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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Francisco CARRILLO GARCIA,

Petitioner-Plaintiff,

v.

Ernesto SANTACRUZ JR., Acting Director, Los
Angeles Field Office, Immigration and Customs
Enforcement, Enforcement and Removal Operations;
Todd M. LYONS, Acting Director, Immigration and
Customs Enforcement; Kristi NOEM, Secretary, U.S.
Department of Homeland Security; Pamela BONDI,
U.S. Attorney General; Fereti SEMAIA, Warden,
Adelanto ICE Processing Center,

Respondents-Defendants.

Case No. 2:25-cv-10581

**MOTION FOR
TEMPORARY
RESTRAINING
ORDER**

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

**PETITIONER'S DHS
NO: A** 

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioner hereby moves this Court for an order enjoining Respondents, Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, from continuing Petitioner's re-detention until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration is justified based upon clear and convincing evidence establishing that he is a danger to the community or a flight risk.

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 Christopher Duran with Accompanying Exhibits in Support of a Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner submits that he warrants a temporary restraining order ("TRO") due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment to liberate him from unlawful re-incarceration absent a pre-deprivation due process hearing before a neutral adjudicator where the government bears the burden.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from continuing his re-incarceration unless and until he is afforded an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the TRO. The Petitioner is currently scheduled to appear for an individual hearing at the Adelanto Detention Center on December 24, 2025.

Dated: November 4, 2025

Respectfully Submitted,

/s/ Christopher Duran

Christopher Duran

Attorney for Mr. Francisco Carrillo Garcia

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1 **I. INTRODUCTION**

2 Petitioner Francisco Carrillo-Garcia, by and through undersigned counsel, hereby
3 files this motion for a temporary restraining order and preliminary injunction to enjoin the U.S.
4 Department of Homeland Security (DHS), and U.S. Immigration and Customs Enforcement
5 (ICE) from continuing his unlawful detention until he is afforded notice and a hearing before a
6 neutral decisionmaker on the question of whether his bond should be revoked and, if so, whether
7 his re-incarceration was justified because ICE failed to establish by clear and convincing evidence
8 that he is a danger to the community or a flight risk.

9 DHS had previously incarcerated Petitioner for approximately 30 days between July
10 2014 and August 2014, pending preliminary processing of his asylum claim including
11 administration of a Credible Fear Interview (CFI). DHS found that Petitioner indeed established
12 a credible fear of persecution and set a bond in the amount of \$10,000. This amount was
13 subsequently reduced to \$8,000.00 upon redetermination by an Immigration Judge [IJ]. Petitioner
14 was released upon posting of the bond on or about August 2014.

15 The Petitioner complied with all conditions of release. His removal proceedings have
16 remained pending a final decision for over eleven years, and yet he was re-detained in the city of
17 San Bernardino on or about May 15, 2025, when he responded to a written notice requiring his
18 appearance for his first ICE check-in. The ICE officer did not advise him of any bond revocation
19 processing and simply advised that “Your time in the United States has come to an end and this
20 is because of the new Trump Administration.”

21 Petitioner’s initial \$8,000.00 bond appears to have been revoked by ICE upon his re-arrest
22 pursuant to 8 C.F.R. §236.1 (c)(9). Petitioner’s counsel reached out to his ICE deportation officer
23 regarding his release on the previous bond, the possibility of a redetermination of the bond, or
24 release on parole beginning in June of 2025, and to date, has not received a response.

25 Over the last eleven years in which he has lived at liberty, Petitioner has begun a family
26 as husband, father, and stepfather to his USC spouse and their four US citizen children. He has
27 also been gainfully employed and has diligently sought relief including protection from
28 persecution from gangs in El Salvador, as well as through Adjustment of Status at the consular

1 level which requires an approved I-601A Provisional Waiver of unlawful presence, and an order
2 of voluntary departure to allow him to finish the adjustment process at a foreign consulate.
3 Although Petitioner's removal proceedings were administratively closed to allow him to seek
4 USCIS approval of the waiver, USCIS denied the waiver because it was filed prior to
5 administrative closure of the removal proceedings. It appears very likely that the denial of the
6 waiver resulted from ineffective assistance of Petitioner's prior counsel.

