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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

F.V.A.V.,

Petitioner,

v.

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

Sergio ALBARRAN, Acting Field Office
Director of the San Francisco Immigration
and Customs Enforcement Office

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.

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

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NOTICE OF MOTION

Petitioner F.V.A.V. 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 F.V.A.V. 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 December 7, 2025.

By counsel,

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INTRODUCTION

Petitioner, F.V.A.V., has been civilly imprisoned by U.S. Immigration and Customs Enforcement (ICE) since on or about August 7, 2025, after having fully complied with the terms of his release from the custody of the Department of Homeland Security (DHS) since his initial apprehension on or about August 29, 2023. During this period, he appeared for his immigration hearings, timely filed his Form I-589 Application for Asylum and for Withholding of Removal, maintained a stable residence in Rochester, New York with his long-term partner and their children, and worked consistently in construction installing flooring to support his family. He was originally released from border custody without bond, ISAP, parole, or reporting requirements, reflecting DHS's determination that he was neither a danger to the community nor a flight risk.

F.V.A.V.'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 parent with no criminal history in either Ecuador or the United States, F.V.A.V. is not a flight risk or danger. His asylum case remains pending before EOIR, and his next hearing is scheduled for February 20, 2026, in Bakersfield, California, and thus removal is not imminent. Thus, Petitioner'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, Petitioner 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).

As will be set out in the Statement of Facts and case, any apparent delay in seeking this emergency relief reflects the substantial obstacles Petitioner faced in securing counsel while in immigration detention, and not any lack of diligence on his part.

1 In light of this irreparable harm, and because he is likely to succeed on the merits of
2 his due process claims, Petitioner respectfully requests that this Court issue an ex parte
3 temporary restraining order (“TRO”) immediately releasing him from custody and enjoining the
4 government from re-arresting him absent the opportunity to contest that arrest at a hearing
5 before a neutral decision maker. Confronted with substantially identical facts and legal issues,
6 this and other courts in this circuit have recently granted the exact relief Petitioner seeks. See
7 *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v Wofford*,
8 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025); *Garro Pinchi v. Noem*, 2025 WL 1853763, *4
9 (N.D. Cal. July 4, 2025), converted to preliminary injunction at __ F. Supp. 3d __, 2025 WL
10 2084921 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, 2025 WL 1918679, *10 (E.D. Cal. July
11 11, 2025) (granting preliminary injunction).

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

14 STATEMENT OF FACTS AND CASE

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

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

6 In addition, individuals are now held for extended periods, sometimes days, in
7 temporary holding cells that are not designed for overnight or prolonged detention, often under
8 inhumane conditions. Government officials have justified these harsh conditions not as a matter
9 of necessity, but as an intentional deterrent, which is not a constitutionally permissible reason
10 for detention. The government's new campaign is also a significant shift from the previous DHS
11 practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v.*
12 *Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
13 *Sessions*, 905 F.3d 1137 (9th Cir. 2018), (describing prior practice).

14 F.V.A.V. fled Ecuador in 2023 because of violent extortion, death threats, and an
15 assault by [REDACTED] whose members repeatedly threatened him
16 and his family, demanded payments, and attacked him [REDACTED]

17 [REDACTED] See Affidavit of F.V.A.V. ("F.V.A.V. Aff."). On or about August 29, 2023,
18 F.V.A.V. crossed the border in Arizona with the intention of seeking protection in the United
19 States. F.V.A.V. Aff. ¶6. DHS held him in border custody for approximately two days before
20 determining that he was not a danger to the community or a flight risk and releasing him under
21 an order of release with a Notice to Appear in removal proceedings under INA § 240. See Exh.
22 3; F.V.A.V. Aff. 6.

23 Upon his release, F.V.A.V. established a life with his long-term partner and their
24 children in Rochester, New York. ¶7. He has worked diligently in construction installing
25 flooring to support his household and pays taxes. He has never committed any crimes, nor been
26 arrested for any reason. Exh. 5; *see also* F.V.A.V. Aff. ¶8 and letters and information gathered
27 from his partner, friends, and faith community attest to his reliability, strong work ethic, and
28 good character at Exh. 2.

