement climate in Southern California, and even more so since J. P.'s brutal
9 arrest and hospitalization on July 18, 2025. *Id.* ¶¶ 34, 51.

10 J. P. also supports his two sisters, including one who is a single mother of
11 two sons for whom J. P. is the primary father figure. *Id.* ¶ 35. J. P.'s 13-year-old
12 nephew has struggled with emotional and behavioral problems, but he looks up to
13 his uncle, turns to him for advice, and listens to his counseling. *Id.* ¶ 36. J. P.'s four-
14 year-old nephew, whose biological father has been incarcerated since before he was
15 born, is highly attached to J. P. and runs to hug him every day when J. P. returns
16 home. *Id.* ¶ 37.

17 J. P.'s sister, Elizabeth, and the mother of J. P.'s two nephews, writes of her
18 brother:

19 "[J. P.] is a great role model in our [family's] lives and in my kids' lives.
20 Having him home feels a lot like having my father back [who passed away
21 in 2019], in that [J. P.] is a positive influence and a joy to be around. It would
22 be unimaginable for my mother to lose [J. P.] given her age and close
23 relationship with him. When [J. P.] is not working, he is taking our mom on
24 errands or spending time at church. He also helps me a lot with my kids."

25 Tinto Decl., Exh. L (Elizabeth Decl.) J. P.'s youngest sister, Juliana, writes of him:

26 "Having a brother like [J. P.] has been one of the best gifts God could have
27 given me. He has helped in shaping me into the strong woman that I am today,
28 from teaching me about respect for myself and others, to understanding from

1 a place of love, and also setting boundaries. I'd give up my right arm before
2 I would trade the experience of being a sister to one of the most beautiful
3 brothers a girl could ask for."

4 Tinto Decl., Exh. M (Juliana Decl.).

5 Since his release, J. P. has also been reunited with his four U.S. citizen
6 children, who live nearby and who he continues striving to support and to make up
7 for lost physical time with during his years of incarceration. J. P. Decl. ¶ 38.

8 In addition to supporting his family physically and emotionally, J. P. has
9 worked in various jobs since his release, including food delivery and, most recently,
10 at a children's book factory, in order to support himself and to provide for his
11 family. *Id.* ¶ 39. He has had employment authorization since his release. Kavanagh
12 Decl. ¶ 17. He is enrolled in a California Department of Rehabilitation employment
13 development program to earn his Class A driver license. J. P. Decl. ¶ 40.

14 J. P. also applied to Santa Ana College and was accepted on March 7, 2025.
15 *Id.* ¶ 41. He is interested in the school's "Rising Scholars" program for formerly
16 incarcerated students, and he hopes to take classes to become a counselor for at-risk
17 youth, in order to help others avoid the mistakes he made when he was young. *Id.*;
18 *see also* Tinto Decl., Exh. N (Ashar Letter). J. P. has also recently been
19 corresponding with Big Brothers Big Sisters of Orange County about opportunities
20 to volunteer as a "Big Brother," with the same goal. J. P. Decl. ¶ 41.

21 J. P. has also shared his experiences and wisdom as a person directly
22 impacted by the criminal-legal and immigration systems with students, including
23 speaking to the entire entering clinical class at UC Irvine School of Law in January
24 2024 and to over 130 audience members at a University of California Los Angeles
25 School of Law event in spring 2023. *See id.*; Tinto Decl., Exh. N (Ashar Letter);
26 Tinto Decl., Exh. W (Inlender Letter). According to Professor Ashar of UC Irvine
27 School of Law, "In all of his interactions with law students in the clinic, Mr. [J. P.]
28 has been a calm, humble, and thoughtful collaborator and teacher." Tinto Decl.,

1 Exh. N.

2 Despite his commitment and best efforts towards healing and rebuilding his
3 life, J. P. has struggled emotionally and mentally since his release, due in large part
4 to the traumas he endured while in ICE custody. *Id.* ¶¶ 29-32; *see also* Tinto Decl.,
5 Exh. K (Mother Decl.) ¶¶ 11-12 (“I live with my son [J. P.] now, and I can see that
6 these events and the abuse he suffered are . . . going to affect him for a long time,
7 maybe his entire life.”). He was diagnosed in May 2025 with Post Traumatic Stress
8 Disorder (PTSD) and Persistent Depressive Disorder with intermittent major
9 depressive episodes, current episode severe. *See* Tinto Decl., Exh. J (Psychological
10 Evaluation). His symptoms have been especially severe in recent months,
11 exacerbated by the heavy presence of immigration agents in his community,
12 including raids at locations like a Home Depot near his home. J. P. Decl. ¶ 47; *see*
13 *also* Tinto Decl., Exh. M (Juliana Decl.) ¶¶ 22-24 (“[J. P.’s] body can’t relax; it is
14 always in fight or flight mode.”).

15 Since J. P. was stopped, brutally arrested, and sent to the Emergency Room
16 by police on July 18, 2025, he has felt even more overwhelmed with anxiety,
17 flashbacks, and terror at the idea of being returned to immigration custody. *Id.* His
18 family, even his 13-year-old nephew, are also highly stressed by the uncertainty of
19 his safety and freedom. *Id.* ¶ 47.