7 On or about May 15, 2025, Petitioner attended his first check-in appointment with ICE in
8 San Bernardino California and was incarcerated by ICE despite his insistence that his case
9 remained administratively closed, that he had an attorney, an approved immediate relative visa
10 petition, and was not a flight risk nor considered to be a danger to the community as determined
11 by the Superior Court of California, San Bernardino, Rancho Cucamonga branch in misdemeanor
12 case number MWV 24015623. The ICE Officer's response was that none of that mattered and that
13 "his time in the U.S. has come to an end because of the new Trump administration."

14 On September 10, 2025, a bond redetermination request on behalf of the Petitioner was
15 scheduled to be conducted at EOIR Adelanto. During a pre-hearing discussion, the IJ stated that
16 he did not have jurisdiction to conduct such a hearing pursuant to *Matter of Yajure Hurtado*, 29
17 I&N Dec. 216 (BIA 2025) decided September 5, 2025. Accordingly, counsel for Petitioner was
18 allowed to withdraw the request without prejudice and counsel advised Petitioner that the next
19 step in seeking release would be via Habeas Corpus in this Court.

20 By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
21 has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a
22 change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9);
23 *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in
24 litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d
25 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
26 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause
27 because it is well-established that individuals released from incarceration have a liberty interest
28 in their freedom. In turn, to protect that interest, on the particular facts of Petitioner's case, due

1 process requires notice and a hearing, *prior to any revocation of his conditional release on bond*,
2 at which he is afforded the opportunity to advance his arguments as to why his bond should not
3 be revoked.

4 That basic principle—that individuals placed at liberty are entitled to process before the
5 government imprisons them—has particular force here, where Petitioner’s detention was *already*
6 found to be unnecessary to serve its purpose. An Immigration Judge previously found that he need
7 not be incarcerated to prevent flight or to protect the community, and no circumstances have
8 changed that would justify re-arrest.

9 Therefore, at a minimum, in order to lawfully re-arrest the Petitioner, the government must
10 first establish, by clear and convincing evidence and before a neutral decision maker, that he is a
11 danger to the community or a flight risk, such that his re-incarceration was or is necessary.

12 The Petitioner meets the standard for a temporary restraining order. He will suffer
13 continuing immediate and irreparable harm absent an order from this Court enjoining the
14 government from continuing Petitioner’s unlawful re-incarceration unless and until he receives a
15 hearing before a neutral adjudicator, as demanded by the Constitution. Because holding federal
16 agencies accountable to constitutional demands is in the public interest, the balance of equities
17 and public interest are also strongly in Petitioner’s favor.

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

19 Petitioner is a citizen and national of El Salvador who entered the U.S. in 2014 at the age
20 of 24. He lived with his family in El Salvador, earned a degree in nursing and then pursued
21 nursing as a career. He was threatened by three gang members, who demanded hospital
22 equipment from him. When he refused to provide any assistance because of their gang affiliation,
23 they threatened to kill him unless he agreed to sell drugs for them, which he also refused. These
24 gang members made similar threats to other members of his community, one of whom was
25 tortured and killed a few days after Petitioner was threatened by the same gang members.
26 Fortunately, he was able to flee before the threats resulted in his own torture and murder.

27 Once in the U.S., the Petitioner pursued his asylum claim, attending every court hearing,
28 and in 2017 he married his U.S. citizen spouse Xiomara. The couple have started a family,

1 including four U.S. citizen children, one of whom, his youngest son, has been assessed as
2 “severe” on the Autism spectrum.

3 It is apparent that during his removal proceedings the Petitioner suffered ineffective
4 assistance of counsel, including withdrawal of his Asylum application on or about November 1,
5 2018, in order to pursue alternative relief via consular processing of an application for legal
6 permanent resident status, which first required USCIS to approve an unlawful presence waiver.

7 The I-601A Provisional Waiver of unlawful presence application filed by Petitioner’s
8 prior counsel resulted in denial simply because it was filed with USCIS on December 31, 2019,
9 prior to administrative closure of the case by the IJ on March 25, 2022. This egregious error
10 resulted in the denial of the waiver and derailing of the proceedings. Since the I-601A waiver has
11 not been refiled, the error may also result in future prejudice to the Petitioner in the event this
12 avenue of relief is barred by an IJ’s future denial of a second motion for administrative closure to
13 allow the Petitioner to re-file and await a subsequent USCIS determination of the waiver.

