

Jordan Weiner (Cal. Bar No. 356297)
La Raza Centro Legal
474 Valencia Street, Suite 295
San Francisco, CA 94103
E: jordan@lrcl.org

Alex Mintz*
American Friends Service Committee
570 Broad St., Ste. 1001
Newark, NJ 07102
amintz@afsc.org

Pro Bono Counsel for Petitioner

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

CARLOS LOPEZ CONTRERAS,

Petitioner,

v.

TODD LYONS, in his official capacity as
Acting Director of the Immigration and
Customs Enforcement;

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security;

PAMELA BONDI, in her official capacity as
Attorney General of the United States;

TONYA ANDREWS, in his official capacity as
Warden of the Golden State Annex;

Respondents.

Case No. 25-1291

**MEMORADUM OF LAW IN SUPPORT
OF PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

*Pro Hac Vice Application Forthcoming

INTRODUCTION

Petitioner Carlos Lopez Contreras¹ (“Mr. Lopez”) is a 29-year-old New Jersey resident who has lived in the United States for 25 years and is an applicant for adjustment of status. Through his habeas petition, Mr. Lopez is challenging his unlawful re-detention in violation of his statutory, regulatory and constitutional due process rights. *See* Petition for Writ of Habeas Corpus, ECF No. 1. Mr. Lopez was abruptly and arbitrarily re-detained at an ICE check-in appointment without any meaningful process or determination in September 2025. Since that time, he has been shipped across the country several times, away from his U.S. citizen family members, loved ones and counsel. He seeks immediate injunctive relief to protect him from the ongoing and imminent harm caused by Respondents’ unlawful actions.

For these reasons, Mr. Lopez asks this Court to provide immediate relief, ordering Respondents to immediately release him from immigration detention and enjoin them from re-detaining him unless the government proves by clear and convincing evidence at a bond hearing before a neutral decision maker that petitioner is a flight risk or danger to the community.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

Mr. Lopez has resided in the United States since he entered in 2000, at the age of five with his half-brother’s father. Exh. A, Declaration of Carlos Absalon Lopez Contreras (hereafter “Decl.”) ¶ 1. Mr. Lopez moved to New Jersey to live with his legal guardian, his mother, and built a life for himself. He grew into a role as caretaker for his mother, stepfather and brothers, two of whom are U.S. citizens. *Id.* ¶¶ 3, 31.

¹ Mr. Lopez’s immigration paperwork incorrectly identifies him as “Antonio Absalon Catellanos-Contreras,” but his legal name is Carlos Absalon Lopez Contreras. It is unclear why DHS has identified him as such.

In 2023, Mr. Lopez learned that he had previously been ordered removed in absentia in 2000 when he was five years old, precipitating the filing of a Motion to Reopen his immigration proceedings. *Id.* ¶ 7. Neither Mr. Lopez nor his mother, his legal guardian, were ever served a copy of his Notice to Appear (“NTA”). *Id.* Though the Immigration Judge (IJ) denied this Motion to Reopen, Mr. Lopez appealed the decision to the Board of Immigration Appeals (“BIA”) and filed a Motion to Remand. *Id.* He was granted a Stay of Removal and ultimately released on an Order of Supervision on October 17, 2023, and ordered to comply with various conditions of release and routine check-in requirements. *Id.* ¶ 9-10.

Mr. Lopez complied with his check-in requirements upon release from ICE custody. *Id.* ¶ 11. On December 15, 2023, the BIA granted Mr. Lopez’s Motion to Remand. *Id.* On January 18, 2024, an Immigration Judge granted his Motion to Change Venue from Harlingen, Texas, to Newark, New Jersey. Mr. Lopez also re-filed his I-589 application for asylum, which was accepted by the Immigration Court in July 2024, and was subsequently docketed for an immigration hearing in 2027. *Id.* ¶ 12.