20 Due to the ordeal that J. P. endured on July 18, 2025, he is being considered
21 for representation in a civil rights action by the UC Irvine School of Law Defending
22 Democracy Clinic. *See* Tinto Decl., Exh. F (Civil Rights Attorney Letter).

23 **ICE may re-arrest J. P. on July 29, 2025**

24 On July 24, 2025, J. P. received a phone call from an ISAP representative
25 who said J. P. would need to report to the ISAP office in person to meet a new case
26 manager, and because he would have in-person check-ins added to his supervision
27 requirements. J. P. Decl. ¶ 48. When asked the reason for this change, the ISAP
28 representative stated that he had no idea but that as far as he knew, J. P.’s case was

1 “good.” The representative suggested that J. P.’s supervision might be changing to
2 “make room for other cases.” *Id.* This explanation did not make sense to J. P., so he
3 inquired as to how increasing his supervision would “make room,” but he did not
4 receive a straight answer. *Id.* J. P. asked numerous questions and many of the
5 statements made by the ISAP representative were contradictory or did not make
6 sense. *Id.* The representative pressured J. P. to report as soon as the next day or early
7 on the following Monday morning. *Id.*

8 On the morning of July 25, 2025, J. P.’s immigration attorney emailed ICE
9 Deportation Officer Samuel Chairez and asked if ICE planned to detain J. P. when
10 he reported to ISAP. Kavanagh Decl. ¶ 25. Later that day, at 2:07 p.m., Officer
11 Chairez called Ms. Kavanagh and stated that J. P. was being called in due to his
12 July 18th arrest and indicated that there was a possibility that ICE would re-detain
13 J. P. after he reported for a “case review.” *Id.* ¶ 25. The statements made by Officer
14 Chairez to Ms. Kavanagh were inconsistent with the reasons the ISAP
15 representative had given to J. P. the day prior. J. P. Decl. ¶ 49.

16 Later on July 25, 2025, at 3:57 p.m., J. P. received a text message through the
17 ISAP application on his phone, asking if he could go to the ISAP office on Monday
18 or Tuesday. *Id.* ¶ 50. He replied that he would go on Tuesday. *Id.*

19 Despite the fact that an IJ ordered his release, J. P. now faces the prospect of
20 ICE unilaterally stripping him of his liberty, tearing him away from his family and
21 community, and keeping him detained under mandatory detention with no
22 opportunity for a neutral adjudicator to review his case. Kavanagh Decl. ¶ 26. He
23 also faces the very real possibility of being transferred outside of California with
24 little or no notice, far away from his family and community, or even being
25 unlawfully deported to Mexico, a country where an IJ has found he is likely to suffer
26 torture. *See id.* ¶¶ 27; 9.

27 If J. P. is re-detained by ICE, his mental health would drastically deteriorate,
28 causing significant psychological harm. Tinto Decl., Exh. I (Letter from Deana

1 Gullo). His re-detention would also destabilize his family and cause substantial
2 further harm to them. J. P. Decl. ¶ 51; *see also* Tinto Decl., Exh. M (Juliana Decl.)
3 ¶ 25-27. J. P. is terrified at the prospect:

4 “I am terrified of being taken back into custody by ICE. Thinking about it at
5 all sends me into a panic. The 21 months I spent in ICE detention before was
6 the worst experience of my life, and still impacts me daily. If I am detained
7 again for even a short time, I fear for my physical and mental wellbeing. I
8 also deeply fear for my family’s wellbeing because they are so reliant on me
9 and are themselves still recovering from the trauma of our prolonged
10 separation and everything they went through with me when I was in ICE
11 custody before. I am especially fearful for my mother’s health if I am
12 detained. She has been saying she feels like she will die if I am taken into
13 custody again. Having lost my father while I was incarcerated, the fear I will
14 be taken away and that it will destroy my mother and mean losing her really
15 haunts me.”

16 J. P. Decl. ¶ 51.

17 Intervention from this Court is therefore required to ensure that J. P. is not
18 unlawfully re-arrested and re-incarcerated and subjected to irreparable harm
19 without the process due to him.

20 **III. LEGAL STANDARD**

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

1 order if he raises “serious questions” as to the merits of his claims, the balance of
2 hardships tips “sharply” in his favor, and the remaining equitable factors are
3 satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).
4 As set forth in more detail below, J. P. overwhelmingly satisfies both standards.

5 **IV. ARGUMENT**

6 **A. J. P. WARRANTS A TEMPORARY RESTRAINING ORDER**

7 A temporary restraining order should be issued if “immediate and irreparable
8 injury, loss, or irreversible damage will result” to the applicant in the absence of an
9 order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to
10 prevent irreparable harm before a preliminary injunction hearing is held. *See Error!*
11 **Bookmark not defined.** *Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto*
12 *Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Without
13 intervention from this Court, Respondents are likely to re-arrest J. P. on Tuesday,
14 July 29, 2025, absent any material change in circumstances and prior to receiving a
15 hearing before a neutral adjudicator, in violation of his due process rights. J. P. will
16 continue to suffer irreparable injury if he is arrested and detained without due
17 process, separated from his family and community, in conditions that will likely
18 lead to dramatic deterioration of his mental health.