14 On December 15, 2023, Petitioner was arrested by law enforcement for an alleged hit and
15 run collision involving a bicycle vs. auto resulting in actual injury in violation of California
16 Vehicle Code (VC) §20001(b)(1). The petitioner was arrested and initially released on \$30,000
17 bond. He subsequently pled not guilty, and his bond was reduced to \$10,000.00. The record
18 reflects his current custody status as “Own Recognizance.” A further pre-trial hearing on this
19 matter was scheduled by the Court for January 20, 2026. Mr. Harrison Sell, the Deputy Public
20 Defender representing the Petitioner, has provided a letter indicating that “generally with
21 misdemeanor Hit and Run cases at the Rancho Cucamonga Courthouse, we make a civil
22 compensation for dismissal diversion agreements with the District Attorney’s Office.” And that
23 “Based on the alleged facts in the relevant police report, Mr. Carrillo-Garcia’s case would almost
24 definitely not be an exception.” And that “It is highly likely the final disposition in Mr. Carrillo-
25 Garcia’s criminal case would be dismissal.”

26 The Misdemeanor charge pursuant to VC § 2001 (b)(1) does not render the Petitioner
27 subject to mandatory detention, as the code section refers to actual injury and not serious bodily
28 injury as set forth in INA §236(C) (1) (E), as amended by the Laken Riley Act.

1 On September 10, 2025, A Request for Custody Redetermination on behalf of the
2 Petitioner was scheduled for hearing with IJ Bryan Depowell at EOIR Adelanto, California. A
3 pre-hearing conference was conducted, during which the IJ indicated that he did not have
4 jurisdiction to determine the request pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216
5 (BIA 2025) which held, “based on the plain language of section 235 (b) (2)(A) of the INA, 8
6 U.S.C. §1225(b)(2)(A)(2018) Immigration Judges lack authority to hear bond requests or to
7 grant bond to aliens who are present in the United States without admission.” Accordingly, the
8 request was withdrawn without prejudice, and Petitioner’s individual hearing was subsequently
9 reset for December 24, 2025, at 1:00 p.m. The Petitioner was advised that the next step to seek
10 release on bond was by way of Habeas Corpus in Federal District Court.

11 Intervention from this Court is therefore required to ensure that the Petitioner’s continued
12 unlawful detention ends immediately and he is either released or provided with a bond
13 redetermination forthwith. Petitioner therefore seeks a Temporary Restraining Order enjoining
14 Respondents from continuing to detain him unless Petitioner is provided an individualized bond
15 hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the
16 TRO.

17 Petitioner also seeks an Order prohibiting Respondents from relocating Petitioner outside
18 of the Central District pending final resolution of this litigation.

19 **III. LEGAL STANDARD**

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

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

3 **IV. ARGUMENT**

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

5 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
6 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
7 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
8 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
9 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). The Petitioner has
10 already been re-arrested absent any material change in circumstances and prior to receiving a
11 hearing before a neutral adjudicator, and his re-incarceration will continue in violation of his due
12 process rights without intervention by this Court. Petitioner will continue to suffer irreparable
13 injury if his unlawful detention and separation from his U.S. citizen spouse and children continues
14 without due process.

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

18 Petitioner is likely to succeed on his claim that in his particular circumstances, the Due
19 Process Clause of the Constitution makes it unlawful for Respondents to have re-arrested him
20 without first providing a pre-deprivation hearing before a neutral decisionmaker to determine
21 whether circumstances had materially changed since his release on bond in August of 2014, such
22 that detention would now be warranted on the basis that he is a danger or a flight risk by clear
23 and convincing evidence.

24 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s
25 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
26 236.1(c)(9). Notwithstanding the breadth of the statutory language, granting ICE the power to
27 revoke an immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at
28 640, the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens. There,
the BIA held that “where a previous bond determination has been made by an immigration judge,

1 no change should be made by [the DHS] absent a change of circumstance.” *Id.* In practice, DHS
2 “requires a showing of changed circumstances both where the prior bond determination was made
3 by an immigration judge *and* where the previous release decision was made by a DHS officer.”
4 *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed that,
5 under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
6 circumstances. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent
7 changed circumstances ... ICE cannot redetain Panosyan.”).

