

1 Zachary Nightingale (California Bar # 184501)
2 Christine Raymond, (Massachusetts Bar #711907)*
3 Van Der Hout LLP
4 360 Post Street, Suite 800
5 San Francisco, CA 94108
6 Telephone: (415) 981-3000
7 Fax: (415) 981-3003
8 Email: ndca@vblaw.com

9 *Application for Pro Hac Vice Pending

10 Attorneys for Petitioner-Plaintiff
11 Sanjiv KAKKAR

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

14 Sanjiv KAKKAR,

15 Petitioner-Plaintiff,

16 v.

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

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

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

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

28 U.S. Customs and Border Protection;

Defendants.

Case No. 1:25-cv-01627-JLT-SAB

**PETITIONER-PLAINTIFF'S
REPLY IN SUPPORT OF
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief

Judge: Hon. Jennifer L. Thurston

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. ARGUMENT.....	3
a. Ordering the Preliminary Relief Sought Pursuant to a TRO Would Maintain the Status Quo Pending Full Litigation.....	3
b. Mr. Kakkar Meets the Standard to Warrant a TRO.....	4
i. Mr. Kakkar has established a likelihood of success on the merits because due process requires that he be provided with a pre-deprivation hearing prior to re-detention.....	4
ii. Mr. Kakkar clearly establishes a likelihood of immediate irreparable harm, and that the balance of harms and public interest weigh in favor of relief.	8
III. CONCLUSION	10

1 **I. INTRODUCTION**

2 Petitioner Sanjiv Kakkar was unlawfully detained on August 20, 2025 without notice or
3 an opportunity to be heard, and he will continue to be unlawfully detained, without any
4 meaningful recourse, absent intervention by this Court.

5 Mr. Kakkar is currently scheduled for a hearing before the Immigration Court on
6 January 12, 2026. However, the Immigration Judge assigned to his case—Judge Jerome M.
7 Rothschild, Jr.—is currently on leave from the court for an indefinite period of time. *See*
8 Declaration of Zachary Nightingale (“Nightingale Decl.”). Moreover, though Mr. Kakkar could
9 request a bond hearing before the Immigration Court, as Respondents suggest, such a request
10 would be summarily denied. This is because the Immigration Courts and Board of Immigration
11 Appeals (“BIA”) have long held that individuals detained under 8 U.S.C. § 1226(c) are not
12 entitled to bond hearings. Thus, the only meaningful recourse for Mr. Kakkar is an as-applied
13 due process challenge to the statute itself, which cannot be made in the context of a bond
14 hearing, nor in removal proceedings in general—and thus is made through this habeas petition
15 and motion for TRO. *Garcia-Ramirez v. Gonzales*, 423 F.3d 935 (9th Cir. 2005) (“[D]ue
16 process considerations...need not be exhausted in administrative proceedings because the BIA
17 cannot give relief on such claims.”). Mr. Kakkar need not make a futile request for a bond
18 hearing to meet any exhaustion requirement in the context of his habeas petition and motion for
19 TRO. *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)
20 (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to
21 review” constitutional claims).

22 Respondents in their opposition to the motion for temporary restraining order (“TRO”)
23 discuss only briefly the statutory authority—8 U.S.C. § 1226(c)—which purportedly permits, in
24 the view of Respondents, Mr. Kakkar’s sudden and unlawful detention. Dkt. 8. Notably,
25 however, Respondents fail to acknowledge Mr. Kakkar’s due process rights as an individual
26 who has resided in this country as a lawful permanent resident since 1992, and likewise fail to
27 engage with or even respond to Mr. Kakkar’s due process arguments—which form the entirety
28

1 of the legal basis of his pending motion for TRO. Dkt. 3.