Because he was once again in proceedings before the Immigration Court and therefore no longer subject to a final order of removal, Mr. Lopez and his counsel understood his OSUP to be null and void. *Id.* ¶ 12. However, on September 8, 2025, Mr. Lopez was called in for a check-in with ICE where he was summarily re-detained. *Id.* ¶ 14. Mr. Lopez was given a copy of an I-200 arrest warrant but was not given any custody determination paperwork. *Id.* ¶ 17. Despite requesting it from ICE, Mr. Lopez’s counsel was not given any paperwork. *Id.* When Mr. Lopez asked why he was being re-detained, he was told by one officer that it was because he was allegedly “not legal in this country” and by another officer that it was because he had missed an ICE check-in. *Id.* ¶

15-16. He was not interviewed by any officers after he was re-detained, nor did any officer discuss his OSUP with him. *Id.* ¶ 18.

Following Mr. Lopez's arrest, he was taken into custody at the Elizabeth Detention Center. Mr. Lopez was then transferred to Louisiana and Arizona, before ultimately being transferred to the Golden State Annex. *Id.* ¶ 19. ICE issued a custody determination to continue Mr. Lopez's detention without an opportunity to post bond or be released on other conditions.

Mr. Lopez is currently in removal proceedings before the Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a. ICE has charged Mr. Lopez with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. Exh. B, Notice to Appear.

Mr. Lopez subsequently requested a bond redetermination hearing before an IJ on October 24, 2025. The IJ found she did not have jurisdiction to hear Mr. Lopez's request for bond because he was an applicant for admission pursuant to the BIA's decision in *Matter of Yajure Hurtado*. On December 4, 2025, Mr. Lopez requested bond a second time in light of the holding in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 25, 2025), and the IJ likewise found she did not have jurisdiction because he was an application for admission and denied the request. Exh. C, December 4, 2025, IJ Decision.

ARGUMENT

The requirements for granting a Temporary Restraining Order are "substantially identical" to those for granting a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Petitioners must demonstrate that (1) they are likely to succeed on the merits of their claims; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v. Nat.*

Res. Def. Council, 555 U.S. 7, 22 (2008). A sliding scale test may be applied and an injunction should be issued when there is a stronger showing on the balance of hardships, even if there are “serious questions on the merits ... so long as the plaintiff also shows a likelihood of irreparable harm and that the injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead- Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024). Under the circumstances presented herein, no security bond is required under Federal Rule of Civil Procedure 65(c).

Each of these factors weighs decidedly in favor of granting Mr. Lopez requested TRO and/or preliminary injunction. First, Mr. Lopez is likely to succeed on the merits of his habeas petition. Second, Mr. Lopez will be irreparably harmed by his ongoing detention. Without injunctive relief, the government can and will continue its unchecked, unlawful and unconstitutional conduct. Third, granting relief will not result in any harm to DHS. And fourth, the public interest is served by reuniting families and requiring the government to protect the due process rights of those in its custody.

I. MR. LOPEZ IS LIKELY TO SUCCEED ON THE MERITS.

Mr. Lopez likely to succeed on his claims that his re-detention without a pre-deprivation hearing was unlawful, or in the alternative, that the revocation of his OSUP was unlawful, and that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) without a bond hearing before an IJ is unlawful.

A. Mr. Lopez is likely to prevail on his claim that his abrupt re-detention without a pre-deprivation hearing and his continued detention violates due process.

The Fifth Amendment’s Due Process Clause prevents the Government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. amend. V. “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.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). It is well established that such protection extends to noncitizens, including those who are in removal proceedings. *See id.* at 693 (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”); *Reno v. Flores*, 507 U.S. 292, 306 (1993). “Even noncitizens have a liberty interest in continued freedom from civil immigration confinement.” *Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *2 (S.D.N.Y. June 18, 2025) (citing *Lopez v. Sessions*, No. 18 Civ. 4189, 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) (“Petitioner’s re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.”)).

Civil immigration detention is typically justified only when a noncitizen presents a risk of flight or danger to the community, *see id.*, *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023); *Zadvydas*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Velasco Lopez v. Decker*, 978 F.3d 842, 853-54 (2d. Cir. 2020). Indeed, the regulations implementing § 1226(a) delegate to DHS officers the authority to grant bond or conditional parole, and pursuant to such authority, a DHS officer must make this individualized determination as to the appropriateness of detention. *See* 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien . . . provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.”)

