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Attorneys for *Petitioner* Josue Daniel Cruz Banos

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Josue Daniel Cruz Banos,

Petitioner,

v.

Sergio ALBARRAN, Acting Field Office
Director of San Francisco Office of
Detention and Removal, U.S. Immigrations
and Customs Enforcements; U.S. Department
of Homeland Security;

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

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

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

Respondents - Defendants,

No.

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

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION AND EX PARTE MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Eastern District of California, that Petitioner, Josue Daniel Cruz Banos ("Mr. Cruz") will and hereby does move for a temporary restraining order pursuant to Federal Rules of Civil Procedure 65(b) and Civil Local Rule 65-1. Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this Court (1) orders Petitioner's immediate release from Respondent's custody pending these proceedings, without requiring bond or electronic monitoring, or, in the alternative, (2) orders Petitioner's immediate release from Respondents' custody and, within 14 days, order a pre-deprivation bond hearing before the San Francisco Immigration Court, where Respondents will have the burden of proof to show, by clear and convincing evidence, that Petitioner is a danger or a flight risk. To preserve this Court's jurisdiction, Petitioner further seeks an order (3) enjoining Respondents from deporting Petitioner during the pendency of this proceeding. Enjoins Respondents (1) from continuing to detain Petitioner based on an unlawful action by ICE, (2) orders his immediate release from Respondents' custody; and (3) from re-arresting Mr. Cruz until he is afforded a hearing before a neutral decisionmaker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that his re-incarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk.

Consistent with Civil L.R. 65-1, Petitioner seeks relief at the earliest possible opportunity. Petitioner filed this motion the same day he filed his Petition for Writ of Habeas Corpus. His Writ of Habeas Corpus stated that he would be filing this motion forthwith.

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

Dated: November 24, 2025 Respectfully submitted,

/s/ Emilio Parker

Emilio Parker

Attorney for Petitioner-Plaintiff

Josue Daniel Cruz Banos

1 **I. INTRODUCTION**

2 Respondents unlawfully detained Petitioner-Plaintiff Josue Daniel Cruz Banos on
3 November 24, 2025. Mr. Cruz was detained during a routine check-in at the ICE Enforcement
4 and Removal Center at 630 Sansome Street in San Francisco, California. Mr. Cruz entered the
5 United States without inspection on April 2, 2022. Mr. Cruz was detained upon entering the
6 United States. On April 30, 2022, Mr. Cruz was released from custody on his own recognizance
after a determination was made that Mr. Cruz was not a flight risk nor a danger to society.

7 The Department of Homeland Security ("DHS") handed Mr. Cruz a Notice to Appear
8 with the immigration court however that noticed was never filed with the Immigration Court. On
9 June 9, 2022, Petitioner filed an asylum application with USCIS. On June 9, 2022, Petitioner
10 filed for work authorization with USCIS. On January 27, 2023, Petitioner was granted legal
11 authorization to work by USCIS. Since arriving to the United States, Mr. Cruz has maintained
12 steady employment, attended every immigration appointment that he was required to attend. Mr.
13 Cruz has no criminal history.

14 Mr. Cruz is not an applicant for admission to the United States, Mr. Cruz has lived in the
15 United States for over three and a half years. He currently resides with his sister in Hayward,
California.

16 At the time of detention, Mr. Cruz was working full time as an electrician for [REDACTED]
17 [REDACTED] and as a supervisor of operations at a warehouse [REDACTED] Mr. Cruz
18 suffers from health issues which require antibiotics which have not been available to him while
19 in custody. I

20 Mr. Cruz's summary arrest and indefinite detention flout the Constitution. The only
21 legitimate interests that civil immigration detention serves are mitigating the risk of flight and
22 preventing danger to the community. When those interests are absent, the Fifth Amendment's
23 Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and
24 detaining Mr. Cruz without making any affirmative showing of immigration violations, flight
25 risk or danger to the community, the government violated Petitioner's procedural due process
26 rights. At the very least, he was constitutionally entitled to a hearing before a neutral
decisionmaker at which the government should have justified his detention.

