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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

ROGER MARTIN ALDANA CENTENO,)

Petitioner-Plaintiff,)

vs.)

Anchorage Correctional Complex, Zane)

NIGHSWONGER, Director; Alaska)

Department of Corrections, Cori)

MILLS, Acting Attorney General of)

Alaska; U.S. Immigration and Customs)

Enforcement and Customs Enforcement.)

U.S. Department of Homeland Security;)

Todd M. LYONS, Acting Director,)

Immigration and Customs Enforcement,)

U.S. Department of Homeland Security;)

Markwayne MULLIN, Secretary, U.S.)

Department of Homeland Security; and)

Todd BLANCE, Attorney General of)

The United States)

Respondents-Defendants.)

Case No.: 3:26-cv-00284-ACP

**EX PARTE MOTION
FOR TEMPORARY
RESTRAINING ORDER**

**POINTS AND
AUTHORITIES IN
SUPPORT OF MOTION
FOR TEMPORARY
RESTRAINING ORDER
AND MOTION FOR
PRELIMINARY
INJUNCTION**

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive Relief

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local rules of this Court, Petitioner hereby moves this Court for an order that Respondents-Defendants U.S. Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE), Cori Mills, in her official capacity as the U.S. Attorney General of the State of Alaska, Todd Blanche as the Attorney General of the United States, and Zane Nighswonder, in his official capacity as Director of the Anchorage Correctional Complex, be enjoined from continuing to incarcerate Petitioner, and, following his release, be enjoined from re-arresting him without first providing him with a hearing before a neutral adjudicator, prior to any future re-arrest, to determine whether circumstances have materially changed such that his re-incarceration would be justified because (1) there is clear and convincing evidence establishing that he is a danger to the community or a flight risk and (2) his removal from the United States is reasonably foreseeable (related to Claims 1-6 in the petition and complaint).

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, as well as his Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful incarceration, where that detention was imposed absent a pre-deprivation due process hearing, and in preventing his summary removal to another country without first providing him with notice and an opportunity to apply for fear-based relief as to that country.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order requiring ICE to immediately release him from custody (to enjoin the unlawful ongoing detention), enjoining Respondents from re-detaining him before providing him a hearing before a neutral adjudicator prior to any re-detention, and enjoining Respondents from removing him to any other country without first providing him with constitutionally compliant procedures. The only mechanism to ensure that he is not continuously unlawfully detained in violation of his

due process rights is an ex parte temporary restraining order from this Court.

RESPECTFULLY SUBMITTED August 2, 2026, at Fairbanks, Alaska.

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I. INTRODUCTION

Petitioner, Roger Aldana Centeno (“Petitioner” or “Mr. Aldana”), through undersigned counsel, hereby files this motion for an ex parte temporary restraining order (TRO) and preliminary injunction (PI) to enjoin the U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) from continuing to incarcerate him, from subsequently re-arresting him unless and until he is afforded notice and a hearing before a neutral decisionmaker on the question of whether his release should be revoked, and from removing him to any other country without first providing him with constitutionally compliant procedures.

Petitioner is a citizen and national of Nicaragua who came to the United States seeking asylum in 2023 to flee heinous persecution and torture as well as potential death based on his political opinions and membership in a particular social group. His brother had previously come to the United States for the same reason and sought to have him join him in Fairbanks where he would be much safer than in Nicaragua. He has had an open asylum case since that time. Mr. Aldana has had a work permit since 2025 and has worked full time at [REDACTED] in Fairbanks, Alaska, since that time. He lives with his brother in Fairbanks and is a productive member of society. He has not received even as much as a parking ticket since his arrival in the United States.

