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9 *Application for PHV forthcoming

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11 Sanjiv KAKKAR

12 UNITED STATES DISTRICT COURT
13
14 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 Sanjiv KAKKAR,

16 Petitioner-Plaintiff,

17 v.

18 Christopher CHESTNUT, Facility Warden at
19 California City Detention Facility, California
20 City, California;

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

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

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

U.S. Customs and Border Protection;

Respondents-Defendants.

Case No. 25-1625

**EX PARTE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

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

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local rules of this Court, Petitioner hereby moves this Court for an order that Respondents Department of Homeland Security (“DHS”), United States Immigration and Customs Enforcement (“ICE”), Pam Bondi, in her official capacity as the U.S. Attorney General, U.S. Customs and Border Protection (CBP), and Christopher Chestnut, in his official capacity as Facility Administrator at California City Detention Facility, be enjoined from continuing to detain Petitioner-Plaintiff Sanjiv Kakkar (“Mr. Kakkar”) in custody, and, following his release, be enjoined from re-detaining him without first providing him with a hearing before a neutral adjudicator (e.g., an Immigration Judge) prior to any future re-detention, as required by the Due Process clause of the Fifth Amendment.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the concurrently-filed Declaration of Zachary Nightingale with Accompanying Exhibits in Support of 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 Mr. Kakkar raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful re-detention, where that detention was arbitrarily imposed absent a pre-deprivation due process hearing.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order requiring ICE to immediately release him from custody (to enjoin the unlawful ongoing detention), and enjoining Respondents from re-detaining him before providing him a hearing before a neutral adjudicator prior to any re-detention. The only mechanism to ensure that he is not continuously unlawfully detained in violation of his due process rights is an ex parte temporary restraining order from this Court.

Dated: November 24, 2025

Respectfully Submitted

/s/Zachary Nightingale

Attorney for Petitioner-Plaintiff

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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff Mr. Sanjiv Kakkar, by and through undersigned counsel, hereby files
3 this motion for a temporary restraining order and preliminary injunction to enjoin the U.S.
4 Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE")
5 from his ongoing immigration detention in its custody and immediately release him. Mr. Kakkar
6 also seeks an order enjoining Respondents from re-detaining him unless and until he is afforded
7 notice and a hearing before a neutral adjudicator prior to any future re-detention where DHS
8 bears the burden of demonstrating that circumstances have changed such that his re-detention
9 would be justified—that is, whether he poses a danger or a flight risk, and where the neutral
10 adjudicator must further consider whether, in lieu of detention, alternatives to detention exist to
11 mitigate any risk that DHS may establish.

12 Mr. Kakkar is a 64-year-old lawful permanent resident of the United States who has
13 resided in this country as a permanent resident since 1992. He has a U.S. citizen wife of many
14 years, and together they have raised four citizen children in the United States.

15 Mr. Kakkar sustained convictions in 2017 for conduct dating back to 2008, and he served
16 his 48-month sentence in prison and complied with all other requirements imposed by the court,
17 including by paying restitution in full. While he was incarcerated, ICE interviewed Mr. Kakkar,
18 who readily cooperated with ICE and informed them of his immigration status and his
19 convictions. In 2018, DHS issued him a Notice to Appear ("NTA") and placed him in removal
20 proceedings before the Immigration Court under the Institutional Hearing Program—which
21 allows noncitizens to undergo removal proceedings while serving time in certain correctional
22 facilities. Mr. Kakkar began attending his removal proceedings while incarcerated.

23 In April 2021, Mr. Kakkar was released from incarceration. **He was not detained by**
24 **ICE at this time, and in fact he has never before been detained by ICE—until now.** Instead,
25 his removal proceedings were transferred to the San Francisco Immigration Court (which has
26 jurisdiction over his place of residence), and he has continued to attend his removal proceedings
27 in a non-detained setting. Prior to his detention, he had a scheduled merits hearing before the San
28 Francisco Immigration Court.

On August 20, 2025, upon returning to the United States from a trip abroad to visit his elderly and ill mother-in-law, U.S. Customs and Border Protection (“CBP”) detained Mr. Kakkar at the San Francisco International Airport without notice or the opportunity for a due process hearing. Mr. Kakkar was kept at the airport for approximately one week. On August 21, 2025, counsel for Mr. Kakkar made a request to CBP to release him from custody on his own recognizance, or on the payment of a bond. However, CBP never responded to this request. On August 26, 2025, CBP transferred Mr. Kakkar to ICE custody. Mr. Kakkar has been detained at California City Detention Facility, in California City, California even since.

As a lawful permanent resident, Mr. Kakkar had the right to take a brief trip abroad to visit family, and then to reenter the United States. This is true regardless of the fact that he is in removal proceedings because he does not have a final removal order. It appears, however, that CBP made a determination as to his admissibility at the airport—though they did not inform Mr. Kakkar or counsel of record of this determination.