19 **1. J. P. is Likely to Succeed on the Merits of His Claim That in**
20 **This Case the Constitution Requires a Hearing Before a**
21 **Neutral Adjudicator Prior to Any Re-Incarceration by ICE**

22 J. P. is likely to succeed on his claim that, in his particular circumstances, the
23 Due Process Clause of the Constitution prevents Respondents from re-arresting him
24 without first providing a pre-deprivation hearing before a neutral adjudicator where
25 the government demonstrates by clear and convincing evidence that there has been
26 a material change in circumstances such that he is now a danger or a flight risk.

27 The statute and regulations grant ICE the ability to unilaterally revoke any
28 noncitizen’s immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. §

1 1226(b); 8 C.F.R. § 236.1(c)(9). Notwithstanding the breadth of the statutory
2 language granting ICE the power to revoke an immigration bond “at any time,” 8
3 U.S.C. 1226(b), in *Matter of Sugay***Error! Bookmark not defined.**, 17 I&N Dec.
4 647, 640 (BIA 1981), the BIA recognized an implicit limitation on ICE’s authority
5 to re-arrest noncitizens. There, the BIA held that “where a previous bond
6 determination has been made by an immigration judge, no change should be made
7 by [the DHS] absent a change of circumstance.” *Id.* The Ninth Circuit has also
8 assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual
9 absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th
10 Cir. 2021) (“Thus, absent changed circumstances ... ICE cannot redetain
11 Panosyan.”).

12 ICE has further limited its authority as described in *Sugay*, and “generally
13 only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in
14 circumstances.” *Saravia***Error! Bookmark not defined.**, 280 F. Supp. 3d at 1197,
15 *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (quoting
16 Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case
17 law and ICE practice, ICE may re-arrest a noncitizen who had been previously
18 released on bond only after a material change in circumstances. *See Saravia*, 280 F.
19 Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

20 There has been no material change in circumstances in J. P.’s case. Although
21 he was arrested, he was quickly released by law enforcement—an act expressly
22 acknowledging that J. P. is neither a risk of flight nor danger to society—and no
23 charges have been filed. Tinto Decl.; Exh. E (Defense Attorney Letter). His notice
24 to appear in court requires his appearance on August 18, 2025, where his defense
25 attorney intends to defend against any charges, should any be filed. *Id.* An arrest,
26 without more, does not undermine the IJ’s August 2023 finding that J. P. is not a
27 danger to society. After all, even the criminal authorities chose to release him.

1 Furthermore, ICE's power to re-arrest a noncitizen who is at liberty following
2 a release on bond is also constrained by the demands of due process. *See Hernandez*
3 *v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's discretion to
4 incarcerate non-citizens is always constrained by the requirements of due process").
5 In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-
6 arrest a noncitizen absent materially changed circumstances—is insufficient to
7 protect J. P.'s weighty interest in his freedom from detention.

8 Federal district courts in California have repeatedly recognized that the
9 demands of due process and the limitations on DHS's authority to revoke a
10 noncitizen's bond or parole require a pre-deprivation hearing for a noncitizen on
11 bond, like J. P., *before* ICE re-detains him. *See, e.g., Guillermo M. R. v. Kaiser*, No.
12 25-CV-05436-RFL, 2025 WL 1983677, at *10 (N.D. Cal. July 17, 2025) (granting
13 petitioner's motion for a preliminary injunction where petitioner had been released
14 on an IJ-granted bond approximately two years prior, and finding that petitioner's
15 recent arrest was not a materially changed circumstance that would allow ICE to
16 unilaterally re-arrest petitioner absent a pre-deprivation hearing before an IJ);
17 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal.
18 Aug. 23, 2020) (granting a preliminary injunction for Petitioner to be provided with
19 a pre-deprivation hearing prior to re-arrest by Respondents, even though he was
20 facing a new criminal charge after release); *see also Meza v. Bonnar*, 2018 WL
21 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D.
22 Cal. 2019); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at
23 *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL
24 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm
25 if re-detained, and required notice and a hearing before any re-detention);
26 *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal.
27 May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's
28 ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*,

No. 3:25-cv-05070-JSC, 2025 WL 1676855, at *4 (N.D. Cal. Jun. 14, 2025) (granting temporary restraining order enjoining Respondents from re-detaining Petitioner without notice and a hearing); *Diaz v. Kaiser*, 3:25-cv-05071, 2025 WL 1676854, at *4 (N.D. Cal. Jun. 14, 2025) (granting temporary restraining order and finding that a pre-detention hearing would prevent against the risk of erroneous deprivation). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).¹³

Courts analyze procedural due process claims such as this one in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure 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).