On July 31, 2026, Mr. Aldana left for work and was reportedly arrested at approximately 8:30am. On information and belief, Mr. Aldana was pulled over by an unmarked black SUV and was detained. His vehicle was left in a nearby parking lot. Mr. Aldana was not allowed to call his brother or anyone else upon his arrest, and Mr. Aldana’s brother had to call the local confinement facility as well as his friends to attempt to piece together what occurred. Circumstances have not materially changed since 2023, as Petitioner is still not a danger or a flight risk, and his removal to Nicaragua is still not reasonably foreseeable. His incarceration is therefore unlawful. Based on these circumstances, he raises numerous ways in which his ongoing detention must be enjoined. He further requests an injunction against removal to another country without due process.

Furthermore, following his release, and *prior to any re-arrest*, Petitioner must be provided

notice and a hearing before a neutral arbiter where ICE bears the burden of justifying that his re-incarceration is required because clear and convincing evidence exists to demonstrate that (1) he is a flight risk or a danger to the community and (2) his removal is reasonably foreseeable. During any such hearing, he must be afforded the opportunity to present arguments as to why he should not be re-arrested and re-incarcerated, and the neutral arbiter must consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk established by ICE.

Petitioner meets the standard for a TRO. He will continue to suffer immediate and irreparable harm stemming from his unlawful arrest absent an order from this Court ordering ICE to release him immediately and enjoining ICE from re-arresting him unless and until he receives a hearing before a neutral arbiter where the government must bear the burden by clear and convincing evidence to show that (1) he is a flight risk or danger to the community and (2) his removal is reasonably foreseeable. He would also suffer immediate and irreparable harm if removed to another country where his life could be in danger without first being provided with constitutionally compliant procedures providing him adequate notice and an opportunity to demonstrate if his life or safety is in danger or he stands a high risk of persecution or torture. Because holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in his favor.

II. STATEMENT OF FACTS AND CASE

As previously stated, Mr. Aldana came to the United States to flee heinous persecution and torture as well as potential death based on his political opinions and membership in a particular social group. His brother had previously come to the United States for the same reason and sought to have him join him in Fairbanks where he would be much safer than in Nicaragua.

In early 2026, the Board of Immigration Appeals (BIA) began to require an Annual Asylum Fee (AAF) be paid by aliens seeking asylum each year that their application was pending. BIA also states that it will give applicants a 30-day notice of when this fee is due.

However, numerous individuals have never received this notice. According to the BIA website, failure to pay this fee may result in severe consequences, including rejection and dismissal of a petitioner's asylum application. These penalties have been challenged in courts across the United States. It appears from Mr. Aldana's USCIS account that Mr. Aldana's AAF was due on July 30, 2026. On information and belief, Mr. Aldana never received a 30-day notice to make this payment. Any failure to pay the AAF is inadvertent, as Mr. Aldana is still actively seeking asylum. As far as counsel can discern, the only rationale for arresting and detaining Mr. Aldana was that his AAF was approximately eight and a half hours past due. Mr. Aldana was not provided with an explanation as to why he was being arrested, nor has he been provided with an explanation of his confinement since that time. There is no evidence of any other change relevant to his detention status, removability, or criminal record. On information and belief, although Mr. Aldana's AAF was technically "past due," he was never informed in writing other otherwise that his asylum petition had been denied or revoked or that his legal authority to reside in the United States had been revoked.

For the past three years, Mr. Aldana has been living at liberty, during which time he has been able to support himself and assisted his family. He has paid his taxes annually and has never been arrested. He has not, in fact, even received a parking ticket in the three years he has resided in Fairbanks.

ICE transferred Petitioner to the Northwest ICE Processing Center in Tacoma, Washington, where he remains detained. He has not been provided a due process hearing, and his prolonged and potentially indefinite detention is not constitutional, given that his removal to Nicaragua, the only country to which he has been ordered removed, is not reasonably foreseeable.