Petitioner and counsel believed Petitioner could seek release from unlawful detention through other means—that is, via a request for release, and/or litigating his application for relief before the detained docket of the immigration court. However, neither of these options has proved viable. For example, Mr. Kakkar was scheduled for a hearing before the detained immigration court on September 25, 2025. However, that hearing did not go forward because (1) staff at the detention facility did not bring Mr. Kakkar to the hearing and (2) the immigration court mistakenly assigned an immigration judge who does not preside over cases at the California City Detention Center. Mr. Kakkar was then scheduled for a hearing on November 12, 2025. At that hearing, the immigration judge informed Mr. Kakkar and counsel that court staff would reach out to schedule the merits hearing, which would occur in 2026, based on the judge’s docket.

To be clear, ICE has known about Mr. Kakkar’s conviction since approximately 2018, and specifically interviewed him while incarcerated, and issued him an NTA to place him in removal proceedings. ICE then declined to detain him when he was released from federal prison in 2021. This means that, at this time, the agency *necessarily* found that he did not constitute a

1 danger or a flight risk under 8 U.S.C. § 1236(a) (the statute authorizing conditional parole of
2 noncitizens); *see also* 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest
3 may, in the officer's discretion, release an alien...provided that the alien must demonstrate to the
4 satisfaction of the officer that such release would not pose a danger to property or persons, and
5 that the alien is likely to appear for any future proceeding.”).

6 Since his release from incarceration over four years ago, Mr. Kakkar was living at liberty
7 until he was suddenly and unlawfully detained on August 20, 2025 without notice or an
8 opportunity to be heard. Also during the last four years, nothing has changed regarding his flight
9 risk or dangerousness: he has attended all immigration court hearings as required, and he has no
10 further criminal history. His brief travel to the United Kingdom to visit his wife's ill mother was
11 lawful, as his immigration status remains that of lawful permanent resident and as such he has
12 the right to travel and return to the United States, which has no bearing on either flight risk or
13 dangerousness.

14 Further, at no time did DHS allege that his travel to the United Kingdom was not lawful
15 or not permitted. At no time did DHS allege any criminal activity or violation that indicated a
16 failure to follow any legal requirements, or any change that relates to his removal case.

17 By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
18 has the authority to revoke a non-citizen's conditional parole and arrest them, but only where
19 there has been a change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8
20 C.F.R. § 236.1(c)(9); *see Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) (“Thus,
21 absent changed circumstances . . . ICE cannot redetain Panosyan.”); *Matter of Sugay*, 17 I&N
22 Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any change in
23 circumstances must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
24 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis
25 added). That authority, however, is proscribed by the Due Process Clause because it is well-
26 established that individuals released from incarceration have a liberty interest in their freedom. In
27 turn, to protect that interest, on the particular facts of Mr. Kakkar's case, due process required
28 notice and a hearing, *prior to any revocation of his release*, at which he was afforded the

1 opportunity to advance his arguments as to why he should not be detained. **That basic**
2 **principle—that individuals placed at liberty are entitled to process before the government**
3 **imprisons them—has particular force here, where Mr. Kakkar’s detention was *already***
4 **found to be unnecessary to serve its purpose.**

5 Under these circumstances, DHS was required to afford Mr. Kakkar the opportunity to
6 advance arguments in favor of his freedom before it robbed him of his liberty. He must therefore
7 be released from custody unless and until DHS proves to a neutral decisionmaker by clear and
8 convincing evidence that he is a flight risk or a danger to the community. During any custody
9 redetermination hearing that occurs, the neutral adjudicator must further consider whether, in lieu
10 of incarceration, alternatives to detention exist to mitigate any risk that DHS may establish.

11 Mr. Kakkar meets the standard for a temporary restraining order. He will continue to
12 suffer immediate and irreparable harm stemming from his unlawful detention absent an order
13 from this Court enjoining the government from further unlawful detention by ordering his release
14 from detention, and enjoining future re-detention unless and until he receives a hearing before a
15 neutral adjudicator. Since holding federal agencies accountable to constitutional demands is in
16 the public interest, the balance of equities and public interest are also strongly in Mr. Kakkar’s
17 favor.

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

19 Mr. Kakkar was born in India and has lived in the United States as a lawful permanent
20 resident since 1992. Since obtaining lawful permanent residence, Mr. Kakkar married his wife,
21 who is a U.S. citizen. Together, they raised four U.S. citizen children in the United States who
22 are each successful and productive members of their community. Mr. Kakkar is a highly
23 educated individual who committed a mistake but has worked diligently to rehabilitate,
24 contribute to his community, and provide for his family.

25 In 2017, Mr. Kakkar sustained convictions for conduct dating back to 2008. He was
26 sentenced to 48 months in federal prison.¹

27
28

¹ Mr. Kakkar was convicted of 18 U.S.C. §§ 1343, 1014, and 2.

1 While incarcerated, ICE encountered Mr. Kakkar at Taft Correctional Facility. ICE
2 interviewed Mr. Kakkar, who readily cooperated with ICE and informed them of his immigration
3 status and his convictions. In 2018, DHS issued him an NTA and placed him in removal
4 proceedings before the Immigration Court under the Institutional Hearing Program—which
5 allows noncitizens to undergo removal proceedings while serving time in certain correctional
6 facilities. *Declaration of Zachary Nightingale* (“ZN Decl.”) at Exhibit (“Exh.”) A (Copy of
7 Notice to Appear). Mr. Kakkar began attending his removal proceedings while incarcerated.