F.V.A.V. has diligently complied with all requirements of his removal proceedings.
Upon his entry into the country, he received a Notice to Appear scheduling his initial Master
Hearing for January 30, 2024. Exh. 4; Exh 6; F.V.A.V. Aff. ¶6. He complied with this

1 commitment and duly appeared before the Immigration Court. On August 14, 2024, F.V.A.V.
2 timely filed his Form I-589 (Application for Asylum and for Withholding of Removal), given
3 his fear of return to Ecuador because of the death threats he received, and he was awaiting
4 further hearings on his asylum application when he was arrested and detained again. Exh.6;
5 F.V.A.V. App. ¶9.

6 On August 7, 2025, at approximately 7:30 a.m., F.V.A.V. was detained by ICE
7 agents in Rochester while he was driving his partner to work. ¶10. Unmarked vehicles with dark
8 tinted windows followed and then surrounded his car at a traffic light. Several men, who did not
9 clearly identify themselves as law enforcement, approached and asked for his “documents.”
10 Despite his explanation that he was in asylum proceedings and showing on his phone the date of
11 his upcoming hearing, they handcuffed him and took him into custody without presenting a
12 judicial warrant or written authorization. He was transported first to an ICE office in New York
13 and then transferred to the Buffalo Federal Detention Facility in Batavia, before being moved
14 through additional facilities and ultimately transferred to Mesa Verde, where he is currently
15 detained. 11.

16 Although Petitioner has been detained since August 2025, any apparent delay in
17 seeking this emergency relief reflects the substantial barriers he has faced in securing counsel
18 from within immigration detention, including language limitations, lack of financial resources,
19 and multiple transfers between facilities located far from where he lived with his family in
20 Rochester, New York and ultimately culminating in his recent transfer to California. Only after
21 arriving in California and understanding he was not going to be subjected to a new transfer, was
22 Petitioner able to focus on his case and attempt to retain an attorney to seek his release. In
23 addition, because he cannot work or pay for a lawyer while detained, his partner needed time to
24 gather resources and, with the help of friends, retain counsel. In this scenario, Petitioner has
25 proceeded diligently to retain counsel and present this request; this apparent delay does not
26 diminish the urgency of judicial intervention.

27 F.V.A.V.’s asylum case remains pending. Prior to his re-detention, he had already
28 appeared for his initial Master Hearing on January 30, 2024, and was preparing to continue
litigating his asylum claim. ¶9 Following his arrest and subsequent transfer to California, his
case was placed on the detained docket in this District. At a hearing on November 20, 2025, at

1 which he appeared accompanied by counsel, the Immigration Court set his Individual Hearing
2 for February 20, 2026.

3 LEGAL ARGUMENT

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

15 Furthermore, the requirements for issuing a temporary restraining order without
16 notice are met here. *See* Fed. R. Civ. P. 65(b). F.V.A.V. notified respondents’ counsel on
17 December 7, 2025, that he would be filing the motion by email to the U.S. Attorney’s Office
18 email address for habeas petition filings. F.V.A.V. also set out specific facts demonstrating that
19 immediate and irreparable injury, loss, or damage may result before respondents can be heard in
20 opposition. *See Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 WL 1853763, at *4 (N.D. Cal.
21 July 4, 2025); *J.O.L.R. v Wofford*, 2025 WL 2718631 * 11 (E.D. Cal Sept. 23, 2025); *R.D.T.M. v*
22 *Wofford*, 2025 WL 2617255 * 11 (E.D. Cal Sept. 9, 2025)(granting ex parte temporary
23 restraining order in similar circumstances).

24 **I. Petitioner Warrants A Temporary Restraining Order**

25 A temporary restraining order should be issued if “immediate and irreparable injury,
26 loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ.
27 P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
28 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). F.V.A.V. is likely
to remain in unlawful custody in violation of his due process rights without intervention by this

1 Court. F.V.A.V. will continue to suffer irreparable injury if he continues to be detained without
2 due process.

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

5 The Due Process Clause applies to "all 'persons' within the United States, including
6 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent."
7 *Zadvydas*, 533 U.S. at 693. "The touchstone of due process is protection of the individual
8 against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974),
9 including "the exercise of power without any reasonable justification in the service of a
10 legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).
11 "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.