**a. J. P. Has a Protected Liberty Interest in His
Conditional Release**

¹³ Where DHS has ignored serious due process concerns and re-arrested individuals previously released by either an IJ or ICE itself, district courts have ordered immediate release of the individual from ICE custody. *See, e.g., Singh v. Andrews*, No. 25-cv-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025) (ordering immediate release of illegally arrested petitioner and enjoining Respondents from re-arresting petitioner without a pre-deprivation bond hearing at which the government bears the burden of demonstrating, by clear and convincing evidence, that petitioner is a danger to the community or a flight risk); *Domingo v. Kaiser*, No. 25-cv-05893-RFL, 2025 WL 1940179 (N.D. Cal. July 14, 2025) (ordering immediate release of petitioner whom ICE re-arrested at his routinely scheduled check-in, where ICE cited a conviction from 2019 as the reason for re-arrest, and finding no material change in circumstances had occurred); *Garro Pinchi v. Noem*, No. 25-cv-05632-RFL, 2025 WL 1853763 (N.D. Cal. July 4, 2025); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (ordering immediate release of illegal re-arrested noncitizen petitioner).

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

5 For nearly two years, J. P. has exercised that freedom under the IJ's August
6 18, 2023, order granting him release on the minimum bond of \$1,500. Tinto Decl.,
7 Exh. A (IJ Bond Order). J. P. has exercised his freedom by living at home with his
8 family; caring for his U.S. citizen children; working; enrolling in Santa Ana College
9 through their Rising Scholars program; and receiving ongoing reentry support from
10 the California Department of Rehabilitation. Although J. P. was released on bond
11 (and thus under government custody), he retains a weighty liberty interest under the
12 Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See*
13 *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778,
14 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *see also*
15 *Ortega*, 415 F.Supp.3d at 969-70 (holding that a noncitizen has a protected liberty
16 interest in remaining out of custody following an IJ's bond determination); *Wesa v.*
17 *Engleman*, No. 2:25-cv-03413-WLH-DTB, 2025 WL 2005224, at *11 (C.D. Cal.
18 June 6, 2025) (citing *Young* and *Morrissey*, ordering petitioner released from re-
19 incarceration after his "prerelease" custody was revoked without notice or
20 hearing—i.e. "minimum due process requirements"—and emphasizing petitioner's
21 "inherent[] liberty interest" in "preparole" conditions, which were "very different
22 from that of confinement in a prison" (quotation marks and citations omitted)).

23 In *Morrissey*, the Supreme Court examined the "nature of the interest" that a
24 parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that,
25 "subject to the conditions of his parole, [a parolee] can be gainfully employed and
26 is free to be with family and friends and to form the other enduring attachments of
27 normal life." *Id.* at 482. The Court explained that "the liberty of a parolee, although
28 indeterminate, includes many of the core values of unqualified liberty and its

1 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
2 “[b]y whatever name, the liberty is valuable and must be seen within the protection
3 of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

4 This basic principle—that individuals have a liberty interest in their
5 conditional release—has been reinforced by both the Supreme Court and the circuit
6 courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding
7 that individuals placed in a pre-parole program created to reduce prison
8 overcrowding have a protected liberty interest requiring pre-deprivation process);
9 *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony
10 probation have a protected liberty interest requiring pre-deprivation process). As
11 the First Circuit has explained, when analyzing the issue of whether a specific
12 conditional release rises to the level of a protected liberty interest, “[c]ourts have
13 resolved the issue by comparing the specific conditional release in the case before
14 them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*
15 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and
16 citation omitted). *See also, e.g., Wesa*, 2025 WL 2005224, at *11; *Hurd v. District*
17 *of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of
18 physical confinement—even if that freedom is lawfully revocable—has a liberty
19 interest that entitles him to constitutional due process before he is re-incarcerated”)
20 (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S.
21 at 482).

22 In fact, it is well-established that an individual maintains a protectable liberty
23 interest even where the individual obtains liberty through a mistake of law or fact.
24 *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873
25 (9th Cir. 1982) (noting that due process considerations support the notion that an
26 inmate released on parole by mistake, because he was serving a sentence that did
27 not carry a possibility of parole, could not be re-incarcerated because the mistaken
28 release was not his fault, and he had appropriately adjusted to society, so it “would

1 be inconsistent with fundamental principles of liberty and justice” to return him to
2 prison) (internal quotation marks and citation omitted).

3 Here, when this Court ““compar[es] the specific conditional release in [J. P.’s
4 case], with the liberty interest in parole as characterized by *Morrissey*,” it is clear
5 that they are strikingly similar. *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in
6 *Morrissey*, J. P.’s release “enables him to do a wide range of things open to persons”
7 who have never been in custody or convicted of any crime, including to live at
8 home; work; care for his children and mother; receive ongoing reentry support from
9 the California Department of Rehabilitation regarding employment, education, and
10 other social services; enroll in Santa Ana College through their Bright Stars
11 program; and “be with family and friends and to form the other enduring
12 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

13 Furthermore, in this case, a return to detention would have a profoundly
14 destabilizing effect on J. P.’s mental health. *See* Tinto Decl., Exh. I (Letter from
15 Deana Gullo). Re-detention will return J. P. to the site and conditions of the trauma
16 he experienced while previously in ICE custody, and because of which he now
17 suffers from PTSD and Persistent Depressive Disorder. *See id.* Since his arrest and
18 hospitalization on July 18, 2025, J. P. has already been experiencing escalating
19 symptoms of PTSD including worsening anxiety, hypervigilance, and flashbacks,
20 especially due to the similarities between his violent transfer from Mesa Verde in
21 March 2023 and the events of July 18, 2025. J. P. Decl. ¶ 47. Re-detention would
22 place J. P. at high risk of psychological harm and compromise his capacity to
23 function in daily life. *See* Tinto Decl., Exh. I (“Without a doubt, [J. P.] falls into this
24 category of individuals most vulnerable to the adverse impact of detention.”). J. P.
25 thus has a particularly strong interest in his continued liberty, and is entitled to
26 constitutional due process before he is re-incarcerated.

