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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 R.I.,

13 Petitioner,

14 v.

No.

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

Challenge to Unlawful Incarceration Under
Color of Immigration Detention Statutes;
Request for Declaratory and Injunctive Relief

15 Minga WOFFORD, Field Office Director,
16 Mesa Verde, Office of Detention and
17 Removal, U.S. Immigrations and Customs
18 Enforcement, U.S. Department of
19 Homeland Security;

20 Sergio ALBARRAN, Acting Field Office
21 Director of the San Francisco Immigration
22 and Customs Enforcement Office, U.S.
23 Department of Homeland Security;

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

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

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

Respondents.

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18	8 U.S.C. § 1226(b)	14
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20	U.S. Const. amend. V	7
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NOTICE OF MOTION

Petitioner R.I. applies to this Honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain him based on an unlawful action by ICE, (2) ordering his immediate release from immigration detention; and (3) from re-arresting R.I. 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.

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

Respectfully submitted this 24th day of November, 2025.

By counsel,

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INTRODUCTION

Petitioner, R.I., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) at Mesa Verde ICE Processing Center (“Mesa Verde”) since November 3, 2025, after having complied with the conditions of his release from the custody of the Department of Homeland Security (DHS) since he was granted parole on June 12, 2021. For years, R.I. has appeared at appointments, taken photographs, and answered supervision calls from the Intensive Supervision Appearance Program (ISAP), while diligently pursuing asylum before the Executive Office of Immigration Review (EOIR). Throughout this time, R.I. has worked with DHS authorization to provide for his pregnant wife and children, including a child with autism who requires special attention and care.

R.I.’s current detention may be permitted under the Constitution and Immigration and Nationality Act (INA) only if Respondents can demonstrate before a neutral decision-maker that he is a flight risk or danger to the community, or if his removal is imminent. As a hardworking and loving parent with no criminal history, R.I. is not a flight risk or danger. His asylum case remains pending before EOIR, and thus, removal is not imminent. Thus, R.I.’s continued detention without a bond hearing before a neutral decision-maker violates his rights under the INA and the Due Process Clause of the Fifth Amendment. U.S. Const. amend. V.

As a result of his arrest and detention, R.I. 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).

In light of this irreparable harm, and because he is likely to succeed on the merits of his due process claims, R.I. 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

1 courts in this circuit have recently granted the exact relief Petitioner seeks. *See J.O.L.R. v*
2 *Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*, 2025 WL
3 2617255 * 11 (E.D. Cal Sept. 9, 2025); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4 (N.D. Cal.
4 July 4, 2025), converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL 2084921 (N.D.
5 Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July 11, 2025)
6 (granting preliminary injunction).

7 To maintain this Court's jurisdiction, the Court should also prohibit the government from
8 transferring R.I. out of this District and removing him from the country until these proceedings
9 have concluded.

10 STATEMENT OF FACTS AND CASE

11 Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign
12 targeting people who are in regular removal proceedings in immigration court, many of whom
13 have pending applications for asylum or other relief. This "coordinated operation" is "aimed at
14 dramatically accelerating deportations" by arresting people at the courthouse or at the ICE office
15 and placing them into expedited removal. Arelis R. Hernández & Maria Sacchetti, *Immigrant*
16 *Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23,
17 2025, [https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/)
18 [trump/](https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/); *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to*
19 *Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025,
20 <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>. The Trump
21 administration implemented a policy to drastically increase immigration arrests to a target of at
22 least 3,000 per day. According to White House officials like Stephen Miller, this directive
23 prioritized arrest numbers over the individuals' criminal history, encouraging agents to conduct
24 mass round-ups in public spaces rather than targeted investigations.

25 As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-
26 thirds of those deported had no criminal history. This focus on quantity over public safety led to a
27 new and aggressive tactic: systematically arresting immigrants at courthouses and ICE
28 appointments, regardless of the status of their legal cases. This has created a climate of fear,

1 discouraging people from attending their mandatory hearings or ICE appointments.