On information and belief, on January 25, 2025, officials in the new Trump administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically, each field office was instructed to make seventy-five arrests per day.¹ Multiple credible reports demonstrate that, in recent weeks and months, countless noncitizens across the country have been incarcerated or re-incarcerated by ICE.² ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.³

Decisions issued by other courts in this District and the Northern and Eastern Districts of California further corroborate that ICE is re-arresting and re-incarcerating individuals who are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable.⁴

¹ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (Jan. 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

² See *supra* n.2; “ICE arrests at Sacramento immigration courts raises fear among immigrant community,” KCRA (June 3, 2025), <https://www.kcra.com/article/ice-arrests-sacramento-immigration-courts-lawyers-advocacy-groups/64951405>; “ICE confirms arrests made in South San Jose,” NBC Bay Area (June 4, 2025), <https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> (“The Rapid Response Network, an immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision Appearance Program – for what are usually routine appointments to check on their immigration status. But the immigrants who show up are taken from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be taken to a detention center, the Rapid Response Network said.”); “ICE arrests 15 people, including 3-year-old child, in San Bernardino, advocates say,” *San Bernardino Chronicle* (June 5, 2025), <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>; “Cincinnati high school graduate faces deportation after routine ICE check-in,” *ABC News* (June 9, 2025), <https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.

³ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, *N.Y. Times* (Mar. 15, 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html> (Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University PhD student detained by federal agents,” *CNN* (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html> (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, *Politico* (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

⁴ See, e.g., *Rodriguez-Flores v. F. Semaia*, No. 2:25-cv-06900-JGB-JC, Dkt. 14 (C.D. Cal. Aug. 14, 2025) (“The only changed circumstance the government cites is the reopening of Petitioner’s Ninth Circuit case”); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (“Although Petitioner-Plaintiff informed the ICE officer that she has no right to return to either country because she is stateless, the officer told Petitioner-Plaintiff that ‘things are different now.’”); *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL

Petitioner is also at risk of being unlawfully removed to another country without constitutionally adequate notice and a meaningful opportunity to apply for fear-based protection, including protection under the Convention Against Torture (CAT), in violation of the INA, binding international treaty, and due process. Intervention from this Court is therefore required.

III. LEGAL STANDARD

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

IV. ARGUMENT

A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER

A TRO should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” in the absence of an order. Fed. R. Civ. P. 65(b). TROs prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Petitioner is likely to succeed on the merits of his claims or, at a minimum, has raised serious questions as to the merits and shown that the balance of equities tips sharply in his favor.

1. Petitioner is Likely to Succeed on the Merits of His Claim That,

1927596, at *6 (E.D. Cal. July 14, 2025); *Doe v. Andrews*, No. 1:25-cv-00506-SAB-HC, 2025 WL 1856591 (E.D. Cal. June 26, 2025); *Alva v. Kaiser*, No. 25-cv-06676-RFL, 2025 WL 2419262 (N.D. Cal. Aug. 21, 2025); *Paz Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB, 2025 WL 2420390 (E.D. Cal. Aug. 21, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255 (E.D. Cal. Sept. 9, 2025); *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2458865 (N.D. Cal. Aug. 25, 2025); *Rodriguez Diaz v. Kaiser*, No. 3:25-cv-05071-TLT, Dkt. 25 (Sept. 16, 2025); *Yang v. Kaiser, et al.*, 2:25-cv-02205-DAD-AC, Dkt. 16 (E.D. Cal. Aug. 21, 2025); *Sun v. Santacruz Jr., et al*, 5:25-cv-02198-JLS-JC, Dkt. 13 (C.D. Cal. Aug. 26, 2025).

in Violation of Clear Supreme Court Precedent, his Detention is Unconstitutional Because it is Indefinite.

Petitioner is likely to succeed on his claim that, in his particular circumstances, the Due Process Clause prevents Respondents from continuing to detain him because there is not a legitimate reason for his detention. Additionally, Mr. Aldana has not been notified of any removal proceedings nor afforded an opportunity for a hearing. Even if Mr. Aldana is moved forward to removal hearings, his continued detention is unlawful.