27 Mr. Cruz must be accorded his 5th amendment due process rights as affirmed in the US
28 Supreme Court case *Department of Homeland Security v. Thuraissigium*, 140 S.Ct. 1959 (2020),

Specifically, in *Thuraissigium*, the Supreme Court Stated: “aliens who have established connections in this country have due process rights in deportation proceedings,”

As a result of his arrest and detention, Mr. Cruz is suffering irreparable and ongoing harm. The unconstitutional deprivation of “physical liberty” unquestionably constitutes irreparable injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Mr. Cruz’s arrest and detention have caused and will cause immediate, tremendous, and ongoing harm, which include health problems that may result in hospitalization and/or death due to his ongoing health issues, hygiene, sleep and nutrition deprivation, family separation, emotional and economic harm, loss of employment, and psychological harm.

In light of this irreparable harm, and because he is likely to succeed on the merits of his due process claims, Mr. Cruz respectfully requests that this Court issue an Ex Parte temporary restraining order (“TRO”) immediately releasing him from custody and enjoining the government from re-arresting him absent the opportunity to contest that arrest at a hearing before a neutral decision maker. Confronted with substantially identical facts and legal issues, this and other courts in this circuit have recently granted the exact relief Petitioner seeks.

See *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025), *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal. July 4, 2025), converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025) (granting preliminary injunction).

To maintain this Court’s jurisdiction, the Court should also prohibit the government from transferring Mr. Cruz out of this District and removing him from the country until these proceedings have concluded.

II. STATEMENT OF FACTS AND CASE

Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are not in status, many of whom have pending applications for asylum or other relief. This “coordinated operation” is “aimed at dramatically accelerating deportations” by arresting people at the courthouse, USCIS interviews, or at the ICE office and placing them into expedited removal. The Trump administration implemented a policy to drastically increase

1 immigration arrests to a target of at least 3,000 per day. According to White House officials, such
2 as Stephen Miller, this directive prioritized arrest numbers over individuals' criminal history,
3 encouraging agents to conduct mass round-ups in public spaces rather than targeted
4 investigations.

5 As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-
6 thirds of those deported had no criminal history. This focus on quantity over public safety led to
7 a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE
8 appointments, regardless of the status of their legal cases. This has created a climate of fear,
discouraging people from attending their mandatory hearings or ICE appointments.

9 In addition, individuals are now held for extended periods, sometimes days, in temporary
10 holding cells that are not designed for overnight or prolonged detention, often under inhumane
11 conditions. Government officials have justified these harsh conditions not as a matter of
12 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
13 detention.

14 Mr. Cruz has lived in the United States for over three and half years. He has many family
15 members in the United States. At the time of detention, Mr. Cruz was working full time in
16 multiple jobs. Mr. Cruz has no criminal history anywhere in the world. He has established strong
connections to the United States.

17 Mr. Cruz's arrest and detention have caused and will cause immediate, tremendous, and
18 ongoing harm, which includes serious health problems which could lead to hospitalization and/or
19 death, hygiene, sleep, and nutrition deprivation, family separation, emotional and economic harm
20 to his family and USC child, loss of employment, and psychological harm. Mr. Cruz is not a
21 flight risk, as evidenced by his deep ties to the community, including his relatives in the US. He
22 is not a danger to the community. He is a law-abiding, tax paying, and gainfully employed person.
23 He has paid taxes every year since obtaining lawful employment. His detention serves no
legitimate purpose.

24 This case has substantial factual and legal support to be granted, resulting in Mr. Cruz's
25 release from custody, and enjoining DHS from detaining Mr. Cruz pending a hearing before a
26 neutral adjudicator, to substantiate a material change in circumstances indicating that Mr. Cruz
27 is either a flight risk or a danger to the community.

1 Intervention from this Court is therefore required to ensure that Mr. Cruz is released from
2 his current custody based on his unlawful arrest, returned to his home in Hayward, California,
3 where ICE can then provide him with a hearing before determining to re-arrest him pursuant to
4 the Due Process Clause of the Fifth Amendment.