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

25 The Supreme Court has recognized that noncitizens may bring as-applied challenges
26 to detention, including so-called "mandatory" detention. *Demore v. Kim*, 538 U.S. 510, 532-33
27 (2003) (Kennedy, J., concurring) ("Were there to be an unreasonable delay by the INS in
28 pursuing and completing deportation proceedings, it could become necessary then to inquire

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

6 F.V.A.V., who has no criminal record and who is diligently pursuing his immigration
7 case, is neither a danger nor a flight risk. Therefore, his detention is both punitive and not
8 justified by any legitimate purpose, violating his substantive due process rights. Indeed, when
9 Respondents chose to release F.V.A.V. from custody in August 2023, shortly after his
10 apprehension near the Arizona border, that decision represented their finding that he was neither
11 a danger nor a flight risk. *See Saravia* at 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H.*
12 *v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (“Release reflects a determination by the government
13 that the noncitizen is not a danger to the community or a flight risk.”). No material changes in
14 circumstances have transpired since to disturb that finding.

15 *First*, because F.V.A.V. had no criminal history, and has had no intervening criminal
16 history or arrests since his release, there is no credible argument that he is a danger to the
17 community. *Second*, as to flight risk, the question is whether custody is reasonably necessary to
18 secure a person’s appearance at immigration court hearings and related check-ins. *See*
19 *Hernandez*, 872 F.3d at 990-91. There is no basis to argue that F.V.A.V. is a flight risk.
20 Moreover, F.V.A.V. has a viable path toward immigration relief and a pathway to lawful
21 permanent residence, further mitigating any risk of flight. *See Padilla v. U.S. Immigr. and*
22 *Customs Enf’t*, 704 F. Supp. 3d 1163, 1173 (W.D. Wash. 2023) (holding that there is not a
23 legitimate concern of flight risk where plaintiffs have bona fide asylum claims and desire to
24 remain in the United States).

25 In sum, F.V.A.V.’s actions since Respondents first released him confirm that he is
26 neither a danger nor flight risk. Indeed, his ongoing compliance and community ties compel the
27 conclusion that he is even *less* of a danger or flight risk than when he was initially released.
28 Accordingly, F.V.A.V.’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**

1 **re-incarceration by ICE.**

2 F.V.A.V. is likely to succeed on his claim that, in his particular circumstances, his
3 current detention is unlawful because the Due Process Clause of the Constitution prevents
4 Respondents from re-arresting him without first providing a pre-deprivation hearing before a
5 neutral adjudicator where the government demonstrates by clear and convincing evidence that
6 there has been a material change in circumstances such that he is now a danger or a flight risk.

7 The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
8 release and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).
9 Notwithstanding the breadth of the statutory language granting ICE the power to revoke an
10 immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec. 647, 640
11 (BIA 1981), the BIA recognized an implicit limitation on ICE's authority to re-arrest
12 noncitizens. There, the BIA held that "where a previous bond determination has been made by
13 an immigration judge, no change should be made by [the DHS] absent a change of
14 circumstance." *Id.* In practice, DHS "requires a showing of changed circumstances both where
15 the prior bond determination was made by an immigration judge *and* where the previous
16 release decision was made by a DHS officer." *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal.
17 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (emphasis
18 added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE has no authority
19 to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x
20 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot redetain
21 Panosyan."). ICE has further limited its authority as described in *Sugay*, and "generally only
22 re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances."
23 *Saravia*, 280 F. Supp. 3d at 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*,
24 905 F.3d 1137 (9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis
25 added). Thus, under BIA case law and ICE practice, ICE may re-arrest a noncitizen who had
26 been previously released from custody only after a material change in circumstances. *See*
27 *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

28 ICE's power to re-arrest a noncitizen who is at liberty following a release from custody
is also constrained by the demands of due process. *See Hernandez*, 872 F.3d 976, 981 (9th Cir.
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

1 ICE should not re-arrest a noncitizen absent changed circumstances—is insufficient to protect
2 F.V.A.V.'s weighty interest in his freedom from unlawful detention.