Following a final order of removal, ICE is directed by statute to detain an individual for ninety days in order to effectuate removal. 8 U.S.C. § 1231(a)(2). This ninety-day period, also known as “the removal period,” generally commences as soon as a removal order becomes administratively final. *Id.* at § 1231(a)(1)(A); § 1231(a)(1)(B). If ICE fails to effect removal during the ninety-day period, the law requires ICE to release the individual under conditions of supervision, including periodic reporting. 8 U.S.C. § 1231(a)(3) (“If the alien . . . is not removed within the removal period, the alien, pending removal, shall be subject to supervision.”). Limited exceptions to this rule exist. Specifically, ICE “may” detain an individual beyond ninety days if the individual was ordered removed on criminal grounds or is determined to pose a danger or flight risk. 8 U.S.C. § 1231(a)(6). However, ICE’s authority to detain an individual beyond the removal period under such circumstances is not boundless.⁵ Rather, it is constrained by the constitutional requirement that detention “bear a reasonable relationship to the purpose for which the individual [was] committed.” *Zadvydas*, 533 U.S. at 690. Because the principal purpose of the post-final-order detention statute is to effectuate removal (and not to be punitive), detention bears no reasonable relation to its purpose if removal cannot be effectuated. *Id.* at 697.

The Supreme Court has addressed the statute’s silence regarding the limits on post-final order detention and has definitively held that such detention has the potential to be indefinite and thus unconstitutional. The Supreme Court held that post-final order detention is only authorized

⁵ The removal period begins on the latest of the following: (1) the date the removal order becomes administratively final; (2) if the removal order is judicially reviewed and if a court orders a stay of removal, the date of the court’s final order; and (3) if the alien is detained or confined (except under an immigration process), the date the alien is released. 8 U.S.C. § 1231(a)(B). A case becomes administratively final once the removal order ultimately affirmed. *See Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). Here, Petitioner’s removal period began on May 16, 2005, when the BIA affirmed the IJ a second time. Sinodis Dec. at Ex. C (BIA Decision).

for a “period reasonably necessary to secure removal,” a period that the Court determined to be presumptively six months. *Id.* at 699-701. After this six-month period, if a detainee provides “good reason” to believe that their removal is not significantly likely in the reasonably foreseeable future, “the Government must respond with evidence sufficient to rebut that showing.” *Id.* at 701. If the government cannot do so, the individual must be released. In light of the Supreme Court limitations imposed on the statutory scheme, the government updated the regulations to be consistent with those constitutionally required limitations on indefinite detention. Under those regulations, detainees are entitled to release even before six months of detention, as long as removal is not reasonably foreseeable. *See* 8 C.F.R. § 241.13(b)(1) (authorizing release after ninety days where removal not reasonably foreseeable). Moreover, under the Supreme Court’s constitutional limitations on indefinite detention, as the period of post-final-order detention grows, what counts as “reasonably foreseeable” must conversely shrink. *Zadvydas* at 701.

Here, Petitioner’s detention and removal are not foreseeable. Petitioner’s USCIS account continues to state that he is in the asylum process and is simply awaiting an interview with an officer. He was provided no notice or opportunity to be heard prior to his arrest and detention. No legitimate reason was provided to Petitioner for his arrest. Because Petitioner’s removal is not reasonably foreseeable, and the government failed to provide him with notice, evidence, or an opportunity to be heard on this issue before arbitrarily arresting him. His continued detention without any reasonably foreseeable end point is thus unconstitutionally prolonged in violation of clear Supreme Court precedent. *Id.* This is particularly true where, as here, Respondents have no intention to remove him. Sinodis Decl. at Ex. D. He must therefore be released. 8 C.F.R. § 241.13(b)(1).⁶

2. Petitioner is Likely to Succeed on the Merits of His Claim That his Incarceration is Unlawful Because it is in Violation of the Regulations.