5 **III. LEGAL STANDARD**

6 Mr. Cruz is entitled to a temporary restraining order if he establishes that he is “likely to
7 succeed on the merits...likely to suffer irreparable harm in the absence of preliminary relief, that
8 the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter*
9 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush*
10 *& Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary
11 restraining order standards are “substantially identical”). Even if Mr. Cruz does not show a
12 likelihood of success on the merits, the Court may still grant a temporary restraining order if he
13 raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply”
14 in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v.*
Cottrell, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Mr. Cruz
overwhelmingly satisfies both standards.

15 Furthermore, the requirements for issuing a temporary restraining order without notice
16 are met here. See Fed. R. Civ. P. 65(b). Mr. Cruz has attempted to secure his release from ICE
17 but has received no response. Mr. Cruz also set out specific facts demonstrating that immediate
18 and irreparable injury, loss, or damage may result before respondents can be heard in opposition.
19 See *Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 L 1853763, at *4 (N.D. Cal. July 4, 2025);
20 *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025
21 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025)(granting ex parte temporary restraining order in
similar circumstances).

22 **IV. ARGUMENT**

23 **A. Josue Cruz Banos WARRANTS A TEMPORARY RESTRAINING ORDER**

24 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
25 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.
26 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
27 preliminary injunction hearing is held. See *Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
28 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Cruz is likely

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

4 **1. Josue Cruz Banos is likely to succeed on the merits because his detention**
5 **violates substantive due process.**

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

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

28 The Supreme Court has recognized that noncitizens may bring as-applied challenges to
detention, including so-called “mandatory” detention. *Demore v. Kim*, 538 U.S. 510, 532-33
(2003) (Kennedy, J., concurring) (“Were there to be an unreasonable delay by the INS in pursuing
and completing deportation proceedings, it could become necessary then to inquire whether the

1 detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but
2 to incarcerate for other reasons.”); *Nielsen v. Preap*, 586 U.S. 392, 420 (2019) (“Our decision
3 today on the meaning of [§ 1226(c)] does not foreclose as-applied challenges—that is,
4 constitutional challenges to applications of the statute as we have now read it.”).

5 Mr. Cruz is neither a danger nor a flight risk. Therefore, his detention is both punitive and
6 not justified by a legitimate purpose, violating his substantive due process rights. Mr. Cruz’s
7 ongoing detention is unconstitutional, and substantive due process principles require his
8 immediate release.

9 **2. Josue Cruz Banos is Likely to Succeed on the Merits of His Claim That in
10 This Case the Constitution Requires a Hearing Before a Neutral Adjudicator
11 Prior to Any Re-Incarceration by ICE.**

12 Josue Cruz Banos is likely to succeed on his claim that, in his particular circumstances,
13 his current detention is unlawful because the Due Process Clause of the Constitution prevents
14 Respondents from detaining him without first providing a pre-deprivation hearing before a
15 neutral adjudicator where the government demonstrates by clear and convincing evidence that he
16 is a danger to the public or a flight risk.

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

21 **a. Josue Daniel Cruz Banos Has a Protected Liberty Interest**

22 The Due Process Clause protects Mr. Cruz’s liberty from immigration custody: “Freedom
23 from imprisonment—from government custody, detention, or other forms of physical restraint—
24 lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533
25 U.S. 678, 690 (2001).

26 Mr. Cruz has an established life in California. Mr. Cruz has lived in the United States for
27 over three and a half years. He resides with his sister in Hayward, California. At the time of
28 detention, Mr. Cruz worked in multiple jobs. Mr. Cruz has no criminal history anywhere in the
world. Mr. Cruz suffers from health issues which require antibiotics. Mr. Cruz currently has no
medication while in custody.

b. Josue Cruz Banos' Liberty Interest Mandates His Release from Unlawful Custody And A Hearing Before any Re-Arrest.