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

7 The government's new campaign is also a significant shift from the previous DHS
8 practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*
9 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
10 *Sessions*, 905 F.3d 1137 (9th Cir. 2018), (describing prior practice).

11 R.I. fled Russia in 2021 because of persecution he suffered on account of his race and
12 ethnicity as an Asian male of Kyrgyzstani origins. *See Asylum Application of R.I.* ("Asylum
13 App."), *submitted as* Exh. 2; *see also* Affidavit of R.I. ("R.I. Aff."). On or around June 8, 2021,
14 R.I. presented him at the San Ysidro port-of-entry with the intention of seeking asylum. R.I. Aff.
15 ¶ 2. DHS admitted R.I. into their custody for four days before determining that he is not a danger
16 to the community nor a flight risk and releasing him pursuant to 8 C.F.R. § 212.5. Exh. 1; *see*
17 *also* R.I. Aff. ¶ 3.

18 Upon his release, R.I. established a life with his wife and children in the San Francisco
19 Bay Area. ¶ 6. DHS granted him employment authorization, enabling him to provide for his
20 pregnant wife and children, including a child with autism who requires special attention and care.
21 ¶ 6, Exh. 4. R.I. worked diligently to provide for his family by working in construction. ¶ 6. R.I.
22 has never committed any crimes, nor been arrested for any reason. ¶ 6.

23 R.I. diligently complied with all requirements imposed by DHS through the Intensive
24 Supervision Appearance Program (ISAP). ¶ 4. For the first three months of his release, he wore a
25 GPS monitor. ¶ 4. Seemingly satisfied with his compliance, DHS removed the GPS monitor and
26 began monitoring R.I. through an application installed on his phone. ¶ 4. For years, R.I. complied
27 with requirements imposed on him by DHS including submission of photographs, answering
28 unscheduled phone calls, and reporting in person at scheduled intervals. ¶ 4. R.I. would

sometimes have difficulty uploading images through the application, but he persisted to comply. ¶ 4. On one occasion the application stopped working, but he diligently reinstalled it to comply. ¶ 4. Throughout this time, R.I. never received any warnings, threats of arrest, or notices of non-compliance. ¶ 5.

On November 3, 2025, R.I. appeared for a supervision check-in with ICE. ¶ 5. At this appointment, DHS accused R.I. of not complying with the conditions of his release and detained him. ¶ 5. Allegedly, this detention was due to R.I. having missed a supervision phone call from an unknown number – a call he did not know was from ICE, contrary to past phone calls. ¶ 8. ICE arrested and re-detained R.I. at this November appointment and promptly transferred him to Mesa Verde. ¶ 9. While detained at Mesa Verde, R.I. is unable to access his regular medical care and his stress threatens to worsen his hypertension. ¶ 10. More than anything, R.I. is experiencing extreme stress worrying about his pregnant wife and children, who are left without their provider and caregiver. ¶ 10. *Id.*

R.I.'s asylum case, for which his wife and eldest children are derivatives, remains pending. *See* Asylum App. Prior to his detention, R.I. and his family were preparing for a merits hearing before EOIR scheduled for February 13, 2026. *See* Automatic Case Information for R.I.'s wife, *submitted as* Exh. 5. Given R.I.'s detention, his case has been severed from his family's and he is scheduled for a preliminary hearing on the detained docket scheduled for December 1, 2025. *See* Automatic Case Information for R.I., *submitted as* Exh. 5.

LEGAL ARGUMENT

R.I. 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. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if R.I. does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “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). As set forth in more detail below, R.I. overwhelmingly satisfies both standards.

Furthermore, the requirements for issuing a temporary restraining order without notice are met here. *See* Fed. R. Civ. P. 65(b). R.I. notified respondents' counsel on November 24, 2025, that he would be filing the motion by email to the U.S. Attorney's Office email address for habeas petition filings. R.I. also set out specific facts demonstrating that immediate and irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025); *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)(granting ex parte temporary restraining order in similar circumstances).