2 Respondents additionally fail to distinguish between the decision to detain and the
 3 eligibility to grant bond following detention and, to be clear, Respondents concede that Mr.
 4 Kakkar was *not* detained by the U.S. Immigration and Customs Enforcement (“ICE”) after he
 5 was released from federal incarceration in 2021. Dkt. 8 at p.2. Thus, ICE did not think he was
 6 required to be detained at that point—because he was not so detained. This is true even though
 7 ICE knew about his conviction¹ years before his release, since approximately 2018, as the
 8 agency specifically interviewed him while incarcerated and issued him an NTA to place him in
 9 removal proceedings at that time. Thus, at the time of his release from incarceration, ICE
 10 *necessarily* found that he was not required to be detained and thus he did not constitute a danger
 11 or a flight risk under 8 U.S.C. § 1236. During the last four years, nothing has changed regarding
 12 the requirement that he be detained or his flight risk or dangerousness: he has attended all
 13 Immigration Court hearings as required, and he has no further criminal history. His brief travel
 14 to the United Kingdom to visit his wife’s ill mother—which led to his detention upon his return
 15 to the United States on August 20, 2025—was lawful, as his immigration status remains that of
 16 lawful permanent resident and as such he has the right to travel and return to the United States,
 17 which has no bearing on whether he has to be detained or whether he poses a danger or flight
 18 risk.

19 Respondents’ brief argument that Mr. Kakkar is now properly detained under 8 U.S.C. §
 20 1226(c) pending removal proceedings, even after he has spent over four years at liberty
 21 following his release during which nothing has changed, completely disregards the question of
 22 whether the unilateral decision to now detain Mr. Kakkar was lawful, and completely disregards
 23 Mr. Kakkar’s due process rights. Moreover, apart from explaining that Mr. Kakkar was

24
 25 ¹ Respondents misstate that, in removal proceedings, Mr. Kakkar “denied his wire fraud
 26 conviction and sentence of 48 months’ incarceration.” Dkt. 8 at p. 2. To be clear, Mr. Kakkar
 27 denied these allegations in the Notice to Appear *only because it is the government’s burden in*
 28 *removal proceedings to sustain these charges*. Mr. Kakkar has already explained to this Court
 that he was convicted of 18 U.S.C. §§ 1343, 1014, and 2, and that he completed his 48-month
 sentence. Dkts. 1, 3.

“detained by a Customs and Border Patrol Officer” at the San Francisco International Airport, Respondents have not explained the actual procedures that the agency applied when detaining Mr. Kakkar, or when making the decision to do so. Dkt 8-1 (Declaration of Deportation Officer Ana L. Juarez). **Notably, nothing in Respondents’ filing indicates the legal basis for the decision to detain Mr. Kakkar, and it is only in the opposition that Respondents indicate, for the first time, the statute under which Mr. Kakkar is currently detained, namely 8 U.S.C. § 1226(c).** Neither Mr. Kakkar nor undersigned counsel had received notice of this determination previously, which only serves to underscore that Mr. Kakkar was not provided with the process he was due when he was suddenly detained (simply because he traveled briefly and returned to the United States) without notice or an opportunity to be heard. Moreover, Respondents have not explained what has changed that makes their sudden decision to detain Mr. Kakkar lawful—since Mr. Kakkar’s criminal record has not changed, nor has the law changed regarding the consequences of his conviction. The government’s theory that 8 U.S.C. § 1226(c) applies to him would have equally applied when he was released from criminal incarceration, and yet he was not detained, so this theory does not explain what now justified the change in detention status.

For these reasons, and to ensure that Mr. Kakkar’s due process rights are protected, this Court should grant the motion for TRO.

II. ARGUMENT

a. Ordering the Preliminary Relief Sought Pursuant to a TRO Would Maintain the Status Quo Pending Full Litigation.

In this case, a TRO granting at least Mr. Kakkar’s release would merely restore him to the uncontested status that he held prior to his re-detention by Respondents on August 20, 2025. In the Ninth Circuit, “[t]he status quo ante litem refers not simply to any situation before the filing of a lawsuit, but instead to the last uncontested status which preceded the pending controversy.” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000); *see also Al Otro Lado v. Wolf*, 497 F. Supp. 3d 914, 925 (S.D. Cal. 2020) (holding same, collecting cases in immigration context). In Mr. Kakkar’s case, the status quo—the last uncontested status

Kakkar v. Chestnut, et al., No. 1:25-cv-01627-JLT-SAB
PETITIONER-PLAINTIFF’S REPLY ISO MOTION FOR TRO

preceding the current controversy—was him living at liberty, and exercising his right to freedom from unlawful restraint. This status quo existed for over four years. Again, returning him to this status would not give Mr. Kakkar any benefit or status that he did not otherwise already have, but rather it would maintain the status quo of the position he was in *prior to* Respondents’ unlawful action—which is the correct point of measurement. *See GoTo.com, Inc.*, 202 F.3d at 1210. Courts in this and other district have ordered the immediate release of petitioners—through preliminary relief—in similar circumstances.²

This Court therefore can, and should, restore the status quo by at least ordering Mr. Kakkar’s immediate release from detention during the pendency of these proceedings.

b. Mr. Kakkar Meets the Standard to Warrant a TRO.