Mr. Cruz asserts that, here, (1) where his detention would be civil; (2) where he has viable immigration relief; (3) where no circumstances exist that would justify his lawful detention; and (4) where ICE's move to arrest as many people as possible under the new administration's initiative, due process mandates that he be released from his unlawful custody and receive notice and a hearing before a neutral adjudicator before any re-arrest or revocation of his custody release.

"Adequate, or due, process depends upon the nature of the interest affected. The more 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 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey v. Brewer*, 408 U.S. 471, at 481-82 (1972)). This Court must "balance [Mr. Cruz's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test outlined in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

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

1 Because, in this case, the provision of a pre-deprivation hearing is both possible and
2 valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Mr. Cruz with
3 notice and a hearing prior to any incarceration. See *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769
4 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; see also *Youngberg v.*
5 *Romeo*, 457 U.S. 307, 321-24 (1982). Under *Mathews*, “the balance weighs heavily in favor of
6 [Mr. Cruz’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

7 **i. Josue Cruz Banos’ Private Interest in His Liberty is Profound.**

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

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

20 **ii. The Government’s Interest in Incarcerating Josue Cruz Banos Without a Hearing is Low and the Burden on the Government to Refrain from Re-Arresting Him Unless and Until He is Provided a Hearing is Minimal**

21 The government’s interest in maintaining an unlawful detention without a due process
22 hearing is low, and when weighed against Josue Cruz significant private interest in his liberty,
23 the scale tips sharply in favor of enjoining Respondents (1) from keeping him in unlawful
24 custody; (2) re-arresting Mr. Cruz unless and until the government demonstrates to a neutral
25 adjudicator by clear and convincing evidence that he is a flight risk or danger to the community;
26 and (3) removing him from the United States in violation of an agency order and district court
27 injunction. It becomes abundantly clear that the *Mathews* test favors Mr. Cruz when the Court
28 considers that the process he seeks—notice and a bond hearing before a neutral decision maker

1 —is a standard course of action for the government. Providing Mr. Cruz with a hearing before
2 this Court (or a neutral decision maker) to determine whether there is clear and convincing
3 evidence that Mr. Cruz is a flight risk or danger to the community would impose only a de
4 minimis burden on the government, because the government routinely provides this sort of
5 hearing to individuals like Mr. Cruz.

6 As immigration detention is civil in nature, it cannot serve a punitive purpose. The
7 government's only interest in holding an individual in immigration detention can be to prevent
8 danger to the community or to ensure a noncitizen's appearance at immigration proceedings. See
9 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
10 basis for detaining Mr. Cruz since he has lived at liberty with his community, without any
11 criminal or civil traffic infractions and has attended all court hearings and ICE check-ins. The
12 government's interest in detaining Mr. Cruz currently is extremely low. That ICE has a new
13 policy to make a minimum number of arrests each day under the new administration does not
14 constitute a valid reason to detain him.

15 Moreover, the "fiscal and administrative burdens" that his immediate release and a lawful
16 pre-detention hearing would impose is nonexistent in this case. See *Mathews*, 424 U.S. at 334-
17 35. Mr. Cruz does not seek a unique or expensive form of process, but rather a routine hearing.
18 As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of
19 immigration detention are 'staggering': \$158 each day per detainee, amounting to a total daily
20 cost of \$6.5 million." *Hernandez*, 872 F.3d at 996. It is only fair to say these costs have increased
21 in the past 8 years.

22 Alternatively, providing Mr. Cruz with a hearing before this Court (or a neutral decision-
23 maker) regarding release from custody is a routine procedure that the government provides to
24 those in immigration detention facilities daily. At that hearing, the Court would have the
25 opportunity to determine whether circumstances justify his arrest and detention. But there is no
26 justifiable reason to incarcerate Mr. Cruz before such a hearing takes place.