8 ICE has further limited its authority as described in *Sugay*, and “generally only re-
9 arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances.” *Saravia*,
10 280 F. Supp. 3d at 1197, *aff’d sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs.’ Second
11 Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE
12 may re-arrest a noncitizen who had been previously released on bond only after a material change
13 in circumstances. *See Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

14 ICE’s power to re-arrest a noncitizen who is at liberty following a release on bond is also
15 constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
16 Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the
17 requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that ICE
18 should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect the
19 Petitioner’s weighty interest in his freedom from detention.

20 Federal district courts in California have repeatedly recognized that the demands of due
21 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in
22 DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
23 on bond, like the Petitioner, *before* ICE re-detains him. *See, e.g., Meza v. Bonnar*, 2018 WL
24 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019);
25 *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
26 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1,
27 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6,
28 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing

1 before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
2 *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's
3 ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No.
4 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the
5 Constitution requires a hearing before any re-arrest).

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

10 **2. Petitioner Has a Protected Liberty Interest in His Conditional Release.**

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

15 Since August 2014, the Petitioner exercised that freedom under the IJ's August 2014,
16 order granting him release on a \$8,000 bond. Duran Decl. at Ex. A (IJ Bond Order). Although he
17 was released on bond, (and thus under government custody) he retains a weighty liberty interest
18 under the Due Process Clause of the Fifth Amendment in avoiding re-incarceration. *See Young v.*
19 *Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973);
20 *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

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

1 valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S.
2 at 482.

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

18 In fact, it is well-established that an individual maintains a protectable liberty interest even
19 where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*,
20 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
21 considerations support the notion that an inmate released on parole by mistake, because he was
22 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
23 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
24 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
25 (internal quotation marks and citation omitted).

26 Here, when this Court “compar[es] the specific conditional release in the Petitioner’s
27 case, with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are
28 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s

1 release “enables him to do a wide range of things open to persons” who have never been in
2 custody or convicted of any crime, including to live at home, work, care for his children, including
3 his U.S. citizen son who suffers from Autism and for whom he is a key caretaker, and to “be with
4 family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408
5 U.S. at 482.

6 Petitioner has complied with all conditions of release for over eleven years as he
7 litigates his removal proceedings. He has meritorious applications for relief from removal,
8 including eligibility for adjustment of status via consular processing, a substantial Cancellation of
9 Removal for Non-Legal Permanent Residents, and the possibility, however remote of re-
10 instatement of his asylum claim which may have been improperly withdrawn, with an upcoming
11 hearing on December 24, 2025. (Duran Decl.)

12 **3. Petitioner’s Liberty Interest Mandated a Hearing Before any Re-Arrest and**
13 **Revocation of Bond, Denial of Which Requires Immediate Release.**

14 The Petitioner asserts that, here, (1) where his re-detention is civil, (2) where he has been
15 at liberty for over eleven years, during which time he has complied with all conditions of
16 release and served as husband, father and sole breadwinner for his U.S. citizen spouse and four
17 minor U.S. citizen children, (3) where he has substantial applications for relief from removal
18 including adjustment of status via consular processing of an approved Immediate relative
19 visa petition, eligibility for Cancellation of Removal for Non-Legal Permanent Residents, as
20 well the prospect of a renewed Asylum application previously pending before the Immigration
21 Court, and has an upcoming hearing on December 24, 2025, (4) where no change in
22 circumstances exist that would justify his detention, and (5) where the only circumstance that has
23 changed is ICE’s move to arrest as many people as possible because of policies of a new
24 administration, due process mandates that he receive notice and a hearing before a neutral
25 adjudicator *prior* to any re-arrest, revocation of bond, re-detention, and any denial of these
26 processes requires his immediate release.

27 “Adequate, or due, process depends upon the nature of the interest affected. The more
28 important the interest and the greater the effect of its impairment, the greater the procedural
safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d

1 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
2 “balance the Petitioner’s liberty interest against the [government’s] interest in the efficient
3 administration of” its immigration laws in order to determine what process he is owed to ensure
4 that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth
5 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
6 “first, the private interest that will be affected by the official action; second, the risk of an
7 erroneous deprivation of such interest through the procedures used, and the probative value, if
8 any, of additional or substitute procedural safeguards; and finally the government’s interest,
9 including the function involved and the fiscal and administrative burdens that the additional or
10 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
11 *Eldridge*, 424 U.S. 319, 335 (1976)).