3 Federal district courts in California have repeatedly recognized that the demands of due
4 process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out
5 in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a
6 noncitizen on ICE release, like F.V.A.V., before ICE re-detains him. See, e.g., *Ortega v. Bonnar*,
7 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL
8 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
9 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH,
10 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm
11 if re-detained, and required notice and a hearing before any re-detention); *Enamorado v.*
12 *Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary
13 injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on
14 bond for more than five years). See also *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025
15 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before
16 any re-arrest); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal.
17 Aug. 21, 2025); *Garcia v. Kaiser*, No. 4:25-cv-06916-YGR (N.D. Cal. Aug. 29, 2025);
18 *Hernandez Nieves v. Kaiser*, *Jimenez* No. 25-CV-06921-LB, 2025 WL 2533110 (N.D. Cal.
19 Sept. 3, 2025); *Caicedo Hinestroza et al. v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983
20 (N.D. Cal. Sept. 9, 2025). *Arzate v. Andrews*, Slip Copy, 2025 WL 2230521 (E.D. Cal. Aug. 4,
21 2025) (The court found Mr. Arzate was likely to succeed on his claim that his re-detention
22 without a new bond hearing violated the Due Process Clause; the court enjoined the
23 government from re-detaining him without first providing a bond hearing where it must prove
24 by clear and convincing evidence that he is a flight risk or a danger to the community); *Pinchi*
25 *v. Noem*, Slip Copy, 2025 WL 1853763 (N.D. Cal. July 4, 2025).

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

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

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

5 Since August 2023, F.V.A.V. has exercised that liberty under a DHS order releasing him
6 from custody. He therefore retains a substantial Fifth Amendment liberty interest in avoiding
7 unlawful re-incarceration. See *Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v.*
8 *Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972).

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

19 This basic principle—that individuals have a liberty interest in their conditional
20 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
21 occasions. See, e.g., *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a
22 pre-parole program created to reduce prison overcrowding have a protected liberty interest
23 requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that
24 individuals released on felony probation have a protected liberty interest requiring
25 pre-deprivation process). As the First Circuit has explained, when analyzing the issue of
26 whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts
27 have resolved the issue by comparing the specific conditional release in the case before them
28 with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*,
607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). See also, e.g.,
Hurd v. District of Columbia, 864 F.3d 671, 683 (D.C. Cir. 2017) ("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”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that 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).

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

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

F.V.A.V. asserts that, here, (1) where his detention would be civil; (2) where he has been at liberty for almost two years and has complied with all requirements in his immigration case; (3) where he has a viable asylum claim (4) where no change in circumstances exist that would justify his lawful detention; and (5) where the only circumstance that has changed was 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*, 408 U.S. at 481-82). This Court must “balance [F.V.A.V.’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

1 does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test outlined in
 2 *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test:
 3 “first, the private interest that will be affected by the official action; second, the risk of an
 4 erroneous deprivation of such interest through the procedures used, and the probative value, if
 5 any, of additional or substitute procedural safeguards; and finally the government’s interest,
 6 including the function involved and the fiscal and administrative burdens that the additional or
 7 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*
Eldridge, 424 U.S. 319, 335 (1976)).

8 The Supreme Court “usually has held that the Constitution requires some kind of a
 9 hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.
 10 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation
 11 remedies are “the only remedies the State could be expected to provide” can the
 12 post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985.
 13 Moreover, only where “one of the variables in the *Mathews* equation—the value of
 14 predeprivation safeguards—is negligible in preventing the kind of deprivation at issue” such
 15 that “the State cannot be required constitutionally to do the impossible by providing
 predeprivation process,” can the government avoid providing pre-deprivation process. *Id.*

16 Because, in this case, the provision of a pre-deprivation hearing is both possible and
 17 valuable to preventing an erroneous deprivation of liberty, ICE is required to provide F.V.A.V.
 18 with notice and a hearing *prior* to any reincarceration and revocation of his release. *See*
 19 *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; *see*
 20 *also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th
 21 Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not
 22 constitutionally be held in jail pending the determination as to whether they can ultimately be
 23 recommitted). Under *Mathews*, “the balance weighs heavily in favor of [F.V.A.V.’s] liberty” and
 requires a pre-deprivation hearing before a neutral adjudicator.