27 **b. J. P.’s Liberty Interest Mandates a Hearing Before**
28 **any Re-Arrest and Revocation of Bond**

1 J. P. asserts that due process mandates that he receive notice and a hearing
2 before a neutral adjudicator *prior* to any re-arrest or revocation of a bond.

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

19 The Supreme Court “usually has held that the Constitution requires some
20 kind of a hearing *before* the State deprives a person of liberty or property.”
21 *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a
22 “special case” where post-deprivation remedies are “the only remedies the State
23 could be expected to provide” can post-deprivation process satisfy the requirements
24 of due process. *Zinermon*, 494 U.S. at 985.

25 Because, in this case, the provision of a pre-deprivation hearing is both
26 possible and valuable to preventing an erroneous deprivation of liberty, ICE is
27 required to provide J. P. with notice and a hearing *prior* to any re-incarceration and
28 revocation of his bond. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at

1 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinerman*, 494 U.S.
2 at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
3 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
4 commitment proceedings may not constitutionally be held in jail pending the
5 determination as to whether they can ultimately be recommitted). Under *Mathews*,
6 “the balance weighs heavily in favor of [J. P.’s] liberty” and requires a pre-
7 deprivation hearing before a neutral adjudicator.

8 **i. J.P.’s Private Interest in His Liberty is Profound**

9 Under *Morrissey* and its progeny, individuals conditionally released from
10 serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408
11 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a
12 person who is in fact free of physical confinement, even if that freedom is lawfully
13 revocable, has a liberty interest that entitles him to constitutional due process before
14 he is re-incarcerated—apply with even greater force to individuals like J. P., who
15 have been released pending civil removal proceedings, because “his liberty interest
16 is arguably greater than the interest of the parolees in *Morrissey*.” *See Ortega*, 415
17 F.Supp.3d at 970. Nonetheless, even in the criminal parolee context, the courts have
18 held that the parolee cannot be re-arrested without a due process hearing in which
19 they can raise any claims they may have regarding why their re-incarceration would
20 be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683.
21 Thus, J. P. retains a truly weighty liberty interest even though he is under
22 conditional release.

23 At stake in this case for J. P. is one of the most profound individual interests
24 recognized by our legal system: whether ICE may unilaterally nullify a prior bond
25 decision, reached by an Immigration Judge, and take away his physical freedom,
26 i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v.*
27 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom
28 from bodily restraint has always been at the core of the liberty protected by the Due

1 Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *see also Zadvydas*,
2 533 U.S. at 690 (“Freedom from imprisonment—from government custody,
3 detention, or other forms of physical restraint—lies at the heart of the liberty that
4 [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

5 It is clear that there is a profound private interest at stake in J. P.’s case, which
6 must be weighed heavily when determining what process he is owed under the
7 Constitution. *See Mathews*, 424 U.S. at 334-35.

8 **ii. The Government’s Interest in Re-Incarcerating**
9 **J. P. Without a Hearing is Low, and the Burden**
10 **on the Government to Refrain from Re-**
11 **Arresting Him Unless and Until He is Provided**
12 **a Hearing is Minimal**

13 The government’s interest in detaining J. P. without a due process hearing is
14 low, and when weighed against his significant private interest in his liberty, the
15 scale tips sharply in favor of enjoining Respondents from re-arresting J. P. unless
16 and until the government demonstrates by clear and convincing evidence that he is
17 a flight risk or danger to the community. It becomes abundantly clear that the
18 *Mathews* test favors J. P. when the Court considers that the process he seeks—notice
19 and a hearing regarding whether his bond should be revoked—is a standard course
20 of action for the government. Providing J. P. with a hearing before this Court (or a
21 neutral decisionmaker) to determine whether there is clear and convincing evidence
22 that J. P. is a flight risk or danger to the community would impose only a *de minimis*
23 burden on the government, because the government routinely provides this sort of
24 hearing to individuals like J. P.

25 In August 2023, nearly two years ago, an IJ found that J. P. was not a danger
26 to the community or a flight risk. Tinto Decl., Exh. A (IJ Bond Order). That
27 determination still stands. J. P.’s 2025 arrest does not undermine the IJ’s finding,
28

1 given that he was promptly released by law enforcement and no charges have been
2 filed. Tinto Decl., Exh. E (Defense Attorney Letter). Furthermore, due to the
3 pretextual and violent nature of the police stop, the Criminal Justice Clinic at UC
4 Irvine School of Law intends to review J. P.'s situation for a possible civil rights
5 lawsuit and notes that "the information [they] have received so far" leads them to
6 "believe J. P. may have such claims." Tinto Decl., Exh. F (Civil Rights Attorney
7 Letter).