8 In April 2021, Mr. Kakkar was released from incarceration. He was *not* detained by ICE
9 at this time. Instead, his removal proceedings were transferred to the San Francisco Immigration
10 Court (which has jurisdiction over his place of residence), and he has continued to attend his
11 removal proceedings in a non-detained setting. Prior to his current detention, he had a scheduled
12 merits hearing before the San Francisco Immigration Court.

13 Mr. Kakkar completed his sentence, and paid all restitution in connection with his
14 convictions. For the past four years, Mr. Kakkar has been living at liberty, during which time he
15 has worked on rebuilding his life, including by reconnecting with his U.S. citizen wife and their
16 four citizen children. Mr. Kakkar has no further criminal history.

17 On August 20, 2025, after returning to the United States from a brief trip abroad to visit
18 his elderly and ill mother-in-law, CBP detained Mr. Kakkar at the San Francisco International
19 Airport without notice or the opportunity for a due process hearing. Mr. Kakkar was kept at the
20 airport for approximately one week. On August 21, 2025, counsel for Mr. Kakkar made a request
21 to CBP to release him from custody on his own recognizance, or on the payment of a bond.
22 However, CBP never responded to this request.

23 On August 26, CBP transferred Mr. Kakkar to ICE custody. Mr. Kakkar is now currently
24 detained at California City Detention Facility, in California City, California. Neither CBP nor
25 ICE provided any due process to Mr. Kakkar regarding his detention status. At no time did DHS
26 allege that his travel to the United Kingdom was not lawful or not permitted. At no time did DHS
27 allege any criminal activity or violation that indicated a failure to follow any legal requirements,
28 or any change that relates to his removal case.

Mr. Kakkar was scheduled for a hearing before the detained immigration court on September 25, 2025. However, that hearing did not go forward because (1) staff at the detention facility did not bring Mr. Kakkar to the hearing and (2) the immigration court mistakenly assigned an immigration judge who does not preside over cases at the California City Detention Center. Mr. Kakkar was then scheduled for a hearing on November 12, 2025. At that hearing, the immigration judge informed Mr. Kakkar and counsel that court staff would reach out to schedule the merits hearing, which would occur in 2026, based on the judge's docket.

In addition to being unlawfully detained, Mr. Kakkar's detention is highly problematic given the conditions at California City Detention Facility. Mr. Kakkar is 64 years old, and detention conditions at California City have been described as inhumane, with staff failing "to provide access to critical medical and mental health care" and otherwise failing "to meet people's basic needs, including adequate food, water, and clothing."² **On September 13, 2025, only weeks after the detention facility started to receive immigration detainees, a detainee died after staff did not properly respond to his medical emergency.** *ZN Decl.* at Exh. B (Declaration of Lydia Sinkus). In addition, detainees "report interruptions to sleep during the night . . . and very poor treatment by staff at the facility who lack experience and training. One client reported a conversation with facility staff, where the guard told him he had been hired to paint and clean the facility and then was made a guard when detainees were transferred there." *Id.* Detainees also report "aggressive and overbearing treatment by the guards, different from what [was] experienced at [Golden State Annex]." *Id.*

III. LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D.*

² "Newly Opened California City ICE Detention Facility: Dangerous for Disabled People," Disability Rights California (Nov. 3, 2025), available at: <https://www.disabilityrightscalifornia.org/reports/california-city-ice-processing-center-a-dangerous-expansion-of-immigration-detention-in>.

1 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
2 temporary restraining order standards are “substantially identical”). Even if Petitioner does not
3 show a likelihood of success on the merits, the Court may still grant a temporary restraining
4 order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips
5 “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild*
6 *Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner
7 overwhelmingly satisfies both standards.

8 **IV. ARGUMENT**

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

10 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
11 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
12 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
13 preliminary injunction hearing is held. See *Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
14 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974).

15 The Court should enjoin further detention because Mr. Kakkar is likely to succeed on the
16 merits of his claims.

17 **1. Petitioner is Likely to Succeed on the Merits of His Claim That in**
18 **This Case Due Process Requires That He Should Have Been**
19 **Afforded a Hearing Before a Neutral Adjudicator Prior to Any**
20 **Detention by ICE, and he is Entitled to Such a Hearing Prior to**
21 **Any Future Re-Detention.**

22 Mr. Kakkar is likely to succeed on his claim that, in his particular circumstances,
23 fundamental principles of due process required that his release could not be revoked, and
24 therefore he could not be detained by ICE, without first being provided a pre-deprivation hearing
25 before a neutral adjudicator where the government shows that circumstances have changed such
26 that Mr. Kakkar is now a danger or a flight risk.

27 Civil detention in United States law is the exception, not the rule, and even where
28 permitted by law or regulation, must comport with fundamental constitutional limitations. By
statute and regulation, ICE has the ability to unilaterally revoke any noncitizen’s conditional
parole and arrest the noncitizen at any time. 8 U.S.C. § 1225(b) 8 C.F.R. § 236.1(c)(9).