Mr. Kakkar has established his entitlement to a TRO by clearly demonstrating: (1) a likelihood of success on the merits; (2) that it is likely he will suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that injunctive relief is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (where the government is a party, the last two *Winter* factors merge). Moreover, at a minimum, Mr. Kakkar establishes the alternative standard—that he raises “serious questions” as to the merits of his claims, the balance of hardships tip “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

i. Mr. Kakkar has established a likelihood of success on the merits because due process requires that he be provided with a pre-deprivation hearing prior to re-detention.

As an individual in this country, Mr. Kakkar has due process rights. Contrary to Respondents’ argument, *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) does apply to Mr. Kakkar to the extent that this decision recognized that noncitizens in the United States are entitled to full due process protections, and “[f]reedom from imprisonment—from government custody,

² See *Infra* p. 7.

1 detention, or other forms of physical restraint—lies at the heart of the liberty that Clause
2 protects.” *Id.* at 690. (citing U.S. Const. amend. V.).

3 Here, ICE’s authority under 8 U.S.C. § 1226(c) to unilaterally re-detain Mr. Kakkar is
4 proscribed by the Due Process Clause because it is well-established that individuals released
5 from incarceration have a liberty interest in their freedom.³ In turn, to protect that interest, on the
6 particular facts of Mr. Kakkar’s case, due process required, and requires in the future, notice and
7 a hearing *prior to any re-detention* at which he is afforded the opportunity to advance his
8 arguments as to why he should not be re-detained.

9 Though Respondents cite to *Demore v. Kim*, 538 U.S. 510, 526 (2003) for the proposition
10 that Mr. Kakkar’s sudden detention is lawful solely because he is in removal proceedings, this is
11 not a complete analysis. Respondents fail to note that in *Demore*, the Court upheld 8 U.S.C. §
12 1226(c) against a *facial*, *not an as-applied*, challenge to the statute, in a case where a noncitizen
13 was detained within a day of his release from criminal incarceration. *Id.* at 513-14. The *Demore*
14 Court held, based on the factual record before it, that “Congress, justifiably concerned that
15 deportable criminal [noncitizens] who are not detained continue to engage in crime and fail to
16 appear for their removal hearings in large numbers, may require that [such noncitizens] be
17 detained for the brief period necessary for their removal proceedings.” *Id.* at 513. While the
18 Supreme Court addressed the question of whether mandatory detention is unconstitutionally
19 prolonged, and it held in *Demore* that when ICE detains an individual following their criminal
20 incarceration, a *brief* mandatory detention under 8 U.S.C. § 1226(c) without a bond hearing did
21 not violate due process, this holding was specifically premised on *now discredited evidence* that

22
23 ³ So fundamental to due process is the concept of liberty that it is even well-established that an
24 individual maintains a protectable liberty interest where the individual obtains liberty through a
25 *mistake* of law or fact. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson*
26 *v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support
27 the notion that an inmate released on parole by mistake, because he was serving a sentence that
28 did not carry a possibility of parole, could not be re-incarcerated because the mistaken release
was not his fault, and he had appropriately adjusted to society, so it “would be inconsistent with
fundamental principles of liberty and justice” to return him to prison) (internal quotation marks
and citation omitted).

at the time detention under 8 U.S.C. § 1226(c) was neither indefinite nor prolonged.⁴ 538 U.S. at 529-531 (relying on evidence provided by the Government that, at the time, removal proceedings were completed in an average time of 47 days and a median time of 30 days in 85% of cases, and that the remaining 15% of cases in which there was an appeal were completed in an average of four months).⁵