⁶ *See also* *Cordon-Salguero v. Noem*, No. 1:25-cv-01626-GLR (D. Md. June 18, 2025) (ordering release from physical custody under *Zadvydas*); *Tadros v. Noem*, No. 2:25-cv-04108-EP (D.N.J. June 17, 2025) (same); 8 C.F.R. § 241.13(b)(1); *see also* *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Yang*, 2:25-cv-02205-DAD-AC (HC, *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D.Tex. Aug. 3, 2025); *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470.

Petitioner's re-incarceration is separately unlawful because the controlling regulations specify the circumstances that permit his re-arrest, and Respondents have not established that circumstances have changed regarding his lack of danger or flight and the foreseeability of his removal, which is required under those regulations. Additionally, Respondents have not followed their own regulations in re-detaining Petitioner, which mandate that he be provided with notice and an interview promptly after his detention at which he can respond to the purported reasons for revocation of his release. 8 C.F.R. § 241.13(i)(3).

By regulation, noncitizens with final removal orders who are released from detention or not taken into custody during the removal period are subject to an OSUP, which is documented on Form I-220B. 8 C.F.R. § 241.4(j). After an individual has been released on an OSUP, the regulations further specify that ICE cannot revoke such an order without cause or adequate legal process. 8 C.F.R. § 241.13(i)(2)-(3). Under the regulations, ICE has the authority to re-incarcerate a noncitizen previously ordered removed *only* in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2); 8 C.F.R. § 241.13(i). Here, because Petitioner has not received notice whatsoever of the reason for his re-detention, there is no indication that he violated a condition of release and no indication that there are changed circumstances such that a travel document has been issued or that he is now a danger or flight risk. Thus, Respondents did not properly follow the regulatory procedures to re-detain Petitioner. *Id.*; 8 C.F.R. § 241.13(i) (requiring notice of the reason for revocation of release, and an interview at which an individual has an opportunity to respond to the reasons given for revocation and submit evidence and information on his behalf, including to show that there is no significant likelihood of removal in the reasonably foreseeable future); *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 166 (W.D.N.Y. 2025) (“because ICE did not follow its own regulations in deciding to re-detain Ceesay, his due process rights were violated, and he is entitled to release. And even if that were not so, he still would be released because he was not afforded even the minimal due process that protects everyone—citizens and noncitizens—in the United States”).

3. Petitioner is Likely to Succeed on the Merits of His Claim That in This Case Due Process Required a Hearing Before a Neutral Arbiter Prior to Any Arrest by ICE, and he is Entitled to Such a Hearing Prior to Any Future Re-Detention.

ICE failed to follow the controlling regulations in arresting Petitioner but, even if they had complied with the procedures set forth in those regulations, ICE's regulatory authority to unilaterally arrest him is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See 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"). To protect that interest, on the particular facts of Petitioner's case, due process required notice and a hearing, *prior to any arrest*, at which he should have been afforded the opportunity to advance his arguments as to why he should not be re-detained. This never occurred. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to re-detain noncitizens require notice and a pre-deprivation hearing *before* re-detention by ICE.⁷

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure 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).

⁷ *See, e.g., Rodriguez-Flores*, No. 2:25-cv-06900-JGB-JC, Dkt. 14; *Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *4; *Hoac*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ---, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ---, 2025 WL 2084921, at *7 (N.D. Cal. July 24, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at *7 (N.D. Cal. Aug. 6, 2025); *Galindo v. Andrews*, 1:25-cv-00942-KES-SKO, Dkt. 20 (E.D. Cal. Aug. 20, 2025), *Escalante v. Noem*, 9:25-cv-00182-MJT-CLS, Dkt. 43 (E.D. Tex. Aug. 3, 2025); *M.R.*, No. 25-cv-05436-RFL, 2025 WL ***; *Diaz*, No. 3:25-cv-05071, 2025 WL ***; *Doe*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *4 (holding the Constitution requires a hearing before any re-arrest); *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years); *Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (June 14, 2025). *Paz Hernandez*, No. 1:25-cv-00986-KES-CDB, 2025 WL 2420390; *Guzman*, No. 1:25-cv-01015-KES-SKO, 2025 WL 2617256; *R.D.T.M.*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255; *Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2458865 (N.D. Cal. Aug. 25, 2025); *Rodriguez Diaz*, No. 3:25-cv-05071-TLT, Dkt. 25; *Yang*, 2:25-cv-02205-DAD-AC, Dkt. 16; *Sun*, 5:25-cv-02198-JLS-JC, Dkt. 13.