1 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
2 immigration bond “at any time,” 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. at 640, the
3 BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens absent a change
4 of circumstance. *Id.* The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no
5 authority to re-detain an individual absent changed circumstances. *Panosyan*, 854 F. App’x at
6 788 (“Thus, absent changed circumstances ... ICE cannot redetain Panosyan.”). Any change in
7 circumstances must be “material.” *Saravia*, 280 F. Supp. 3d at 1197, *aff’d sub nom. Saravia for*
8 *A.H.*, 905 F.3d 1137 (emphasis added).

9 The Government’s authority to make the unilateral decision to arrest a noncitizen
10 previously released is proscribed by the Due Process Clause because “it is well established that
11 the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” *Reno v.*
12 *Flores*, 507 U.S. 292, 306 (1993). It is equally undisputed that “[f]reedom from imprisonment—
13 from government custody, detention, or other forms of physical restraint—lies at the heart of the
14 liberty that [the Fifth Amendment’s Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S.
15 678, 690 (2001). Noncitizens on pre-parole, parole, or probation status have a protected liberty
16 interest in remaining out of custody. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR
17 (CDB), 2025 WL 2337099, at *13 (D. Ariz. Aug. 11, 2025) (internal citations omitted).

18 To protect that interest, federal district courts in California and beyond have repeatedly
19 recognized that the demands of due process and the limitations on DHS’s authority to revoke a
20 noncitizen’s release set out in DHS’s stated practice and *Matter of Sugay* both require a pre-
21 deprivation hearing for a noncitizen on bond or parole, *before* ICE re-detains him. *See, e.g.,*
22 *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d
23 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D.
24 Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2
25 (N.D. Cal. Mar. 1, 2021); *see also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL
26 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-
27 arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F.
28 Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312,

1 at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL
2 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL
3 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-
4 detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No.
5 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction
6 warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more
7 than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

8 This extends to situations where, as here, the noncitizen is de facto conditionally paroled
9 based on ICE's decision *not* to detain them when released from incarceration during removal
10 proceedings. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099,
11 at *6 (D. Ariz. Aug. 11, 2025) (continued non-detention after the issuance of an NTA can only
12 be construed a "'discretionary' release [which] 'must be construed as conditional parole, or
13 release on recognizance.'"). *Id.*

14 Here, DHS came across Mr. Kakkar while he was in federal prison, and initiated removal
15 proceeding against him. When Mr. Kakkar was released from incarceration, the agency made the
16 decision not to arrest him. This means that, at this time, the agency *necessarily* found that he did
17 not constitute a danger or a flight risk under 8 U.S.C. § 1236(a) (the statute authorizing
18 conditional parole of noncitizens); *see also* 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to
19 issue a warrant of arrest may, in the officer's discretion, release an alien...provided that the alien
20 must demonstrate to the satisfaction of the officer that such release would not pose a danger to
21 property or persons, and that the alien is likely to appear for any future proceeding.").

22 This discretionary decision not to detain Mr. Kakkar after his release from incarceration,
23 and instead to allow him to remain non-detained for four years following his release from prison
24 in April 2021, must be construed as release on recognizance or conditional parole. Therefore, the
25 government violated his Due Process Clause of the Constitution when it decided to arbitrarily
26 revoke his release and arrest him in August 2025 without first providing him with a pre-
27 deprivation hearing before a neutral adjudicator to determine whether circumstances had
28 materially changed since April 2021.

1 In sum, it is well-established that individuals released from incarceration have a liberty
 2 interest in their freedom. *See e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.
 3 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully
 4 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
 5 incarcerated”). In turn, to protect that interest, on the particular facts of Mr. Kakkar’s case, due
 6 process required notice and a hearing, *prior* to his detention.

7 Courts analyze these procedural due process claims in two steps: (1) whether there exists
 8 a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that
 9 protected liberty interest accords with the Constitution. *See Kentucky Dep’t of Corrections v.*
 10 *Thompson*, 490 U.S. 454, 460 (1989).

11 **a. Petitioner Has a Protected Liberty Interest in His**
 12 **Release**

13 Mr. Kakkar’s liberty from immigration custody, a form of civil detention, is protected by
 14 the Due Process Clause: “Freedom from imprisonment—from government custody, detention, or
 15 other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
 16 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

17 For over four years preceding his detention on August 20, 2025, Mr. Kakkar exercised
 18 that freedom when ICE decided not to arrest him following his release from federal prison. He
 19 thus retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in
 20 avoiding detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411
 21 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

22 Individuals—including noncitizens—released from incarceration have a liberty interest in
 23 their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on
 24 OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that “[i]t is well-established that
 25 the due process clause applies to protect immigrants”). This is further reinforced by *Morrissey*, in
 26 which the Supreme Court recognized the protected liberty rights under the Due Process Clause of
 27 a *criminal* detainee who was released on parole from incarceration. 408 U.S. at 481-82. The
 28 Court noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed
 and is free to be with family and friends and to form the other enduring attachments of normal

1 life”—thus, those released on parole have a protected liberty interest, even where that liberty is
2 subject to conditions. *Id.* at 482. *See also Young v. Harper*, 520 U.S. at 152 (holding that
3 individuals placed in a pre-parole program created to reduce prison overcrowding have a
4 protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at
5 781-82 (holding that individuals released on felony probation have a protected liberty interest
6 requiring pre-deprivation process).