8 As to flight risk, an IJ determined that a bond of \$1,500 was sufficient to
9 guard against any possible flight risk, to "assure [his] presence at the moment of
10 removal." *Zadvydas*, 533 U.S. at 699. Furthermore, J. P. was granted relief from
11 removal to Mexico and is currently awaiting the outcome of DHS's appeal.
12 Kavanagh Decl. ¶ 9. It is difficult to see how the government's interest in ensuring
13 his presence at the moment of removal has materially changed since he was released
14 in August 2023, as he has complied with all scheduled ISAP check-ins. *Id.* ¶ 14; *see*
15 *also* Tinto Decl., Exh. C (ICE Letter Confirming ISAP Compliance). The
16 government's interest in detaining J. P. at this time is therefore low. That ICE has a
17 new policy to make a minimum number of arrests each day under the new
18 administration does not constitute a material change in circumstances or increase
19 the government's interest in detaining him.¹⁴

21 ¹⁴ See Washington Post, "Trump officials issue quotas to ICE officers to ramp up
22 arrests," (Jan. 26, 2025),
23 [https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/)
24 [quota/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/); Forbes, "Stephen Miller's Order Likely Sparked Immigration Arrests And
25 Protests" (June 9, 2025),
26 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
27 [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,
28 'Stephen Miller, a senior White House official, told Fox News that the White
House was looking for ICE to arrest 3,000 people a day, a major increase in
enforcement. The agency had arrested more than 66,000 people in the first 100
days of the Trump administration, an average of about 660 arrests a day,' reported

1 Moreover, the “fiscal and administrative burdens” that a pre-deprivation
2 bond hearing would impose are nonexistent in this case. *See Mathews*, 424 U.S. at
3 334-35. J. P. does not seek a unique or expensive form of process, but rather a
4 routine hearing regarding whether his bond should be revoked and whether he
5 should be re-incarcerated.

6 Providing J. P. with a hearing before this Court (or a neutral decisionmaker)
7 regarding bond is a routine procedure that the government provides to those in
8 immigration jails on a daily basis. At that hearing, the Court would have the
9 opportunity to determine whether J. P.’s circumstances have materially changed to
10 require a different amount of bond—or if bond should be revoked. But there is no
11 justifiable reason to re-incarcerate J. P. prior to such a hearing taking place. As the
12 Supreme Court noted in *Morrissey*, even where the State has an “overwhelming
13 interest in being able to return [a parolee] to imprisonment without the burden of a
14 new adversary criminal trial if in fact he has failed to abide by the conditions of his
15 parole . . . the State has no interest in revoking parole without some informal
16 procedural guarantees.” 408 U.S. at 483.

17 Enjoining J. P.’s re-arrest until ICE (1) moves for a bond re-determination
18 before an IJ and (2) demonstrates by clear and convincing evidence a material
19 change in circumstances and that J. P. is a flight risk or danger to the community is
20 far *less* costly and burdensome for the government than keeping him detained. As
21 the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public
22 of immigration detention are ‘staggering’: \$158 each day per detainee, amounting
23 to a total daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

24 **iii. Without a Due Process Hearing Prior to Any**
25 **Re-Arrest, the Risk of an Erroneous**

26 _____
27
28 the New York Times. Arresting 3,000 people daily would surpass 1 million arrests
in a calendar year.”).

**Deprivation of Liberty is High, and Process in
the Form of a Constitutionally Compliant
Hearing Where ICE Carries the Burden Would
Decrease That Risk**

Providing J. P. a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before J. P. can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that there has been materially changed circumstances such that the IJ's August 2023 bond determination should be altered or revoked because clear and convincing evidence exists to establish that J. P. is a danger to the community or a flight risk.

Under ICE's process for custody determination—which affords J. P. no process whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk that J. P. will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to **Error! Bookmark not defined.** 8 C.F.R. § 236.1(c)(9), an arrest of J. P. automatically revokes his bond. Thus, the regulations permit ICE to unilaterally nullify a bond order without oversight of any kind. After re-arrest, ICE makes its own, one-sided custody determination and can decide whether the agency wants to hold J. P. without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9). However, ICE repeatedly denied J. P. release on bond when he was previously incarcerated. *See* Kavanagh Decl. ¶ 11.

J. P.'s detention will be governed by 8 U.S.C. § 1226(c) because he has been rendered deportable based on a conviction for one of the specified criminal offenses. Noncitizens detained under 8 U.S.C. § 1226(c) are subject to mandatory detention

1 and are not be eligible for an individualized bond hearing before an IJ.¹⁵ Therefore,
2 revocation of J. P.'s bond would completely evade *any* review by an IJ or any other
3 neutral arbiter.