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

21 Because, in this case, the provision of a pre-deprivation hearing was both possible and
22 valuable to preventing the erroneous deprivation of liberty, ICE was required to provide the
23 Petitioner with notice and a hearing prior to any re-incarceration and revocation of his bond. *See*
24 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*,
25 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
26 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment
27 proceedings may not constitutionally be held in jail pending the determination as to whether they
28 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor of the

Petitioner's liberty" and requires a pre-deprivation hearing before a neutral adjudicator.

4. The Petitioner's Private Interest in His Liberty is Profound.

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

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

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

5. The Government's Interest in Re-Incarcerating the Petitioner Without a Hearing was Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing is Minimal.

The government's interest in detaining the Petitioner without a due process hearing was low, and when weighed against the Petitioner's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from re-arresting and continuing Petitioner's detention without a hearing unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors the Petitioner when the Court considers that the process he seeks—notice and a hearing regarding whether his bond should be revoked and, if so, whether a new bond amount should be set—is a standard course of action for the government. Providing the Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that the Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like the Petitioner.

As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had any basis for detaining the Petitioner in May of 2025 when he has lived at liberty complying with the conditions of his release since August of 2014, while acting as the loving patriarch of his U.S. citizen family of six and critical care participant in the ongoing care of his youngest son, who suffers from a severe form of Autism.

The Petitioner was determined by an IJ not to be a danger to the community in August of 2014, and has done nothing to undermine that determination. *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a person's justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere

1 anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of*
2 *Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

3 As to flight risk, an IJ determined that a bond of \$8,000 was sufficient to guard against
4 any possible flight risk, to “assure [his] presence at the moment of removal.” *Zadvydas*, 533 U.S.
5 at 699. Furthermore, the Petitioner has meritorious applications for relief from removal and
6 eagerly awaits the opportunity to present his case before the Immigration Court. It is difficult to
7 see how the government’s interest in ensuring his presence at the moment of removal has
8 materially changed since he was released in August of 2014, when he has complied with all
9 conditions of release and he has met the responsibilities of a loving husband and father of four
10 for the past eleven plus years. The government’s interest in detaining the Petitioner in May of
11 2025 and continuing that detention now was and remains low. That ICE has a new policy to make
12 a minimum number of arrests each day under the new administration does not constitute a material
13 change in circumstances or increase the government’s interest in detaining him.¹

14 It is noted that the State of California has charged the Petitioner with one count of
15 misdemeanor hit and run, and that the Superior Court of California County of San Bernardino
16 released the Petitioner on his Own Recognizance pending final resolution of the case which will
17 likely be via civil compensation for dismissal/informal diversion. The fact that the Superior Court
18 of the State of California released the Petitioner OR is consistent with him not being a danger to
19 the community nor a flight risk and that the federal government’s interest in ensuring his presence
20 at the moment of removal remains protected.

21 Moreover, the “fiscal and administrative burdens” that a pre-deprivation bond hearing
22 would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. The Petitioner does
23 not seek a unique or expensive form of process, but rather a routine hearing regarding whether

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25 ¹ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025), available
26 at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; “Stephen Miller’s
27 Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9, 2025),
28 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
and-protests/ (“At the end of May 2025, ‘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 the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”).

1 his bond should have been revoked and whether his re-incarceration should continue.

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

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

18 **6. Petitioner’s Re-Arrest Prior to a Hearing where ICE Carries**
19 **the Burden is a Violation of Due Process.**

20 The failure to provide the Petitioner with a pre-deprivation hearing resulted in the
21 erroneous deprivation of his liberty. Before the Petitioner could have been lawfully detained, he
22 must have been provided with a hearing before a neutral adjudicator at which the government is
23 held to show that there have been sufficiently changed circumstances such that the IJ’s August
24 2014 bond determination should be altered or revoked because clear and convincing evidence
25 exists to establish that the Petitioner is a danger to the community or a flight risk.