7 In fact, so fundamental to due process is the concept of liberty that it is even well-
8 established that an individual maintains a protectable liberty interest where the individual obtains
9 liberty through a *mistake* of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887
10 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process
11 considerations support the notion that an inmate released on parole by mistake, because he was
12 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because
13 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would
14 be inconsistent with fundamental principles of liberty and justice” to return him to prison)
15 (internal quotation marks and citation omitted).

16 Here, when this Court “‘compar[es] the specific conditional release in [Petitioner’s case],
17 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are
18 strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Mr. Kakkar’s
19 release “enables him to do a wide range of things open to persons” who have never been in
20 custody or convicted of any crime, including to live at home, work with his community, and “be
21 with family and friends and to form the other enduring attachments of normal life.” *Morrissey*,
22 408 U.S. at 482. **Moreover, Mr. Kakkar is not a criminal detainee, but a civil detainee, and**
23 **thus the due process considerations of his liberty should be even weightier than the courts**
24 **have already found apply in the criminal context.**

25 Since his release from incarceration in 2021, Mr. Kakkar has been focused on spending
26 time with his family, contributing to his community, and has paid in full the restitution that the
27 sentencing court ordered him to pay. Mr. Kakkar is a very educated and accomplished
28 businessman, and during his release, he has continued to work hard support himself and his

1 family, while devoting his time and efforts to rehabilitate and give back to his community in the
2 United States. Moreover, at the time of his arrest, Mr. Kakkar was assisting in providing care to
3 elderly his mother-in-law. His freedom from immigration detention is “valuable and must be
4 seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482. Precedent
5 from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in
6 his continued release from detention.

7 Moreover, Mr. Kakkar’s due process rights continue to provide him a liberty interest after
8 his brief travel outside of the United States, just as they did before such travel, as nothing about
9 his fundamental rights changed simply due to that travel.

10 Pursuant to 8 U.S.C. § 1225, a noncitizen “who arrives in the United States or is present
11 in this country but has not been admitted, is treated as an applicant for admission.” *Jennings v.*
12 *Rodriguez*, 583 U.S. 281, 287 (2018); 8 U.S.C. § 1225(a)(1). Any applicant for admission “must
13 ‘be inspected by immigration officers’ to ensure that they may be admitted into the country
14 consistent with U.S. immigration law.” *Id.* at 287 (quoting 8 U.S.C. § 1225(a)(3)). Generally
15 speaking, applicants for admission “fall into one of two categories, those covered by §
16 1225(b)(1) and those covered by § 1225(b)(2).” *Id.* at 837. Noncitizens “arriving in the United
17 States” and “initially determined to be inadmissible due to fraud, misrepresentation, or lack of
18 valid documentation” fall under the provisions at 8 U.S.C. § 1225(b)(1). *Id.*; 8 U.S.C. §
19 1225(b)(1)(A)(i). Such individuals (which does not include Mr. Kakkar here) are ordered
20 removed “without further hearing or review” unless they “indicate[] either an intention to apply
21 for asylum . . . or a fear of persecution[,]” in which case they are referred for further proceedings
22 regarding their claim to asylum. 8 U.S.C. § 1225(b)(1)(A)(i); 8 C.F.R. § 235; 8 C.F.R. § 208.30;
23 *see also Jennings*, 583 U.S. at 287. All applicants for admission “not covered by § 1225(b)(1)[,]”
24 fall under the “broader . . . catchall provisions” at 8 U.S.C. § 1225(b)(2). *Jennings*, 583 U.S. at
25 287. If an “examining immigration officer” determines an individual under § 1225(b)(2)(A) “is
26 not clearly and beyond a doubt entitled to be admitted” to the United States, they are referred for
27 full removal proceedings before an immigration judge. 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. §
28 235.6(a)(i); *see also* 8 U.S.C. § 1229a; *Jennings*, 583 U.S. at 287.

1 Regardless of whether § 1225(b)(1) or § 1225(b)(2) applies, the statutory text
2 “mandate[s] detention of aliens throughout the completion of applicable proceedings[.]”
3 *Jennings*, 583 U.S. at 301; 8 U.S.C. § 1225(b)(1)(B)(ii); § 1225(b)(2)(A) (stating that, upon
4 determination that an individual “is not clearly and beyond a doubt entitled to be admitted, the
5 alien *shall be detained* for a proceeding under [8 U.S.C. §] 1229a”). Release in the form of
6 parole is only allowed “for urgent humanitarian reasons or significant public health benefit,” 8
7 U.S.C. § 1182(d)(5)(A), and parole determinations fall exclusively within DHS’s exercise of
8 discretion. *Id.*; 8 C.F.R. § 235.3(b)(2)(iii), § 235.3(c); *see also id.* at § 212.5(b); *Jennings*, 583
9 U.S. at 287. As such, immigration judges are fully divested of jurisdiction to grant bond to
10 detainees held under § 1225(b) or to review DHS’s decision to deny or terminate parole.