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

24 Under *Morrissey* and its progeny, individuals conditionally released from serving a
 25 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
 26 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
 27 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
 28

entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like F.V.A.V., 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, F.V.A.V. retains a truly weighty liberty interest even though he is under conditional release.

What is at stake in this case for F.V.A.V. 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 the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690 (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996). Thus, there is a clear, profound private interest at stake in this case, which must be weighed heavily when determining what process he is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

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

The government’s interest in maintaining an unlawful detention without a due process hearing is low, and when weighed against F.V.A.V.’s significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents (1) from keeping him in unlawful custody; (2) re-arresting F.V.A.V. unless and until the government demonstrates to a neutral

1 adjudicator by clear and convincing evidence that he is a flight risk or danger to the community;
2 and (3) removing him contrary to court or agency orders.

3 It becomes abundantly clear that the *Mathews* test favors F.V.A.V. when the Court
4 considers that the process he seeks—notice and a hearing regarding whether release from
5 custody should be revoked—is a standard course of action for the government. Providing
6 F.V.A.V. with a hearing before this Court (or a neutral decisionmaker) to determine whether
7 there is clear and convincing evidence that F.V.A.V. is a flight risk or danger to the community
8 would impose only a *de minimis* burden on the government, because the government routinely
9 provides this sort of hearing to individuals like F.V.A.V.

10 As immigration detention is civil in nature, it cannot serve a punitive purpose. The
11 government's only interest in holding an individual in immigration detention can be to prevent
12 danger to the community or to ensure a noncitizen's appearance at immigration proceedings.
13 See *Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has
14 any lawful basis for detaining F.V.A.V. when he was released after a DHS' determination in
15 August 2023, and since has lived at liberty with his community, without any criminal or civil
16 traffic infractions.

17 In August of 2023, DHS officers determined that F.V.A.V. was not a flight risk or a
18 danger to the community and there are no material changes in circumstances to undermine that
19 determination. See *Morrissey*, 408 U.S. at 482 (“It is not sophistic to attach greater importance
20 to a person’s justifiable reliance in maintaining his conditional freedom so long as he abides by
21 the conditions on his release, than to his mere anticipation or hope of freedom”) (quoting
22 *United States ex rel. Bey v. Connecticut Board of Parole*, 443 F.3d 1079, 1086 (2d Cir. 1971).

23 It is difficult to see how the government’s interest in detaining F.V.A.V. has materially
24 changed since he was released in August of 2023, absent any material circumstances indicating
25 he is a danger to the community or a flight risk. The government’s interest in detaining F.V.A.V.
26 at this time is extremely low. That ICE has a new policy to make a minimum number of arrests
27 each day under the new administration does not constitute a material change in circumstances or
28 increase the government’s interest in detaining him. See “Trump officials issue quotas to ICE
officers to ramp up arrests,” *Washington Post* (January 26, 2025), available at:
<https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>;
“Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,” *Forbes* (June 9,

1 2025),

2 [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-i](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/)
3 [mmigration-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 White
4 House official, told Fox News that the White House was looking for ICE to arrest 3,000 people
5 a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the
6 first 100 days of the Trump administration, an average of about 660 arrests a day,’ reported the
7 New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar
8 year.”). Moreover, the “fiscal and administrative burdens” that his immediate release and a
9 lawful pre-detention hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at
10 334-35. F.V.A.V. does not seek a unique or expensive form of process, but rather a routine
11 hearing regarding whether his release should be revoked and whether he should be
12 re-incarcerated.

12 As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public
13 of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total
14 daily cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

14 Alternatively, providing F.V.A.V. with a hearing before this Court (or a neutral
15 decision-maker) regarding release from custody is a routine procedure that the government
16 provides to those in immigration detention facilities daily. At that hearing, the Court would have
17 the opportunity to determine whether circumstances have changed sufficiently to justify his
18 re-arrest. But there is no justifiable reason to re-incarcerate F.V.A.V. before such a hearing takes
19 place. As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming
20 interest in being able to return [a parolee] to imprisonment without the burden of a new
21 adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the
22 State has no interest in revoking parole without some informal procedural guarantees.” 408 U.S.
23 at 483. Releasing F.V.A.V. from unlawful custody and enjoining F.V.A.V.’s re-arrest until ICE
24 (1) moves for a custody re-determination before an IJ and (2) demonstrates by clear and
25 convincing evidence that F.V.A.V. is a flight risk or danger to the community is far less costly
26 and burdensome for the government than keeping him detained. *Hernandez*, 872 F.3d at 996.