The Due Process Clause bars the government from re-detaining a noncitizen without first providing a hearing where it must prove he is a flight risk or danger. *Padilla*, 704 F. Supp. 3d 1163, 1172 (“The Supreme Court has consistently held that non-punitive detention violates the

Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.”).

A petitioner's Due Process claim is analyzed “in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution.” *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at *2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)). *J.C.L.A. v. Wofford*, No. 1:25-CV-01310-KES-EPG (HC), 2025 WL 2959250, at *3 (E.D. Cal. Oct. 17, 2025).

A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). “To determine whether a specific conditional release rises to the level of a protected liberty interest, ‘[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*.’” *J.A.E.M. v. Wofford*, 2025 WL 3013377, at *3 (E.D. Cal. Oct. 27, 2025) (quoting *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted)). “In *Morrissey*, the Supreme Court explained that parole ‘enables [the parolee] to do a wide range of things open to persons’ who have never been in custody or convicted of any crime, including to live at home, work, and ‘be with family and friends and to form the other enduring attachments of normal life.’” *Id.* (quoting *Morrissey*, 408 U.S. at 482). “‘Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens,’ such as monitoring and seeking authorization to work and travel, his ‘condition is very different from that of confinement in a prison.’” *Id.* (quoting *Morrissey*, 408 U.S. at 481-84).

In addition, “the government's decision to release an individual from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the ... conditions [of release].’ *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (“The more than two years that she has spent out of custody since ICE initially released her have only heightened her liberty interest in remaining out of detention.”) (*citing Morrissey*, 408 U.S. at 482, 92 S.Ct. 2593). “Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.” *Id.*, *see also Ortega*, 415 F. Supp. 3d at 969 (“Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.”); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention.”).

Because of this strong interest against re-detention, “[e]ven when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute.” *J.C.E.P. v. Wofford*, No. 1:25-CV-01559-EFB (HC), 2025 WL 3268273, at *3 (E.D. Cal. Nov. 24, 2025) (*citing Young v. Harper*, 520 U.S. 143, 147-49 (1997) (Due Process requires pre-deprivation hearing before revocation of parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context)). These procedural protections include, in general, a pre-deprivation hearing, as the Supreme Court has recognized that “the Constitution requires some kind of a hearing *before* the State deprives a person

of liberty or property.” *See Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Courts have found this requirement applies in the case of re-detention of non-citizens by DHS. *See, e.g., Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *9 (N.D. Cal. July 17, 2025) (“absent evidence of urgent concerns, a *pre*-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ”); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037 (N.D. Cal. 2025) (“[Petitioner’s] re-detention without a pre-detention hearing before a neutral decisionmaker is ‘likely unconstitutional’”...) (internal citation omitted).

This Court has likened the revocation of parole described in *Morrissey* to that of a noncitizen who was released on their own recognizance pending removal proceedings, finding that the noncitizens had a protected liberty interest in continued release. *See, e.g., J.A.E.M. v. Wofford*, 2025 WL 3013377, at *3 (E.D. Cal. Oct. 27, 2025); *J.C.L.A. v. Wofford*, 2025 WL 2959250, at *3 (E.D. Cal. Oct. 17, 2025); *J.S.H.M v. Wofford*, 2025 WL 2938808, at *7 (E.D. Cal. Oct. 16, 2025); *Perez v. Albarran*, 2025 WL 3187578, at *3 (E.D. Cal. Nov. 14, 2025) (finding that “the length of time of her release strengthens petitioner’s interest in her continued release,” Citing *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (“Moreover, the actions of the Government in allowing Petitioner to remain in the community for over five years strengthen Petitioner’s liberty interest. Governmental actions may create a liberty interest entitled to the protections of the Due Process Clause.”)). Courts have found that re-detention in this context requires a pre-deprivation bond hearing, and that the remedy for those deprived of one is release. *J.S.H.M v. Wofford*, 2025 WL 2938808, at *7 (E.D. Cal. Oct. 16, 2025) (citing *Pinchi* 2025 WL 2084921, at *4).