26 Under ICE’s process for custody determination—which affords Petitioner no process
27 whatsoever—ICE can simply re-detain him at any point if the agency desires to do so. The risk
28 that the Petitioner will be erroneously deprived of his liberty is high if ICE is permitted to re-

1 incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. §
2 236.1(c)(9), the Petitioner's re-arrest automatically revoked his bond. Thus, the regulations permit
3 ICE to unilaterally nullify a bond order without oversight of any kind. After re-arrest, ICE makes
4 its own, one-sided custody determination and can decide whether the agency wants to hold the
5 Petitioner without a bond, or grant him a new bond. 8 C.F.R. § 236.1(c)(9). ICE's new custody
6 determination would have been subject to review by the IJ. 8 U.S.C. § 1226(a). However as noted
7 above, the IJ claimed he lacked jurisdiction to make such bond re-determinations based upon
8 *Yajure Hurtado*. Moreover, as a result of ICE's conduct, the actual *revocation* of Petitioner's bond
9 evades any review by the IJ or any other neutral arbiter. Under the current procedures, by the time
10 the Petitioner ends up in front of an IJ seeking redetermination of his custody status, the IJ would
11 only be considering whether Petitioner has carried the burden to show that a new bond must be
12 granted. The IJ will not be considering whether ICE's re-arrest was, in fact, lawful, because the
13 bond has been revoked and the Petitioner has already have been deprived of his liberty interest.
14 *See 8 C.F.R. § 236.1(c)(9)*.

15 The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under
16 *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody
17 determinations. *Diouf v. Napolitano* ("*Diouf II*"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

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

25 As the above-cited authorities show, Petitioner is likely to succeed on his claim
26 that the Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to*
27 *any* re-incarceration by ICE. And, at the very minimum, he clearly raises serious questions
28

1 regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at
2 1135.

3 **7. Petitioner will Suffer Irreparable Harm Absent**
4 **Injunctive Relief.**

5 The Petitioner has been deprived of his liberty and will continue to suffer irreparable
6 harm as he is subjected to unlawful incarceration by immigration authorities without being
7 provided the constitutionally adequate process that this motion for a temporary restraining order
8 seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d
9 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail
10 awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts
11 family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord*
12 *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover,
13 the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone
14 subject to immigration detention” including “subpar medical and psychiatric care in ICE
15 detention facilities, the economic burdens imposed on detainees and their families as a result of
16 detention, and the collateral harms to children of detainees whose parents are detained”
17 *Hernandez*, 872 F.3d at 995. Finally, the government itself has documented alarmingly poor
18 conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG),
19 Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023
20 (2024) (reporting violations of environmental health and safety standards; staffing shortages
21 affecting the level of care detainees received for suicide watch, and detainees being held in
22 administrative segregation in unauthorized restraints, without being allowed time outside their
23 cell, and with no documentation that they were provided health care or three meals a day).⁷
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28 The Petitioner had been out of ICE custody for over eleven years. During that time, he

1 has worked hard to establish a stable life for himself and his U.S. citizen wife and children. The
2 Petitioner works on a loading dock to provide for his family. He also performs in a critical care
3 role for his U.S. citizen child, who suffers from a severe form of Autism. If his incarceration
4 continues, he would likely lose his job, as he could not work from detention. Detention would
5 irreparably harm not only the Petitioner, but also his U.S. citizen wife and four U.S. citizen
6 children, who rely on him for financial support, full-time care, and emotional and psychological
7 support.
8

9 Thus, a temporary restraining order is necessary to prevent the Petitioner from suffering
10 irreparable harm from his continued unlawful and unjust detention.
11

12 **8. The Balance of Equities and the Public Interest Favor Granting the**
13 **Temporary Restraining Order.**

14 The balance of equities and the public interest favor granting this temporary restraining
15 Order.

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

23 Further, any burden imposed by requiring the DHS to release the Petitioner
24 unless and until he is provided a hearing before a neutral decisionmaker is both *de minimis* and
25 clearly outweighed by the substantial harm he will suffer as if he is detained. *See*
26 *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of
27 affording fair procedures to all persons, even though the expenditure of governmental funds is
28

1 required.”).

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

2 For all the above reasons, this Court should find that the Petitioner warrants a temporary
3 restraining order and a preliminary injunction ordering Respondents to release him from
4 unlawful detention unless he is afforded a hearing before an immigration judge pursuant to 8
5 U.S.C. § 1226(a) on whether a change in bond amount or revocation of his bond is justified by
6 clear and convincing evidence that he is a danger to the community or a flight risk within seven
7 days of the TRO.
8

9
10 Dated: November 4, 2025

Respectfully submitted,

11 /s/ Christopher Duran
12 Christopher Duran
13 Matthew Toyama
14 Attorneys for Petitioner
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