26 **(c) Without a due process hearing prior to any re-arrest, the
27 risk of erroneous deprivation of liberty is high.**
28

1 Releasing F.V.A.V. from unlawful custody and providing him a pre-deprivation hearing
2 would decrease the risk of him being erroneously deprived of his liberty. Before F.V.A.V. can be
3 lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the
4 government is held to show that there has been sufficiently changed circumstances; such
5 circumstances that ICE's August 2023 release should be altered or revoked because clear and
6 convincing evidence exists to establish that F.V.A.V. is a danger to the community or a flight
7 risk.

8 The procedure F.V.A.V. seeks—a hearing in front of a neutral adjudicator at which the
9 government must prove by clear and convincing evidence that circumstances have changed to
10 justify his detention *before* any re-arrest—is much more likely to produce accurate
11 determinations regarding factual disputes, such as whether a certain occurrence constitutes a
12 “changed circumstance.” See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir. 1989)
13 (when “delicate judgments depending on credibility of witnesses and assessment of conditions
14 not subject to measurement” are at issue, the “risk of error is considerable when just
15 determinations are made after hearing only one side”). “A neutral judge is one of the most basic
16 due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated*
17 *on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has
18 noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where
19 a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
20 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011). Due process also requires
21 consideration of alternatives to detention at any custody redetermination hearing that may occur.
22 The primary purpose of immigration detention is to ensure a noncitizen's appearance during
23 removal proceedings: *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this
24 purpose if there are alternatives to incarceration that could mitigate the risk of flight. See *Bell v.*
25 *Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in
26 determining whether F.V.A.V.'s reincarceration is warranted

27 As the above-cited authorities show, F.V.A.V. is likely to succeed on his claim that the
28 current arrest and detention that ICE effected on August 7, 2025, are unlawful. The Due Process
Clause requires notice and a hearing before a neutral decision-maker before any reincarceration
by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus
also meriting a TRO. See *Alliance for the Wild Rockies*, 632 F.3d at 1135.

II. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

F.V.A.V. 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 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).

F.V.A.V. established a life in Rochester, New York. Prior to his detention he was living with his long-term partner and their children. He worked full time in construction installing flooring to provide for his family. F.V.A.V. has never committed any crimes nor been arrested for any reason. He is currently detained at Mesa Verde. Before his detention, he was the primary financial provider for his partner and children. The detention has caused him severe emotional distress knowing that his family is struggling to manage expenses and daily life without him. The financial and emotional hardship on his loved ones, due to his detention, has been severe. Every additional day F.V.A.V. spends in unlawful detention subjects him and his family to further irreparable harm.

As detailed *supra*, F.V.A.V. contends that his re-arrest, absent a hearing before a neutral adjudicator, violates his due process rights under the Constitution. It is clear that “the

1 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*
2 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
3 Thus, a temporary restraining order is necessary to prevent F.V.A.V. from suffering irreparable
4 harm by being subject to unlawful and unjust detention.

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

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

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

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

21 A temporary restraining order is in the public interest. First and most importantly, “it
22 would not be equitable or in the public’s interest to allow [a party] . . . to violate the
23 requirements of federal law, especially when there are no adequate remedies available.” *Ariz.*
24 *Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v.*
25 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered,
26 the government would effectively be granted permission to detain F.V.A.V. in violation of the
27 requirements of Due Process. “The public interest and the balance of the equities favor
28 ‘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

1 unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
2 (“Generally, public interest concerns are implicated when a constitutional right has been
3 violated, because all citizens have a stake in upholding the Constitution.”).

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

6 CONCLUSION

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

13 Respectfully submitted this 7th day of December, 2025.

14 By counsel,

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