On September 8, 2025, Mr. Lopez was unlawfully re-detained at an ICE check-in in Newark, New Jersey. Mr. Lopez was not afforded a pre-deprivation hearing, or any process at all, before he was re-detained, in violation of his due process rights. This is clear because, as discussed

below, DHS considered Mr. Lopez detained pursuant to § 1225, and therefore believed him to be subject to mandatory detention. Therefore, DHS would not have (and did not) provided him with a pre-deprivation hearing to analyze danger and flight risk.

Since his re-detention, ICE has claimed that Mr. Lopez is detained pursuant to § 1225, not § 1226, and therefore he is subject to mandatory detention. An IJ has twice found that she does not have jurisdiction in his custody proceedings on this basis. The statutory analysis employed by DHS and EOIR has been rejected by district courts across the country and this Court should find that he is properly subject to § 1226.

The text, context, and legislative and statutory history of the INA all demonstrate that 8 U.S.C. § 1226(a) governs Mr. Lopez's detention. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b). This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was

most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,”² claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who

² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

Since Respondents adopted their new policies, in more than 350 cases “decided by over 160 different judges sitting in about fifty different courts spread across the United States,” courts have rejected ICE and EOIR’s new interpretation of § 1225. *See Barco Mercado v. Francis*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025). This includes numerous decisions by this Court. *See, e.g., Zumba*, 2025 WL 2753496; *Bethancourt Soto v. Soto*, No. 25-CV-16200 (CPO), 2025 WL 2976572, at *6 (D.N.J. Oct. 22, 2025). Most recently, the district court in *Maldonado Bautista et al v. Noem* echoed the reasoning of district courts across the country, finding that the class members are detained under § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 25, 2025).

Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As courts have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Mr. Lopez. Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be removed from the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting § 1226(a)). These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” The text of § 1226(c) also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.”

Rodriguez Vazquez, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018)

Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Lopez, who have already entered and were residing in the United States at the time they were apprehended. Most recently, the district court in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) echoed the reasoning of district courts across the country, finding that bond denial class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. Mr. Lopez’s continued mandatory detention under § 1225 violates both the INA and his constitutional due process rights, as he has twice been denied bond on jurisdictional grounds.

Even if Mr. Lopez were to have received a bond hearing, which he has not, the initial due process violation remains, and a post-hoc bond hearing cannot cure the due process violation. *See Maldonado v. Cabezas*, 2025 WL 2985256, at *5 (D.N.J. Oct. 23, 2025) (“In this case, Respondents’ post-hoc reasoning at the August 14, 2025 bond hearing does not rectify the lack of

individualized determination at the time of arrest.”); *see also*, *Pinchi v. Noem*, 792 F. Supp. 3d 1025 (N.D. Cal. 2025) (finding that due process requires the government to provide a pre-deprivation hearing before a redetention).

Given the time Mr. Lopez spent at liberty following his initial release from detention upon a determination that he was not a flight risk or danger, as well as the government’s implicit promise that any custody redetermination would be based on those same criteria, he has a protected “interest in remaining at liberty unless [he] no longer meets those criteria.” *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at *13 (E.D. Cal. Sept. 5, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025)). *J.C.L.A. v. Wofford*, No. 1:25-CV-01310-KES-EPG (HC), 2025 WL 2959250, at *4 (E.D. Cal. Oct. 17, 2025)

Mr. Lopez’s immediate release is required to return him to the status quo ante—“the last uncontested status which preceded the pending controversy.” *Pinchi*, 2025 WL 1853763, at *3; *J.A.E.M. v. Wofford*, No. 1:25-CV-01380-KES-HBK (HC), 2025 WL 3013377, at *8 (E.D. Cal. Oct. 27, 2025); *Kuzmenko v. Phillips*, No. 2:25-cv-00663-DJC-AC, 2025 WL 779743, at *2 (E.D. Cal. Mar. 10, 2025); *see also* *Valdez v. Joyce*, 25 Civ. 4627, 2025 WL 1707737, at *5 (S.D.N.Y. June 18, 2025) (ordering immediate release of unlawfully detained noncitizen); *Ercelik v. Hyde*, No. 1:25-CV-11007-AK, 2025 WL 1361543, at *15–16 (D. Mass. May 8, 2025) (same); *Günaydin v. Trump*, No. 25-CV-01151, 2025 WL 1459154, at *10–11 (D. Minn. May 21, 2025) (same).