In addition, Respondents' argument does not take into account that, as already briefed in the motion for TRO, Mr. Kakkar was already found to not pose a danger or a flight risk, as his entire family—his U.S. citizen wife and four citizen children—are in the United States, he himself has lived here as a lawful permanent resident since 1992 and, since his release from incarceration in 2021, he has continued with his removal proceedings and has always attended his hearings as required. Though Respondents, again, note dicta in *Demore* that “detention necessarily serves the purpose of preventing deportable criminal aliens from fleeing prior to or during their removal proceedings, thus increasing the chance that, if ordered removed, the aliens will be successfully removed,” Dkt. 8, at p. 4—this dicta is simply not applicable to Mr. Kakkar, where ICE *already* made the decision in 2021 not to detain him, where he remains a lawful permanent resident in removal proceedings, and where he has continued with his removal

⁴ The Court's 2003 decision in *Demore* explained that detention under 8 U.S.C. § 1226(c) “has a definite termination point” and “in the majority of cases” only lasts “for less than the 90 days.” *Id.* at 512. However, Mr. Kakkar has now been detained for 112 days, and the Immigration Judge assigned to handle his hearing in January 2026 is on indefinite leave. *Nightingale Decl.*

⁵ While *Jennings v. Rodriguez* was being briefed, the government informed the Supreme Court that it had “made several significant errors in calculating” the statistics which it provided to the Court in *Demore* and which the Court relied upon in its decision. Letter from Ian Heath Gershengorn, Acting Solicitor General, to Hon. Scott S. Harris, Clerk, Supreme Court (Aug. 26, 2016), *Demore v. Kim*, 538 U.S. 510 (2003) (No. 01-1491), available at <http://on.wsj.com/2mtjnUP>; see also *Jennings v. Rodriguez*, 583 U.S. 281, 343 (2018) (Breyer, J., dissenting) (“The Government now tells us that the statistics it gave to the Court in *Demore* were wrong. Detention normally lasts twice as long as the Government then said it did. And, as I have pointed out, thousands of people here are held for considerably longer than six months without an opportunity to seek bail.”).

1 proceedings (including by filing applications with the Immigration Court) since his release from
2 incarceration.

3 Federal district courts in California and beyond have repeatedly recognized that the
4 demands of due process (1) limit ICE's statutory and regulatory authority to revoke a
5 noncitizen's release where, as here, there are no relevant changes to his detention status (e.g., no
6 new criminal convictions), and (2) require a pre-deprivation hearing *prior to* any detention or re-
7 detention. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v.*
8 *Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020
9 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
10 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *see also Doe v. Becerra*, No. 2:25-cv-00647-
11 DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a
12 hearing before any re-arrest); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at
13 *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and
14 required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-
15 NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted
16 preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five
17 years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025).

18 Finally, the procedure that Mr. Kakkar seeks—release from custody until he is provided a
19 pre-deprivation hearing prior to any re-detention—is a standard course of action for the
20 government. It would not place additional fiscal and administrative hurdles on the government,
21 and it will provide Mr. Kakkar with safeguards to ensure that his due process rights are
22 protected. Release from custody until ICE assesses and demonstrates to a neutral adjudicator
23 (such as an Immigration Judge) that Mr. Kakkar is actually a flight risk or danger to the
24 community, or that his removal is reasonably foreseeable, is far *less* costly and burdensome for
25 the government than keeping him detained. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir.
26 2017) (“The costs to the public of immigration detention are ‘staggering’: \$158 each day per
27 detainee, amounting to a total daily cost of \$6.5 million.”).

28 *Kakkar v. Chestnut, et al.*, No. 1:25-cv-01627-JLT-SAB
PETITIONER-PLAINTIFF'S REPLY ISO MOTION FOR TRO

1 Thus, Mr. Kakkar is likely to succeed (or at least shows serious questions going to the
2 merits of) his claim that due process requires that he have been provided with a pre-deprivation
3 hearing prior to his detention, and that he be provided such a hearing prior to any future re-
4 detention.