I. Petitioner Warrants A Temporary Restraining Order

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). R.I. is likely to remain in unlawful custody in violation of his due process rights without intervention by this Court. R.I. will continue to suffer irreparable injury if he continues to be detained without due process.

a. Petitioner is likely to succeed in the merits because Petitioner's detention violates substantive due process.

The Due Process Clause applies to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government

objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

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

R.I., who has no criminal record and who is diligently pursuing his immigration case, is neither a danger nor a flight risk. Therefore, his detention is both punitive and not justified by a legitimate purpose, violating his substantive due process rights. Indeed, when Respondents chose

to release R.I. from custody in June 2021, that decision represented their finding that he was neither a danger nor a flight risk. *See Saravia* at 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.”). No material changes in circumstances have transpired since to disturb that finding.

First, because R.I. had no criminal history, and has had no intervening criminal history or arrests since his release, there is no credible argument that he is a danger to the community.

Second, as to flight risk, the question is whether custody is reasonably necessary to secure a person’s appearance at immigration court hearings and related check-ins. *See Hernandez*, 872 F.3d at 990-91. There is no basis to argue that R.I., who was arrested by Respondents *while appearing at his scheduled ICE appointment*, is a flight risk. Moreover, R.I. has a viable path toward immigration relief, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and Customs Enf’t*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to remain in the United States). R.I. concedes that he had technical difficulties with some check-ins and missed one phone call from an unknown number, but this fact does not establish that he is a flight risk, given that he has promptly communicated with his officer, ICE, and ISAP appointment. At the time of his arrest, R.I. had filed his Form I-589, Application for Asylum and Withholding of Removal, and he has every intention of continuing to pursue his applications for immigration relief.

In sum, R.I.’s actions since Respondents first released him confirm that he is neither a danger nor a flight risk. Indeed, his ongoing compliance and community ties compel the conclusion that he is even *less* of a danger or flight risk than when he was initially released. Accordingly, R.I.’s ongoing detention is unconstitutional, and substantive due process principles require his immediate release.

b. Petitioner is likely to succeed on the merits of his claim that the Constitution requires a hearing before a neutral arbiter prior to any re-incarceration by ICE.

R.I. is likely to succeed on his claim that, in his particular circumstances, his current

1 detention is unlawful because the Due Process Clause of the Constitution prevents Respondents
2 from re-arresting him without first providing a pre-deprivation hearing before a neutral
3 adjudicator where the government demonstrates by clear and convincing evidence that there has
4 been a material change in circumstances such that he is now a danger or a flight risk.

5 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
6 release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).
7 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
8 immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640
9 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest noncitizens.
10 There, the BIA held that "where a previous bond determination has been made by an immigration
11 judge, no change should be made by [the DHS] absent a change of circumstance." *Id.* In practice,
12 DHS "requires a showing of changed circumstances both where the prior bond determination was
13 made by an immigration judge *and* where the previous release decision was made by a DHS
14 officer." *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
15 *Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis added). The Ninth Circuit has also assumed
16 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
17 circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent
18 changed circumstances ... ICE cannot redetain Panosyan.").

19 ICE has further limited its authority as described in *Sugay*, and "generally only re-arrests
20 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances." *Saravia*, 280 F.
21 Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
22 (9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus,
23 under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had been previously
24 released from custody only after a material change in circumstances. *See Saravia*, 280 F. Supp. 3d
25 at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

26 ICE's power to re-arrest a noncitizen who is at liberty following a release from custody is
27 also constrained by the demands of due process. *See Hernandez*, 872 F.3d 976, 981 (9th Cir.
28 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the

requirements of due process”). In this case, the guidance provided by *Matter of Sugay*—that ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect R.I.’s weighty interest in his freedom from unlawful detention.

Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on ICE release, like R.I., *before* ICE re-detains him. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff’s ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025); *Hernandez Nieves v. Kaiser*, *Jimenez* No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Caicedo Hinestroza et al. v. Kaiser*, No. 25-CV-07559- JD, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Arzate v. Andrews*, Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4, 2025) (The court found Mr. Arzate was likely to succeed on his claim that his re-detention without a new bond hearing violated the Due Process Clause; the court enjoined the government from re-detaining him without first providing a bond hearing where it must prove by clear and convincing evidence that he is a flight risk or a danger to the community); *Pinchi v. Noem*, Slip Copy, 2025 WL 1853763 (N.D. Cal. July 4, 2025).

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

1 with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

2 **1. Petitioner has a protected liberty interest in his conditional release.**

3 The Due Process Clause protects R.I.'s liberty from immigration custody: "Freedom from
4 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
5 the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678,
6 690 (2001).

7 Since June 12, 2021, R.I. has exercised that freedom under DHS's own grant of
8 parole. Accordingly, he retains a weighty liberty interest under the Due Process Clause of the
9 Fifth Amendment in avoiding unlawful re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-
10 47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
11 482-483 (1972).

12 In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has
13 in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of
14 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
15 form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the
16 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live
17 up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although
18 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
19 a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is
20 valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S.
21 at 482.

22 This basic principle—that individuals have a liberty interest in their conditional release—
23 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See*,
24 *e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program
25 created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation
26 process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony
27 probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit
28 has explained, when analyzing the issue of whether a specific conditional release rises to the level

1 of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
2 conditional release in the case before them with the liberty interest in parole as characterized by
3 *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
4 marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C.
5 Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is
6 lawfully revocable—has a liberty interest that entitles him to constitutional due process before he
7 is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408
8 U.S. at 482).

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

17 Here, when this Court “‘compar[es] the release in [R.I.’s case], with the liberty interest in
18 parole as characterized by *Morrissey*,” they bear similar features in liberty interests. *See*
19 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, R.I.’s release “enables him to do a wide
20 range of things open to persons,” including to live at home, work, care for his family, for whom
21 he is the financial provider, and “be with family and friends and to form the other enduring
22 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

23 **2. Petitioner’s liberty interest mandates his release from unlawful**
24 **custody and a hearing before any re-arrest.**

25 R.I. asserts that, here, (1) where his detention would be civil; (2) where he has been at
26 liberty for over three years, during which time he has appeared at all of his immigration court
27 hearings and ICE appointments; (3) where he has a viable asylum claim (4) where no change in
28 circumstances exist that would justify his lawful detention; and (5) where the only circumstance

1 that has changed was ICE's move to arrest as many people as possible under the new
2 administration's initiative, due process mandates that he be released from his unlawful custody
3 and receive notice and a hearing before a neutral adjudicator *before* any re-arrest or revocation of
4 his custody release.

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

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

28 Because, in this case, the provision of a pre-deprivation hearing is both possible and

valuable to preventing an erroneous deprivation of liberty, ICE is required to provide R.I. with notice and a hearing *prior* to any reincarceration and revocation of his release. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *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 [R.I.’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

(a) Petitioner’s private interest in his liberty is profound.

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like R.I., 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 context of criminal parolees, the courts have held that they cannot be re-arrested without a due process hearing, during which they can raise any claims they may have regarding why their reincarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, R.I. retains a truly weighty liberty interest even though he is under conditional release.

What is at stake in this case for R.I. is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior decision releasing a non-citizen from custody and be able to take away his physical freedom, i.e., his “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of

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

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

8 **(b) The government’s interest in re-incarcerating Petitioner**
9 **without a hearing is low and the burden on the government to**
10 **refrain from re-arresting him until he is provided a hearing is**
11 **minimal.**