B. Mr. Lopez is likely to prevail on his claim that even if he were subject to an OSUP, ICE’s revocation of his OSUP was unlawful.

After his case was remanded to the immigration court in 2023, Mr. Lopez was no longer subject to his absentia order of removal from 2000, and his case status changed from that of a noncitizen with a final removal order released from detention under 8 U.S.C. § 1231, to that of a noncitizen in removal proceedings released under 8 U.S.C. § 1226. As only individuals detained

under 8 U.S.C. § 1231 with a final order of removal can be subject to OSUP, Mr. Lopez's OSUP was vacated, and he was no longer subject to the conditions of supervision. However, even if he were still subject to the conditions of his OSUP, ICE's revocation of his OSUP was unlawful because ICE failed to provide any process in revocation as required by the INA and implementing regulations.

1. Mr. Lopez was not subject to an OSUP at the time of his re-detention.

On December 15, 2023, the BIA remanded Mr. Lopez's case to the immigration court, where it remains pending at this time. The BIA's decision to reopen immigration proceedings "extinguish[es] the finality" a removal order. *Nken v. Holder*, 556 U.S. 418, 430 n.1 (2009). In other words, when a case is reopened, the prior order of removal is no longer in force, and the case returns to a pending, non-final posture. *See Lopez-Ruiz v. Ashcroft*, 298 F.3d 886, 887 (9th Cir. 2002) ("The BIA's granting of the motion to reopen means there is no longer a final decision to review"); *see also* 8 CFR 241.4(b)(1) ("A[] [noncitizen] who has filed a motion to reopen...shall remain subject to the provisions of this section unless the motion to reopen is granted. Section 236 of the Act and 8 CFR 236.1 govern custody determinations for [noncitizens] who are in pending immigration proceedings before the Executive Office for Immigration Review."). Because Mr. Lopez's case was remanded by the BIA in 2023, and he has been, since that time, in active removal proceedings before the Immigration Court, Mr. Lopez is no longer subject to a final order of removal.

8 USC § 1231 provides in part that "when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days." *Id.* at § 1231(a)(1)(A). During this 90-day removal period, DHS and ICE must detain the alien. Upon expiration of the removal period, the government may continue to detain certain aliens or release

them under conditions of supervision. *Id.* at § 1231(a)(6). An Order of Supervision is issued under 8 U.S.C. § 1231(a)(3), which applies only to individuals in the post-final order “removal period”—i.e., noncitizens with final orders of removal. Accordingly, ICE’s statutory authority to issue an Order of Supervision requires a final order of removal. *See* 8 U.S.C. § 1231(a)(3) (“If the [noncitizen] does not leave or is not removed during the removal period, the [noncitizen], pending removal, shall be subject to supervision under regulations prescribed by the Attorney General”). An Order of Supervision applies only after a removal order becomes final and the “removal period” has begun. *See* 8 U.S.C. §§ 1231(a)(1)(B), 1231(a)(3). The supervision regulations at 8 C.F.R. §§ 241.4 and 241.5 likewise apply only to noncitizens released from custody pursuant to a final order of removal and define the conditions of release after the removal period. *See* 8 C.F.R. § 241.5 (“A[] [noncitizen] released pursuant to § 241.4 shall be released pursuant to an order of supervision.”).

Because the BIA remanded Mr. Lopez’s proceedings, Mr. Lopez’s order of removal was vacated and he is no longer “subject to a final order of removal” within the meaning of 8 C.F.R. § 241.5, and thus the Order of Supervision has no statutory or regulatory basis.

2. Even if Mr. Lopez is deemed to remain subject to his OSUP, ICE’s purported revocation of that OSUP violated the INA and its attendant regulations, the APA and due process.