11 However, neither § 1225(b)(1) or § 1225(b)(2) apply to Mr. Kakkar, who is a longtime
12 lawful permanent resident. Even if this statute did apply, Mr. Kakkar has now been detained
13 since August 20, 2025—over three months. Seeking release on humanitarian parole from ICE is
14 an inadequate remedy and functionally unavailable, and Mr. Kakkar has no procedural
15 protections outside of this Court. *See Matter of M-S-*, 27 I&N Dec. 509, 515-17 (A.G. 2019). The
16 only available remedy for Mr. Kakkar’s unconstitutional detention is through this writ of habeas
17 corpus.

18 As a lawful permanent resident of 33 years, Mr. Kakkar has long and deep ties to the
19 United States, and concomitant due process rights that he did not and cannot lose due to his brief
20 trip outside of the United States. *See Pablo Sequen v. Albarran*, --- F.Supp.3d ----, 2025 WL
21 2935630 (N.D.Cal. Oct. 15, 2025) (“Although merely ‘set[ting] foot on U.S. soil’ may not be
22 sufficient to ‘effect[] an entry’ and trigger due-process protections for admissions decisions if a
23 noncitizen is detained shortly thereafter,” *Dep’t of Homeland Security v. Thuraissigiam*, 591
24 U.S. 103, 104 (2020) “if a noncitizen ‘gain[s a] foothold in the United States,’” *Kaplan v. Tod*,
25 267 U.S. 228, 230 (1925), “or ‘begins to develop ... ties’ in this country, ‘h[er] constitutional
26 status changes accordingly,’ and she ‘has a right to due process.’” *Landon v. Plasencia*, 459 U.S.
27 21, 32–33 (1982)). That is: noncitizens “who have established connections in this country have
28 due process rights.” *Thuraissigiam*, 591 U.S. at 107 (2020).

1 As a longtime lawful permanent resident of the United States, Mr. Kakkar has the same
2 due process rights now that he did before he departed the United States for a brief trip abroad. To
3 be clear, his trip was lawful, as he is still a lawful permanent resident even while in removal
4 proceedings, until such time as there is a final order of removal against him. No such order
5 exists. The trip was a valid purpose, to visit his wife's mother, and it was brief. Immigration law
6 has long held that such trips that are brief, casual and innocent do not alter the immigration rights
7 of a lawful permanent resident, and even if the statutory scheme differs, the trip certainly should
8 not alter a permanent resident's constitutional rights constitutional rights. *Rosenberg v. Fleuti*,
9 374 U.S. 449, 462 (1963) (“[A]n innocent, casual, and brief excursion by a resident alien outside
10 this country's borders may not have been ‘intended’ as a departure disruptive of his resident alien
11 status and therefore may not subject him to the consequences of an ‘entry’ into the country on his
12 return.”). These constitutional rights should, and indeed must, trump any statutory or regulatory
13 scheme that otherwise might strip him of these rights entirely—such as 8 U.S.C. § 1225(b).
14 Thus, the particular position that DHS found him in—at a port of entry returning as a lawful
15 permanent resident from a brief trip abroad—does not change or lessen any of his inherent
16 constitutional due process rights. This is because, in Mr. Kakkar's particular circumstances, his
17 due process rights do not depend on where he is encountered or whether he is inside or outside of
18 the United States. If his liberty could not be arbitrarily restricted without notice and an
19 opportunity to be heard on the day before his brief and lawful trip abroad—which indeed it could
20 not—,it remains true that it cannot be arbitrarily restricted upon his return.

21 **b. Petitioner's Liberty Interest Mandated a Due Process**
22 **Hearing Before any Detention, and Once Released,**
23 **Mandates Such a Hearing Prior to Any Re-Detention**

24 Mr. Kakkar asserts that, here, (1) where his detention is civil, (2) where he has diligently
25 complied with attending his hearings at immigration court, (3) where ICE cannot point to any
26 changed circumstances warranting arrest, and (4) where ICE has been aware, since 2018, that he
27 had a criminal conviction yet they determined not to arrest him, due process mandates that he
28 was required to receive notice and a hearing before a neutral adjudicator *prior* to any arrest or

1 revocation of release.

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

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

25 Because, in this case, the provision of a pre-deprivation hearing is both possible and valuable
26 to preventing an erroneous deprivation of liberty, ICE is required to provide Mr. Kakkar with
27 notice and a hearing *prior* to any re-detention and revocation of his release. *See Morrissey*, 408
28 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.

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

i. Petitioner’s 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 Mr. Kakkar, 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. “This most basic American principle—that individuals placed at liberty are entitled to process before the government reimprisons them—has particular meaning,” especially where the government has already found Mr. Kakkar’s detention to be unnecessary. *See Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025) (holding that a noncitizen released from custody after being placed in removal proceedings, and was released and continued to be non-detained after their Notice to Appear hearing, constituted a de facto conditional parole or release on recognizance pursuant to 8 U.S.C. § 1226). Thus, Mr. Kakkar retains a truly weighty liberty interest even though he was under conditional release prior to his arrest.