27 Releasing Mr. Cruz from unlawful custody and enjoining Mr. Cruz's arrest until ICE (1)
28 moves for a custody re-determination before an IJ and (2) demonstrates by clear and convincing
evidence that Mr. Cruz is a flight risk or danger to the community is far less costly and
burdensome for the government than keeping him detained to a total daily cost of over \$6.5
million. *Hernandez*, 872 F.3d at 996.

1 iii. **Without a Due Process Hearing Prior to Any Arrest, the Risk of an**
2 **Erroneous Deprivation of Liberty is High, and Process in the Form of**
3 **a Constitutionally Compliant Hearing Where ICE Carries the Burden**
 Would Decrease That Risk.

4 Releasing Mr. Cruz from unlawful custody and providing Mr. Cruz a pre-deprivation
5 hearing would decrease the risk of him being erroneously deprived of his liberty. Before Mr.
6 Cruz can be lawfully detained, he should have been provided with a hearing before a neutral
7 adjudicator at which the government is held to show that there are sufficient circumstances to
8 detain him. Clear and convincing evidence exists to establish that Mr. Cruz is not a danger to the
community or a flight risk.

9 The procedure Mr. Cruz seeks—a hearing in front of a neutral adjudicator at which the
10 government must prove by clear and convincing evidence to justify his detention. “A neutral
11 judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037,
12 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S.
13 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under
14 *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody
15 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

16 Due process also requires consideration of alternatives to detention at any custody
17 redetermination hearing that may occur. The primary purpose of immigration detention is to
18 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.

19 Detention is not reasonably related to this purpose if there are alternatives to incarceration
20 that could mitigate the risk of flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly,
21 alternatives to detention must be considered in determining whether Mr. Cruz’s reincarceration
is warranted.

22 As the above-cited authorities show, Mr. Cruz is likely to succeed in his claim that the
23 current arrest and detention that ICE effected November 21, 2025, are unlawful. The Due Process
24 Clause requires notice and a hearing before a neutral decision-maker before any reincarceration
25 by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus
26 also meriting a TRO. See *Alliance for the Wild Rockies*, 632 F.3d at 1135.
27
28

3. Mr. Cruz Will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Cruz will suffer irreparable harm if he remains detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided with the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984).

Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to immigration detention,” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995.

The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).

Conditions at the California City Detention Facility – where plaintiff is being held – are so inhumane that the ACLU just this week filed a Class Action lawsuit in this Federal District detailing the grotesque, inhumane, and substandard conditions of the facility. *Gomez Ruiz v. U.S. Immigration and Customs Enforcement*, (N.D. Cal. Case 3:25-cv-09757, filed 11/12/25).

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

1 **4. The Balance of Equities and the Public Interest Favor Granting the**
2 **Temporary Restraining Order.**

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

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

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

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

1 **V. CONCLUSION**

2 For all the above reasons, this Court should find:

3 (1) that Mr. Cruz warrants a temporary restraining order and a preliminary injunction
4 ordering that Respondents Declare that Petitioner's detention violates the Due Process Clause of
5 the Fifth Amendment;

6 (2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately
7 and schedule a bond hearing before an immigration judge;

8 (3) Declare immediately that Defendants are prohibited from moving Petitioner outside
9 of the jurisdiction of the Northern District of California and enjoin Defendants from sending him
10 to any place outside of the United States;

11 (4) Enjoin defendant from re-detaining Petitioner without a pre-deprivation hearing
12 before an immigration judge where the Government bears the burden of proving that
13 circumstances have materially changed, rendering Petitioner a danger to the community or a
14 flight risk;

15 (5) Order Defendants to file a written declaration attesting to full compliance with these
16 obligations.

17 (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and
18 on any other basis justified under law; and

19 (7) Grant any further relief this Court deems just and proper.

20 Dated: November 24, 2025

Respectfully submitted,

21 /s/ Emilio Parker

Emilio Parker

Attorney for Petitioner

Josue Daniel Cruz Banos

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on November 24, 2025, in Oakland, CA.

/s/ Emilio Parker
Emilio Parker
Attorney for Josue Daniel
Cruz Banos