4 The procedure J. P. seeks—a hearing in front of a neutral adjudicator at which
5 the government must prove by clear and convincing evidence that circumstances
6 have changed to justify his detention *before* any re-arrest—is much more likely to
7 produce accurate determinations regarding factual disputes, such as whether a
8 certain occurrence constitutes a “changed circumstance.” *See Chalkboard, Inc. v.*
9 *Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when “delicate judgments depending
10 on credibility of witnesses and assessment of conditions not subject to
11 measurement” are at issue, the “risk of error is considerable when just
12 determinations are made after hearing only one side”). “A neutral judge is one of
13 the most basic due process protections.” **Error! Bookmark not defined.** *Castro-*
14 *Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by*
15 *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted
16 that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased
17 where a neutral decisionmaker, rather than ICE alone, makes custody
18

19
20
21 ¹⁵ J. P.'s previous prolonged mandatory detention was the basis for his first habeas
22 petition, filed in February 2023 in the Northern District of California. After 15
23 months of mandatory detention, J. P.'s habeas petition alleged that his prolonged
24 incarceration ran afoul of the Due Process Clause of the Fifth Amendment of the
25 Constitution due to the lack of custody review by a neutral decisionmaker for that
26 protracted period of time. J. P.'s habeas petition was granted in August 2023, after
27 he had endured 21 months of prolonged mandatory detention. *See J.P. v. Garland*,
28 685 F.Supp.3d 943. At the court-ordered bond hearing, DHS could not meet their
burden to show by clear and convincing evidence that J. P. was either a danger to
the community or a flight risk, and the IJ ordered him released on the minimum
bond of \$1,500, with the specification that ICE could not install a GPS ankle
monitoring device on J. P. *See Tinto Decl., Exh. A (IJ Bond Order).*

1 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.
2 2011).

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

10 * * *

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

16 **2. J. P. will Suffer Irreparable Harm Absent Injunctive Relief**

17 J. P. will suffer irreparable harm were he to be deprived of his liberty and
18 subjected to unlawful incarceration by immigration authorities without being
19 provided the constitutionally adequate process that this motion for a temporary
20 restraining order seeks.

21 Individuals detained in ICE custody are held in “prison-like conditions.”
22 *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has
23 explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the
24 individual. It often means loss of a job; it disrupts family life; and it enforces
25 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,
27 the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed
28 on anyone subject to immigration detention” including “subpar medical and

1 psychiatric care in ICE detention facilities, the economic burdens imposed on
2 detainees and their families as a result of detention, and the collateral harms to
3 children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995.
4 Finally, the government itself has documented alarmingly poor conditions in ICE
5 detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of
6 Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023
7 (2024) (reporting violations of environmental health and safety standards; staffing
8 shortages affecting the level of care detainees received for suicide watch; and
9 detainees being held in administrative segregation in unauthorized restraints,
10 without being allowed time outside their cell, and with no documentation that they
11 were provided health care or three meals a day)¹⁶; California Department of Justice
12 (“Cal DOJ”), 2025 Report: Immigration Detention in California—A
13 Comprehensive Review with a Focus on Mental Health (rev. May 2025) (reporting
14 numerous violations of ICE’s own detention standards, the Performance Based
15 National Detention Standards (“PBNDS”), including but not limited to: lack of
16 proper mental health treatment and planning, over-disciplining that included
17 punishment for making complaints and filing grievances, insufficient suicide
18 prevention and interventions, lack of safety planning, overuse and misuse of solitary
19 confinement, and lack of transparency regarding incidents involving use of force).¹⁷

20 Throughout his previous 21-month detention by ICE, J. P. suffered numerous
21 incidents of unlawful, violent, and degrading treatment that has traumatized him
22 and forced him to live with the sequelae of that trauma. *See supra*, Part II; *see also*
23 Tinto Decl., Exh. J (Psychological Evaluation) (diagnosing J. P. with Post-
24 Traumatic Stress Disorder and Persistent Depressive Disorder). Just some of the

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26 ¹⁶ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed July 26, 2025).

27 ¹⁷ Available at <https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf> (last accessed July 26, 2025).
28

1 mistreatment J. P. experienced during his ICE incarceration included sexually
2 abusive pat-downs,¹⁸ labor exploitation and retaliation for speaking out,¹⁹ improper
3 placement in solitary confinement,²⁰ violent extraction and forced transfer for the
4 purpose of force feeding,²¹ and other degrading treatment and comments. *See supra*,
5 Part II; J. P. Decl. ¶¶ 5-23; *see also* Tinto Decl., Exh. H ¶¶ 72-77. J. P. himself has
6 been the plaintiff in two civil rights lawsuits concerning conditions of his prior ICE
7 detention. *See* Second Amended Complaint at 26-28, *Hernandez Gomez v. GEO*
8 *Group*, No. 1:22-cv-00868-KES-CDB (E.D. Cal. Dec. 23, 2022); First Amended
9 Complaint, *Mendez v. ICE*, No. 3:23-cv-00829-TLT (N.D. Cal. Mar. 10, 2023). He
10 also served as a helpful class member in a lawsuit concerning the dangers of
11 COVID-19 in congregate detention setting. *See Zepeda Rivas v. Jennings*, Case No.
12 3:20-cv-2731 (N.D. Cal. filed 2020).

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14
15 ¹⁸ CRCL Complaint: “Sexually Abusive Pat-Downs Against Individuals in
16 Immigration Detention at Mesa Verde Detention Facility” (Jan. 17, 2023)
17 [https://www.aclunc.org/sites/default/files/2023.01.17_Sexually_Abusive_Pat-](https://www.aclunc.org/sites/default/files/2023.01.17_Sexually_Abusive_Pat-Downs_Complaint_REDACTED.pdf)
18 [Downs_Complaint_REDACTED.pdf](https://www.aclunc.org/sites/default/files/2023.01.17_Sexually_Abusive_Pat-Downs_Complaint_REDACTED.pdf).