8 U.S.C. § 1231(a)(6) dictates that detention beyond the 90-day removal period is only permissible if an individual is a “a risk to the community or unlikely to comply with the order of removal.” The implementing regulations, including 241.4(d)(1) which permits certain designated officials to “release a[] [noncitizen] if the [noncitizen] demonstrates to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such [noncitizen’s] removal from the United States.” *Id.* § 241.4(d)(1). It also requires “[a] copy of any

decision ... to release or to detain a[] [noncitizen] to be provided to the detained [noncitizen].” *Id.* § 241.4(d). Once it is determined that a noncitizen is not a danger or flight risk and is released on an OSUP, the implementing regulations articulate certain bases upon which an OSUP can be revoked, *see generally* 8 C.F.R. §241.4(l)(2). Under these procedures, ICE must follow a particular process if it revokes a noncitizen’s release.

Paragraph (l) concerns revocation of that supervised release. Under paragraph (l)(2), “[t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody” a noncitizen who was previously released. *Id.* § 241.4(l)(2). Pursuant to paragraph (l)(2), a noncitizen’s release “may be” revoked if, “in the opinion of the revoking official,”:

- (i) The purposes of release have been served;
 - (ii) The alien violates any condition of release;
 - (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or
 - (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate.
- Id.*

Paragraph (l)(1), entitled “Violation of conditions of release,” provides that “[u]pon revocation, the [noncitizen] will be notified of the reasons for revocation of his or her release or parole,” as well as “an initial informal interview promptly after his or her return to [ICE] custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification.” *Id.* § 241.4(l)(1). Paragraph (l)(3) discusses “[t]iming of review when release is revoked.” *Id.* § 241.4(l)(3).

Several courts, including in this district, have found that when the DHS revokes the release of a noncitizen, 8 C.F.R. § 241.4(l) requires the noncitizen to be notified of the reasons for revocation under paragraph (l)(1) and given an initial informal interview. *See Diaz v. Wofford*, No.

1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *5 (E.D. Cal. Sept. 5, 2025) (“The Court agrees with those decisions that the notice and interview requirements apply to anyone whose supervision has been revoked pursuant to 8 C.F.R. § 241.4(l)(1).”); *Perez-Escobar v. Moniz*, 792 F. Supp. 3d 224, 225, 2025 WL 2084102, at *1-2 (D. Mass. 2025). Further, such notice must provide “adequate notice of the basis for the revocation decision such that he [can] meaningfully respond at the post-detention ‘informal interview,’ ” *Id.* at *2. *See also Zhen Yi Mei v. Doe*, 2025 WL 2258586, at *10 n.19 (N.D. Ohio Aug. 7, 2025) (observing, in case of petitioner whose release was revoked pursuant to paragraph (l)(2)(iii), that “there are certain procedural requirements when revoking supervision pursuant to § 241.4,” including “notif[ying] [her] of the reasons for [the] revocation [and] ... her return to [ICE] custody,” and “afford[ing] her an opportunity to respond to the reasons for revocation stated in the notification,” which “precedes a full custody review conducted ‘approximately three months after release is revoked’ ” (alterations and omission in original) (quoting *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 652 (D. Mass. 2018))). *Zhu v. Genalo*, 2025 WL 2452352, at *7 (S.D.N.Y. Aug. 26, 2025).

The failure to provide Mr. Lopez with such notice or informal interview thwarted his ability to contest the revocation. *See id.*, citing *Santamaria Orellana v. Baker*, No. 25-cv-01788, 2025 WL 2444087, at *6-8 (D. Md. Aug. 25, 2025) (holding that ICE violated 8 C.F.R. § 241.4(d) by failing to provide noncitizen whose order of supervision was revoked with a notice or any written record as to the basis for the revocation of his release, which in turn violated his due process rights). ICE’s failure to provide Mr. Lopez with a Notice of Revocation or otherwise provide records documenting the decision to re-detain him also establishes that Mr. Lopez’s detention was not in accordance with 8 C.F.R. § 241.4(l)(2), which limits the officials with the authority to revoke release and the reasons for revocation. Specifically, 8 C.F.R. § 241.4(l)(2) provides that the

“Executive Associate Commissioner” and “district director” have authority to revoke release of a noncitizen “previously approved for release under the procedures in this section.” Without the provision of a Notice of Revocation to Mr. Lopez, any notification of the reasons for the revocation of his release, or any information on the identity or position of the ICE official who authorized that revocation, there is no evidence that the officials designated by paragraph 241.4(l)(2) made the decision to revoke Mr. Lopez’s release prior to his detention.