12 The government’s interest in maintaining an unlawful detention without a due process
13 hearing is low, and when weighed against R.I.’s significant private interest in his liberty, the scale
14 tips sharply in favor of enjoining Respondents (1) from keeping him in unlawful custody; (2) re-
15 arresting R.I. unless and until the government demonstrates to a neutral adjudicator by clear and
16 convincing evidence that he is a flight risk or danger to the community; and (3) removing him
17 from the United States in violation of an agency order and district court injunction. It becomes
18 abundantly clear that the *Mathews* test favors R.I. when the Court considers that the process he
19 seeks—notice and a hearing regarding whether release from custody should be revoked—is a
20 standard course of action for the government. Providing R.I. with a hearing before this Court (or a
21 neutral decisionmaker) to determine whether there is clear and convincing evidence that R.I. is a
22 flight risk or danger to the community would impose only a *de minimis* burden on the
23 government, because the government routinely provides this sort of hearing to individuals like
24 R.I.

25 As immigration detention is civil in nature, it cannot serve a punitive purpose. The
26 government’s only interest in holding an individual in immigration detention can be to prevent
27 danger to the community or to ensure a noncitizen’s appearance at immigration proceedings. *See*
28 *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any
basis for detaining R.I. when he was released after a DHS’ determination in 2021, and since has

1 lived at liberty with his community, without any criminal or civil traffic infractions.

2 In June 2021, DHS officers determined that R.I. was not a flight risk or a danger to the
3 community and there are no material changes in circumstances to undermine that determination.
4 *See Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance to a person’s
5 justifiable reliance in maintaining his conditional freedom so long as he abides by the conditions
6 on his release, than to his mere anticipation or hope of freedom”) (quoting *United States ex rel.*
7 *Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

8 It is difficult to see how the government’s interest in detaining R.I. has materially changed
9 since he was released in June 2021, absent any material circumstances indicating he is a danger to
10 the community or a flight risk. The government’s interest in detaining R.I. at this time is
11 extremely low. That ICE has a new policy to make a minimum number of arrests each day under
12 the new administration does not constitute a material change in circumstances or increase the
13 government’s interest in detaining him. *See* “Trump officials issue quotas to ICE officers to ramp
14 up arrests,” *Washington Post* (January 26, 2025), *available at*:
15 <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>;
16 “Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9,
17 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
18 [sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) (“At the end of May 2025, ‘Stephen Miller, a senior
19 White House official, told Fox News that the White House was looking for ICE to arrest 3,000
20 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people
21 in the first 100 days of the Trump administration, an average of about 660 arrests a day,’ reported
22 the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar
23 year.”).

24 Moreover, the “fiscal and administrative burdens” that his immediate release and a lawful
25 pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
26 R.I. does not seek a unique or expensive form of process, but rather a routine hearing regarding
27 whether his release should be revoked and whether he should be re-incarcerated.

28 As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of

1 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
2 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

3 Alternatively, providing R.I. with a hearing before this Court (or a neutral decision-maker)
4 regarding release from custody is a routine procedure that the government provides to those in
5 immigration detention facilities daily. At that hearing, the Court would have the opportunity to
6 determine whether circumstances have changed sufficiently to justify his re-arrest. But there is no
7 justifiable reason to re-incarcerate R.I. before such a hearing takes place. As the Supreme Court
8 noted in *Morrissey*, even where the State has an “overwhelming interest in being able to return [a
9 parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has
10 failed to abide by the conditions of his parole . . . the State has no interest in revoking parole
11 without some informal procedural guarantees.” 408 U.S. at 483.

12 Releasing R.I. from unlawful custody and enjoining R.I.’s re-arrest until ICE (1) moves
13 for a custody re-determination before an IJ and (2) demonstrates by clear and convincing
14 evidence that R.I. is a flight risk or danger to the community is far *less* costly and burdensome for
15 the government than keeping him detained. *Hernandez*, 872 F.3d at 996.

16 **(c) Without a due process hearing prior to any re-arrest, the**
17 **risk of erroneous deprivation of liberty is high.**

18 Releasing R.I. from unlawful custody and providing R.I. a pre-deprivation hearing would
19 decrease the risk of him being erroneously deprived of his liberty. Before R.I. can be lawfully
20 detained, he must be provided with a hearing before a neutral adjudicator at which the
21 government is held to show that there has been sufficiently changed circumstances; such
22 circumstances that ICE’s June 2021 release should be altered or revoked because clear and
23 convincing evidence exists to establish that R.I. is a danger to the community or a flight risk.