19 ¹⁹ Hussain, Shuhauna, Los Angeles Times, “Prison company retaliated against
20 detained immigrants, labor board says” (Jan. 22, 2025),
21 [https://www.latimes.com/business/story/2025-01-22/inmates-protested-work-](https://www.latimes.com/business/story/2025-01-22/inmates-protested-work-conditions-geo-prison-company-retaliated-labor-board-says)
22 [conditions-geo-prison-company-retaliated-labor-board-says](https://www.latimes.com/business/story/2025-01-22/inmates-protested-work-conditions-geo-prison-company-retaliated-labor-board-says) (“GEO Group
23 punished detainees housed at its detention center in Bakersfield who signed a
24 petition and participated in a work stoppage to protest wages and other working
25 conditions, federal labor regulators alleged in a Jan. 6 complaint by a regional
26 NLRB office in Los Angeles.”)

27 ²⁰ Jhabvala Romero, Farida, KQED, “ICE Detainees Protested \$1-a-Day Wage.
28 Now They’re in Solitary Confinement” (July 8, 2022),
[https://www.kqed.org/news/11919161/ice-detainees-protested-1-a-day-wage-now-](https://www.kqed.org/news/11919161/ice-detainees-protested-1-a-day-wage-now-theyre-in-solitary-confinement)
[theyre-in-solitary-confinement](https://www.kqed.org/news/11919161/ice-detainees-protested-1-a-day-wage-now-theyre-in-solitary-confinement).

²¹ Hendricks, Tyche, KQED, “ICE Abruptly Transfers 4 Detainee Hunger Strikers
From California to Texas, Sparking Fears of Force-Feeding” (Mar. 9, 2023),
[https://www.kqed.org/news/11943030/ice-aburptly-transfers-4-detainee-hunger-](https://www.kqed.org/news/11943030/ice-aburptly-transfers-4-detainee-hunger-strikers-from-california-to-texas-sparking-fears-of-force-feeding)
[strikers-from-california-to-texas-sparking-fears-of-force-feeding](https://www.kqed.org/news/11943030/ice-aburptly-transfers-4-detainee-hunger-strikers-from-california-to-texas-sparking-fears-of-force-feeding).

1 J. P. has been out of ICE custody for over two years. During that time, J. P.
2 has supported his family, worked, pursued employment development and
3 educational opportunities, and sought to contribute to his community. *See* J. P. Decl.
4 ¶¶ 33-41. If he were re-incarcerated by ICE, he would lose the ability to see his
5 children and family, lose the ability to work, and all of the effects of trauma he
6 experienced in detention prior would flood him and his mental health would likely
7 dramatically deteriorate. *See* Tinto Decl., Exh. I (“Without a doubt, [J. P.] falls into
8 this category of individuals most vulnerable to the adverse impact of detention.”).
9 Detention would irreparably harm not only J. P., but also his children, his mother,
10 his siblings, and their families.

11 Finally, as detailed *supra*, J. P. contends that his re-arrest absent a hearing
12 before a neutral adjudicator would violate his due process rights under the
13 Constitution. It is clear that “the deprivation of constitutional rights ‘unquestionably
14 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
15 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary
16 restraining order is necessary to prevent J. P. from suffering irreparable harm by
17 being subject to unlawful and unjust detention.

18 **3. The Balance of Equities and the Public Interest Favor** 19 **Granting the Temporary Restraining Order**

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

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

1 Further, any burden imposed by requiring the DHS to refrain from arresting
2 J. P. unless and until he is provided a hearing before a neutral is both *de minimis*
3 and clearly outweighed by the substantial harm he will suffer if he is detained. *See*
4 *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on
5 the side of affording fair procedures to all persons, even though the expenditure of
6 governmental funds is required.”).

7 Finally, a temporary restraining order is in the public interest. First and most
8 importantly, “it would not be equitable or in the public’s interest to allow [a party]
9 . . . to violate the requirements of federal law, especially when there are no adequate
10 remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th
11 Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.
12 2013)). If a temporary restraining order is not entered, the government would
13 effectively be granted permission to detain J. P. in violation of the requirements of
14 Due Process. “The public interest and the balance of the equities favor ‘prevent[ing]
15 the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at
16 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996
17 (“The public interest benefits from an injunction that ensures that individuals are
18 not deprived of their liberty and held in immigration detention because of bonds
19 established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422
20 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated
21 when a constitutional right has been violated, because all citizens have a stake in
22 upholding the Constitution.”).

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

25 **V. CONCLUSION**

26 For all the above reasons, this Court should find that J. P. warrants a
27 temporary restraining order and a preliminary injunction ordering that Respondents
28 refrain from re-arresting him unless and until he is provided notice and a hearing

1 before a neutral decisionmaker to determine first whether there has been a material
2 change in circumstances, and second, assuming there is a material change, whether
3 the government can show by clear and convincing evidence that detention would
4 now be warranted on the basis that he is a danger or a flight risk.

5 Dated: July 27, 2025

Respectfully submitted,

6 /s/ E. Katharine Tinto

7 E. Katharine Tinto

8 UC IRVINE SCHOOL OF LAW

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