“Numerous district courts, including courts in the Ninth Circuit, ‘have determined that where ICE fails to follow its own regulations in revoking release, the detention is unlawful and the petitioner’s release must be ordered.’ *Rokhfirooz v. Larose*, Case No.: 25-cv-2053-RSH-VET, 2025 WL 2646165, at *4 (S.D. Cal. Sept. 15, 2025) (granting a habeas petition and ordering the petitioner’s release where the Government failed to comply with § 241.13); *Uzzhina v. Chestnut*, 2025 WL 3458787, at *6 (E.D. Cal. Dec. 2, 2025) (“Courts have consistently ordered the release of petitioners and enjoined re-detention absent a pre-detention hearing when ICE failed to follow its own regulations or failed to show an actual change in circumstances.”); *Diaz v. Wofford*, No. 1:25-CV-01079 JLT EPG, 2025 WL 2581575, at *9 (E.D. Cal. Sept. 5, 2025) (ordering release for Petitioner who was not afforded notice or opportunity to be heard before being detained, in violation of § 241.4); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) (finding petitioner was likely to succeed on his unlawful redetention claim because “there is no indication that an informal interview was provided”).

Mr. Lopez’s re-detention without process was also arbitrary and capricious in violation of the APA. The APA is principally aimed at ensuring that federal agencies engage in “reasoned decision making” within the bounds of the law. *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 104 (1983). Accordingly, under the APA, a court shall “hold unlawful

and set aside agency action” that is “arbitrary, capricious . . . or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious under the APA if the agency has not “reasonably considered the relevant issues and reasonably explained its decision.” *Fed. Commc’n Comm’n v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021), or “if the agency has . . . entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). This case involves an egregious example of arbitrary decision-making: a decision issued by an agency actor without the requisite evidence of changed circumstances, without affording the requisite notice or process, in violation of the statutory and regulatory procedures required for such decisions.

Despite not having violated the terms of his purported OSUP or being presented with any evidence that might indicate that he might be removed in the reasonable foreseeable future, Mr. Lopez was re-detained by ICE after they called him in for a check-in appointment. As noted, Mr. Lopez did not receive written explanation or even notice of the decision to rescind his OSUP and re-detain him as required by regulation. Nor did Mr. Lopez receive a revocation custody review and the opportunity to put forth contested facts relevant to the revocation. ICE’s re-detention of Mr. Lopez, thus, violates the INA and its attendant regulations. As other courts have found, this type of irrational uninformed decision making without any process for impacted individuals to participate is precisely what the APA is aimed at preventing. *See, e.g., Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (holding that revocation of stay of removal was unlawful and that it is arbitrary and capricious). As one court explained “Defendants’ cursory, abrupt, and predetermined notice that Plaintiff must self-deport within one month after permitting him to live in the United States pursuant to the ICE Stay” without “an

opportunity to be heard in a meaningful time and in a meaningful manner” is unlawful. *Id.* (internal quotation marks and citations omitted).

At minimum, the APA requires that agencies comply with the procedures that they establish for decision making. 5 U.S.C. § 706(2)(D) (“The reviewing court shall . . . hold unlawful and set aside agency action . . . found to be . . . without observance of procedure required by law). However, this case mirrors the situation where other courts have described “ICE’s utter disregard for the agency’s own procedures” related to the revocation or OSUP and redetention. *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017). Under the statutory and regulatory scheme detailed *infra*, an OSUP may not be revoked without notice and, at minimum, an informal interview, 8 C.F.R. § 241.13(i)(3), and upon specific required findings, including that the individual has either violated their conditions of release or that they may be removed in the foreseeable future. None of these procedures were followed in this case, and these failures alone render the purported revocation of his OSUP and the decision to re-detain Mr. Lopez arbitrary and capricious. *See Rombot*, 296 F. Supp. 3d 387-88 (ordering release based, in part, on failure of ICE to follow its own procedures for revocation of OSUP); *Torres-Jurado*, 2023 WL 7130898 (same).