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

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

13 **ii. The Government’s Interest in Keeping Petitioner in**
 14 **Detention is Low and the Burden on the Government to**
Release Him from Custody is Minimal

15 The government’s interest in keeping Mr. Kakkar in detention without a due process
 16 hearing is low, and when weighed against his significant private interest in his liberty, the scale
 17 tips sharply in favor of releasing him from custody unless and until the government demonstrates
 18 by clear and convincing evidence that he is a flight risk or danger to the community. It becomes
 19 abundantly clear that the *Mathews* test favors Mr. Kakkar when the Court considers that the
 20 process Mr. Kakkar seeks—release from custody pending notice and a hearing regarding
 21 whether his release should be revoked and he should be arrested—is a standard course of action
 22 for the government. In the alternative, providing Mr. Kakkar with a hearing before a neutral
 23 decisionmaker to determine whether there is clear and convincing evidence that he is a flight risk
 24 or danger to the community would impose only a *de minimis* burden on the government, because
 25 the government routinely provides this sort of hearing to detained individuals like Mr. Kakkar.

26 As immigration detention is civil, it can have no punitive purpose. The government’s
 27 only interests in holding an individual in immigration detention can be to prevent danger to the
 28 community or to effectuate removal *See Zadvydas*, 533 U.S. at 690. In this case, the government

1 cannot plausibly assert that it had a sudden interest in detaining Mr. Kakkar due to alleged
2 dangerousness or flight risk, as there is no evidence that his circumstances have changed since
3 his release from incarceration in 2021, when ICE made the decision not to detain him. The
4 government had no lawful basis to detain Mr. Kakkar on August 20, 2025, and has no lawful
5 basis to keep him detained now. Again, the government cannot plausibly assert that it had a
6 sudden interest in detaining him in August 2025 where there are no changed circumstances, and
7 certainly not based on his criminal conviction, which the government has been aware of since at
8 least 2018—seven years before his arrest.

9 Mr. Kakkar's arrest constitutes a violation of due process because there was no material
10 change in circumstances that establishes he is a danger to the community here in the United
11 States where he has otherwise lived a law-abiding life and has been fighting his case before the
12 immigration court in a non-detained setting for the past four years. Under the BIA and ICE's
13 own stated policies, any revocation of parole and arrest pursuant to § 1226(b) requires "a *material*
14 change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197, *aff'd sub nom. Saravia for A.H.*,
15 905 F.3d 1137. If DHS believed that there was a material change in circumstances that would
16 justify revoking Mr. Kakkar's release, ICE would have moved to detain him (subject to the
17 demands of due process) at any point during his several hearings before the San Francisco
18 Immigration Court. That ICE did not move to arrest Mr. Kakkar or revoke his parole at his
19 immigration court hearings between 2021 and 2025 illustrates the absurdity of any potential
20 claim that there is a material change in circumstances that allows the government to revoke Mr.
21 Kakkar's release and detain him without affording him due process. At the very least, Mr.
22 Kakkar had the right to a hearing prior to his detention where he could present his argument as to
23 why there was no justification for the revocation of his release,

24 Further, ICE determined that Mr. Kakkar should not be arrested at the time of his release
25 from prison in April 2021, which *necessarily* required the determination that he was not to be a
26 danger to the community nor a flight risk. Mr. Kakkar has done nothing to undermine that
27 determination since his release. In fact, he has continued to appear before the immigration court
28 for each and every hearing that has been scheduled. *See Morrissey*, 408 U.S. at 482 ("It is not

sophistic to attach greater importance to a person’s justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions on his release, than to his mere anticipation or hope of freedom”) (quoting *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971). He has worked hard to rehabilitate himself since his release from prison in April 2021. He completed his court-ordered supervision in April 2024. In addition, he fully paid the court-ordered restitution, and he has had no further criminal history.

Moreover, the “fiscal and administrative burdens” that release from custody unless and until a pre-deprivation bond hearing is provided would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Mr. Kakkar does not seek a unique or expensive form of process, but rather his release from custody until a routine hearing regarding whether his release should be revoked and whether he should be detained takes place.

Release from custody until ICE demonstrates, before a neutral adjudicator, by clear and convincing evidence that Mr. Kakkar is a flight risk or danger to the community is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

iii. Without Release from Custody, the Risk of Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally-Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

Releasing Mr. Kakkar from custody until he is provided a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr. Kakkar 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 sufficiently changed material circumstances such that the April 2021 determination not to arrest him should be altered or revoked because clear and convincing evidence exists to establish that Mr. Kakkar is a danger to the community or a flight risk.

Under the process that ICE maintains is lawful—which affords Mr. Kakkar no process whatsoever—ICE can simply detain him at any point if the agency desires to do so, as ICE did

1 on August 20, 2025. Mr. Kakkar has already been erroneously deprived of his liberty, and the
2 risk he will continue to be deprived is high if ICE is permitted to keep him detention after
3 making a unilateral decision to detain him.