a. Petitioner Has a Protected Liberty Interest

Petitioner's liberty from immigration custody, a form of civil detention, is protected by the Due Process Clause: "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*, 533 U.S. at 690.

Mr. Aldana came to the United States in 2023 with permission from immigration authorities to seek parole and asylum. Since that time, Mr. Aldana has not been required to be on any conditions of release or directly monitored through conditions of an OSUP. Instead, he has been allowed to live freely with his brother, and obtained a work permit in 2025. Since that time, he has been working full-time.

Although his asylum application process has not been fully completed, and Petitioner therefore has obligations related to informing immigration officials of his activity, he retains a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding re-detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Pinchi*, --- F.Supp.3d ---, 2025 WL 2084921, at *3 ("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").

Just as importantly, Petitioner has informed ICE of his whereabouts and remained in good standing with ICE throughout his time in the United States. USCIS continues to publish future dates related to his asylum application and led him to believe he was in full compliance with his obligations. *See Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him") (citing *Valdez v. Joyce*, 25 Civ. 4627 (GBD), 2025 WL 1707737, at *3 & n.6 (S.D.N.Y. June 18, 2025)); *Sun*, 5:25-cv-02198-JLS-JC, Dkt. 13. During that time, he was employed full time and supported himself.

Individuals—including noncitizens—have a liberty interest in their freedom. *Zadvydas*, 533 U.S. at 696 (recognizing the liberty interest of noncitizens on OSUPs); *Getachew v. INS*, 25

F.3d 841 (9th Cir. 1994) (noting that “[i]t is well-established that the due process clause applies to protect immigrants”). This is further reinforced by *Morrissey*, in which the Supreme Court recognized the protected liberty rights under the Due Process Clause of a *criminal* detainee who was released on parole from incarceration. 408 U.S. at 481-82. The Court noted that, “subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life”—thus, those released on parole have a protected liberty interest, even where that liberty is subject to conditions. *Id.* at 482. The Court further noted that the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions, and the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others.” *Id.* See also *Young*, 520 U.S. at 152 (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781-82 (individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). In turn, “[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

As the First Circuit has explained, when analyzing the issue of 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*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). So fundamental to due process is the concept of liberty that it is even well-established that an individual maintains a protectable liberty interest where the individual obtains liberty through a *mistake* of law or fact. See *id.*; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (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).

Here, when this Court “‘compar[es] the specific conditional release in [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,” they are strikingly similar. See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enables him 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 with his community, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. And, unlike in these Supreme Court cases, Petitioner is not a criminal detainee but a civil detainee and thus the due process considerations of his liberty should be even weightier than the courts have already found apply in the criminal context.⁸

Petitioner has complied with all conditions of release for over eighteen years. During that time, he has been a productive member of society who cares for his U.S. citizen family members, including his U.S. citizen wife who suffers from extreme psychological and emotional issues. Precedent from the Supreme Court and the Ninth Circuit make clear that he has a strong liberty interest in his continued release from detention

b. Petitioner’s Liberty Interest Mandated a Due Process Hearing Before His Arrest, and Once Released, Mandates Such a Hearing Prior to Any Re-Detention

Petitioner asserts that, here, (1) where his detention is civil, (2) where he has been at liberty for several years, during which time he has complied with all obligations placed upon him, (3) where his removal is not reasonably foreseeable, (4) where no change in circumstances justify his detention, and (5) where the only circumstance that has changed is ICE’s arrest quota directives, due process mandated that he receive notice and a hearing before a neutral adjudicator *prior* to his detention.