Therefore, even if he were still subject to an OSUP, Mr. Lopez is likely to succeed on the merits of his claim that it was improperly revoked in violation of the INA and its implementing regulations, the APA and due process.

II. IN THE ABSENCE OF IMMEDIATE INJUNCTIVE RELIEF, MR. LOPEZ WILL CONTINUE TO SUFFER IRREPARABLE HARM.

Parties seeking preliminary injunctive relief must also show they are “*likely* to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream*

Act. Coal. v. Brewer (Ariz. I), 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

“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. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d. 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the government’s current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for Petitioners’ continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a).”)

Mr. Lopez currently suffers and will continue to suffer irreparable injury absent relief from this Court. He has lost his liberty and is separated from his family, community and loved ones. Exh A, Decl. at ¶ 33-34. His separation from those he has cared for has exacerbated his mental health conditions, including anxiety and insomnia. *Id.* at ¶ 28. Additionally, his rights under the

INA and its attendant regulations and the Due Process Clause of the Fifth Amendment have been and continue to be violated. All of these reasons urge his immediate release. In the absence of a TRO, Mr. Lopez will continue to be unlawfully detained by Respondents for months or years to come pursuant to § 1225(b)(2) and denied a bond hearing before an IJ. Mr. Lopez has now been detained unlawfully for 98 days. For these reasons, Mr. Lopez has demonstrated irreparable harm.

III. THE BALANCE OF EQUITIES TIPS IN MR. LOPEZ'S FAVOR AND A TRO IS IN THE PUBLIC INTEREST.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). The balance of equities tips in Mr. Lopez's favor. In *J.C.L.A.*, the Court found that when "[f]aced with a choice 'between [minimally costly procedures] and preventable human suffering,' ... 'the balance of hardships tips decidedly in [petitioner's] favor.' 2025 WL 2959250, at *8 (E.D. Cal. Oct. 17, 2025) quoting *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Mr. Lopez faces considerable hardship while being unlawfully detained in violation of his rights, including being separated from his U.S. citizen family members.

The public interest also weighs in Mr. Lopez's favor. "The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz*, 2025 WL 1676854, at *3 (citing *Jorge M.F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3) (N.D. Cal. Mar. 1, 2021); see also *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a party's constitutional rights.") (citing *Padilla*, 953 F.3d at 1147–48). Mr. Lopez established that the public interest factor weighs in his favor because his claims assert that Respondents have violated federal laws. See *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because Respondents' action "is

inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction issued in *Moreno II* and quoting approvingly district judge’s declaration that “it is clear that neither equity nor the public’s interest are furthered by allowing violations of federal law to continue”). This is because “it would not be equitable or in the public’s interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). For these reasons, the balance of equities tips in Mr. Lopez’s favor and a TRO here is in the public interest.

CONCLUSION

For the foregoing reasons, Mr. Lopez respectfully requests that this Court grant his motion for a TRO and/or a preliminary injunction enjoining his continued detention. This Court should order Mr. Lopez’s immediate release and order that Respondents may not re-detain him unless the government proves by clear and convincing evidence at a bond hearing before a neutral decisionmaker that petitioner is a flight risk or danger to the community.

Respectfully Submitted,

s/ Jordan Weiner

Jordan Weiner

Interim Executive Director

La Raza Centro Legal

474 Valencia Street, Suite 295

San Francisco, CA 94103

P: (415) 553-3435

F: (415) 255-7593

E: jordan@lrcl.org

Dated: December 15, 2025

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Memorandum of Law in Support of Motion for Temporary Restraining Order and/or Preliminary Injunction and any attachments using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

s/ Jordan Weiner

Jordan Weiner

Interim Executive Director

La Raza Centro Legal

474 Valencia Street, Suite 295

San Francisco, CA 94103

P: (415) 553-3435

F: (415) 255-7593

E: jordan@lrcl.org

Dated: December 15, 2025