24 The procedure R.I. seeks—a hearing in front of a neutral adjudicator at which the
25 government must prove by clear and convincing evidence that circumstances have changed to
26 justify his detention *before* any re-arrest—is much more likely to produce accurate determinations
27 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
28 circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989) (when

1 “delicate judgments depending on credibility of witnesses and assessment of conditions not
2 subject to measurement” are at issue, the “risk of error is considerable when just determinations
3 are made after hearing only one side”). “A neutral judge is one of the most basic due process
4 protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other*
5 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that
6 the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
7 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf*
8 *IP*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

9 Due process also requires consideration of alternatives to detention at any custody
10 redetermination hearing that may occur. The primary purpose of immigration detention is to
11 ensure a noncitizen’s appearance during removal proceedings: *Zadvydas*, 533 U.S. at 697.
12 Detention is not reasonably related to this purpose if there are alternatives to incarceration that
13 could mitigate the risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly,
14 alternatives to detention must be considered in determining whether R.I.’s reincarceration is
15 warranted

16 As the above-cited authorities show, R.I. is likely to succeed on his claim that the current
17 arrest and detention that ICE effected on November 3, 2025, are unlawful. The Due Process
18 Clause requires notice and a hearing before a neutral decision-maker before any reincarceration
19 by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus
20 also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

21 **II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief**

22 R.I. will suffer irreparable harm if he remains detained after being deprived of his liberty
23 and subjected to unlawful incarceration by immigration authorities without being provided the
24 constitutionally adequate process that this motion for a temporary restraining order seeks.
25 Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193,
26 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial
27 has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and
28 it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for*

1 *Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth
2 Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to
3 immigration detention,” including “subpar medical and psychiatric care in ICE detention
4 facilities, the economic burdens imposed on detainees and their families as a result of detention,
5 and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872
6 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention
7 centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced
8 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of
9 environmental health and safety standards; staffing shortages affecting the level of care detainees
10 received for suicide watch, and detainees being held in administrative segregation in unauthorized
11 restraints, without being allowed time outside their cell, and with no documentation that they
12 were provided health care or three meals a day).

13 R.I. established a life in Walnut Creek, California. Prior to his detention he was living
14 with his pregnant wife and children, including one child with autism who requires special care.
15 He worked full time in construction to provide for his family. R.I. has obtained a work
16 authorization card, which is currently renewing. R.I. has never committed any crimes nor been
17 arrested for any reason. R.I. is currently detained at Mesa Verde. Before his detention, R.I. was an
18 essential financial contributor to his pregnant wife and children, including one child with autism
19 who requires special care. The detention has caused him severe emotional distress knowing that
20 his family is struggling to survive without him. The financial and emotional hardship on his loved
21 ones, due to R.I.’s detention, has been severe. Every additional day R.I. spends in unlawful
22 detention subjects him and others to further irreparable harm.

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

III. The Balance of Equities and the Public Interest Favor Granting this Temporary Restraining Order

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

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

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

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

1 constitutional right has been violated, because all citizens have a stake in upholding the
2 Constitution.”).

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

5 **CONCLUSION**

6 For all the above reasons, this Court should find that R.I. warrants a temporary restraining
7 order and a preliminary injunction ordering that Respondents (1) release him from his unlawful
8 custody; (2) refrain from re-arresting him unless and until he is afforded a hearing before a
9 neutral adjudicator on whether a change in custody is justified by clear and convincing evidence
10 that he is a danger to the community or a flight risk; and (3) refrain from sending him to any place
11 outside of the United States.

12 Respectfully submitted this 24th day of November, 2025.

13 By counsel,

14 /s/ Natalia Vieira Santanna

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