5 **ii. Mr. Kakkar clearly establishes a likelihood of immediate irreparable**
6 **harm, and that the balance of harms and public interest weigh in**
7 **favor of relief.**

8 Given that Mr. Kakkar is likely to succeed on the merits of his claims, and that his
9 claims are constitutional in nature, he has sufficiently demonstrated that he will suffer harm
10 absent immediate injunctive relief. The factors under the balancing test established in *Mathews*
11 *v. Eldridge* weigh heavily in his favor. 424 U.S. 319, 335 (1976). It is well-settled principle that
12 a violation of constitutional rights constitutes irreparable injury. *Hernandez*, 872 F.3d at 995-96
13 (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes
14 irreparable injury.’”) (quoting *Melendres v. Apraio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

15 Respondents do not even address the consequences of unlawful detention, but rather
16 appear to suggest that the irreparable harm imposed by unlawful detention is just part of the
17 statutory scheme of civil detention. Dkt. 8 at p. 5. Thus, Respondents wholly ignore the concrete
18 harms that immigration detention visits on individuals, and the specific harms that Mr. Kakkar
19 would suffer if he were to remain unlawfully detained. *See also Hernandez*, 872 F.3d at 995
20 (“noting irreparable harms imposed on anyone subject to immigration detention” including
21 “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed
22 on detainees and their families as a result of detention[.]”). Detention conditions at the
23 California City Detention Center—where Mr. Kakkar is currently detained—have been
24 described as inhumane, with staff failing “to provide access to critical medical and mental
25 health care” and otherwise failing “to meet people’s basic needs, including adequate food,
26 water, and clothing.”⁶ On September 13, 2025, only weeks after the detention facility started to

27 ⁶ “Newly Opened California City ICE Detention Facility: Dangerous for Disabled People,”
28 Disability Rights California (Nov. 3, 2025), available at:

1 receive immigration detainees, a detainee died after staff did not properly respond to his medical
2 emergency. Dkt. 1-1, Exhibit B (Declaration of Lydia Sinkus).

3 Mr. Kakkar further demonstrates that the balance of harms and public interest weigh in
4 favor of relief. If a TRO is not entered, Respondents would effectively be granted permission to
5 detain Mr. Kakkar arbitrarily, whenever and for however long they wish, in violation of the
6 requirements of Due Process. “The public interest and the balance of the equities favor
7 ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d
8 1053, 1069 (9th Cir. 2014); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits
9 from an injunction that ensures that individuals are not deprived of their liberty and held in
10 immigration detention because of bonds established by a likely unconstitutional process.”); *cf.*
11 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns
12 are implicated when a constitutional right has been violated, because all citizens have a stake in
13 upholding the Constitution.”).

14 Mr. Kakkar has amply demonstrated that he faces irreparable harm and that the balance
15 of equities tips in his favor. Respondents do not challenge his argument that the government
16 “cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined
17 from [statutory and] constitutional violations.” *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir.
18 1983). Respondents have all of the power to locate, arrest, and detain a noncitizen such as Mr.
19 Kakkar if and when such detention is legally permissible. Respondents will thus not be injured
20 by an order requiring them to release Mr. Kakkar from custody, and prohibiting them from re-
21 detaining them unless he is provided with a due process hearing where the parties can fully
22 litigate the legality of his re-detention. Such a hearing is constitutionally mandated, and the
23 government is not injured by being held to the Constitution. *Zepeda*, 753 F.2d at 727. As such,
24 the balance of equities and public interest weigh heavily in favor of granting Mr. Kakkar
25 injunctive relief.

26
27 [https://www.disabilityrightsca.org/reports/california-city-ice-processing-center-a-dangerous-](https://www.disabilityrightsca.org/reports/california-city-ice-processing-center-a-dangerous-expansion-of-immigration-detention-in)
28 [expansion-of-immigration-detention-in.](https://www.disabilityrightsca.org/reports/california-city-ice-processing-center-a-dangerous-expansion-of-immigration-detention-in)

Kakkar v. Chestnut, et al., No. 1:25-cv-01627-JLT-SAB
PETITIONER-PLAINTIFF’S REPLY ISO MOTION FOR TRO

1 **III. CONCLUSION**

2 For all the aforementioned reasons, the Court should grant Mr. Kakkar's motion for a
3 TRO.

4
5
6 Dated: December 10, 2025

Respectfully submitted,

7 /s/ Zachary Nightingale

8 Zachary Nightingale

9 Christine Raymond

10 Attorneys for Plaintiff
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28