4 By contrast, the procedure Mr. Kakkar seeks—a pre-deprivation hearing to assess
5 whether he is a danger or a flight risk—is much more likely to produce accurate determinations
6 regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th
7 Cir.1989) (when “delicate judgments depending on credibility of witnesses and assessment of
8 conditions not subject to measurement” are at issue, the “risk of error is considerable when just
9 determinations are made after hearing only one side”). “A neutral judge is one of the most basic
10 due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
11 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has
12 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
13 a neutral adjudicator, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano*
14 (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

15 Due process also requires consideration of alternatives to detention at any custody
16 redetermination hearing that may occur. The primary purpose of immigration detention is to
17 ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably
18 related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See*
19 *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be
20 considered in determining whether Mr. Kakkar’s detention is warranted.

21 As the above-cited authorities show, Mr. Kakkar is likely to succeed on his claim that the
22 Due Process Clause requires notice and a hearing before a neutral decisionmaker *prior to* any
23 detention ICE. And, at the very minimum, he clearly raises serious questions regarding this issue,
24 thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

25 **2. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief**

26 Mr. Kakkar will suffer irreparable harm were he to be deprived of his liberty and subjected
27 to continued detention by immigration authorities without being immediately released and
28 provided the constitutionally adequate process (a future pre-deprivation hearing before a neutral

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

18 Mr. Kakkar has been released four over four years after serving his federal sentence.
19 During that time, he has been reconnecting with his family and community, including his U.S.
20 citizen wife and his four citizen children. Each day he remains detained is a day he is ripped away
21 from the opportunity to reconnect with his family and rebuild his relationships after his
22 incarceration.

23 Moreover, if Mr. Kakkar remains detained in an immigration jail, his health could be
24 endangered. On April 18, 2024, the U.S. Department of Homeland Security OIG released a
25 report on the results of an unannounced inspection at Golden State Annex that took place from
26 April 18 to 20, 2023.⁴ The OIG reviewed 10 medical grievances filed at Golden State Annex and

27 ³ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
28 (last accessed June 27, 2025).

⁴ *Id.*

1 found that “medical staff did not act on any of the paper medical grievances within 24 hours as
2 required...The delayed action in response to medical grievances could negatively impact
3 detainee’s health care.” Detainees at Golden State Annex have also reported issues with spoiled
4 food and lack of attention to dietary needs that go unresolved.⁵

5 **In particular, the inhumane conditions at the California City Detention Facility are**
6 **well documented. Notably, staff have failed “to provide access to critical medical and mental**
7 **health care” and otherwise failed “to meet people’s basic needs, including adequate food,**
8 **water, and clothing.”⁶ On September 13, 2025, only weeks after the detention facility started**
9 **to receive immigration detainees, a detainee died after staff did not properly respond to his**
10 **medical emergency. *ZN Decl.* at Exh. B (Declaration of Lydia Sinkus). In addition, detainees**
11 **“report interruptions to sleep during the night . . . and very poor treatment by staff at the**
12 **facility who lack experience and training. One client reported a conversation with facility**
13 **staff, where the guard told him he had been hired to paint and clean the facility and then**
14 **was made a guard when detainees were transferred there.” *Id.* Detainees also report**
15 **“aggressive and overbearing treatment by the guards, different from what [was]**
16 **experienced at [Golden State Annex].” *Id.* Mr. Kakkar will continue to face irreparable**
17 **harm in these conditions.**

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

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

22 First, the balance of hardships strongly favors Mr. Kakkar as his detention is
23 unconstitutional. The government cannot suffer harm from an injunction that prevents it from
24 engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he
25 INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined

26 ⁵See “Resistance, Retaliation, Repression: Two Years in California Immigration Detention,”
27 ACLU of Northern California (2024), available at:
28 <https://www.aclunc.org/publications/resistance-retaliation-repression-two-years-california-immigration-detention>.

⁶ *Supra* n.2.

1 from constitutional violations.”). Therefore, the government cannot allege harm arising from a
2 temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

3 Further, any burden imposed by requiring the Respondents to release Mr. Kakkar from
4 custody (and provide notice and a hearing before a neutral adjudicator prior to any future re-
5 detention) is both *de minimis* and clearly outweighed by the substantial harm he will suffer as
6 long as he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)
7 (“Society’s interest lies on the side of affording fair procedures to all persons, even though the
8 expenditure of governmental funds is required.”).

9 Finally, a temporary restraining order is in the public interest. First and most importantly,
10 “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the
11 requirements of federal law, especially when there are no adequate remedies available.” *Ariz.*
12 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v.*
13 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the
14 government would effectively be granted permission to continue to detain Mr. Kakkar, in
15 violation of the requirements of Due Process. “The public interest and the balance of the equities
16 favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757
17 F.3d at 1069 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012); *see also*
18 *Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that ensures that
19 individuals are not deprived of their liberty and held in immigration detention because of bonds
20 established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826
21 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right
22 has been violated, because all citizens have a stake in upholding the Constitution.”).

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

25 V. CONCLUSION

26 For all the above reasons, Mr. Kakkar warrants a temporary restraining order that
27 Respondents release him from custody, and not re-detain him unless he is afforded notice and a
28 hearing before a neutral adjudicator on whether it is justified by evidence that he is a danger to

1 the community or a flight risk.

2
3 Dated: November 24, 2025

Respectfully submitted,
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