“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

⁸ “[D]ecisions defining the constitutional rights of prisoners establish a *floor* for the constitutional rights of [noncitizens in immigration custody],” who are “most decidedly entitled to *more* considerate treatment than those who are criminally detained.” *Unknown Parties v. Johnson*, No. CV-15-00250-TUC-DCB, 2016 WL 8188563, at *5 (D. Ariz. Nov. 18, 2016) *aff’d sub nom. Doe v. Kelly*, 878 F.3d 710 (9th Cir. 2017) (cleaned up) (emphasis added).

1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient administration of” its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. This Court must consider three factors set forth in *Mathews v. Eldridge* in conducting its balancing test.⁹

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

Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable to preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner with notice and a hearing *prior* to his arrest. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinermon*, 494 U.S. at 985; *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, once Petitioner is ordered released, “the balance weighs heavily in favor of [Petitioner’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

i. Petitioner’s Interest in His Liberty is Profound

⁹ “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who have already been determined to not present a risk or danger or flight and are facing *civil* (not criminal) detention. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, courts have held that parolees cannot be re-arrested without a due process hearing where they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly weighty liberty interest even though he was under supervised release.

What is at stake in this case for Petitioner is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release decision 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, it is clear that there is a profound private interest at stake in this case, which must be weighed heavily when determining what process Petitioner is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35

ii. The Government’s Interest in Keeping Petitioner Incarcerated is Low and the Burden on the Government to Release Him is Minimal

Respondents’ interest in keeping Petitioner detained without a due process hearing is low, and when weighed against his significant private interest in his liberty, the scale tips sharply in

favor of ordering release. It becomes abundantly clear that the *Mathews* test favors him when the Court considers that the process he seeks—release from civil custody until he is provided with notice and a hearing regarding whether he should be re-detained—is standard for the government. Providing Petitioner with a future hearing before a neutral adjudicator to determine whether he is a flight risk or danger to the community and whether his removal is reasonably foreseeable would impose only a *de minimis* burden on the government, because the government routinely conducts these reviews for individuals in his same circumstances. 8 C.F.R. § 241.4(e)-(f).

As immigration detention is civil, it can have no punitive purpose. The government’s only interests in holding an individual in immigration detention can be to prevent danger to the community or to effectuate removal *See Zadvydas*, 533 U.S. at 690. Moreover, the Supreme Court has made clear that indefinite detention of noncitizens who cannot be removed to the country of the removal order is unconstitutional. In this case, Respondents cannot plausibly assert that they had a sudden interest in detaining Petitioner due to alleged dangerousness, or due to a change in the foreseeability of his removal to Nicaragua, as there is no evidence that his circumstances have not changed since seeking asylum in 2023.

Petitioner has complied with any and all restrictions to include check-ins and work requirements, further confirming that he is not a flight risk and that he will present himself at any future ICE appearances, as he has consistently done. *Zadvydas*, 533 U.S. at 699 (ICE’s interest is to “assure [Petitioner’s] presence at the moment of removal.”). ICE’s interest in keeping him detained is therefore low. That ICE has a new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances or increase the government’s interest in detaining her.¹⁰ *See Zakzouk*, 2025 WL 2097470, *2 (“Although Petitioner[] informed [] ICE [] that she has no right to return to either country because

¹⁰ *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, 2025), <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 House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.”).

she is stateless, the officer told Petitioner-Plaintiff that ‘things are different now.’”); *Singh*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *2 (“The law requires a change in relevant facts, not just a change in [the government’s] attitude”) (internal quotations omitted).

Moreover, the “fiscal and administrative burdens” that a pre-deprivation bond hearing would impose is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather a routine hearing before a neutral arbiter regarding whether his release should be revoked and whether he should be re-detained. But there is no justifiable reason to further Petitioner’s incarceration prior to such a hearing taking place. As the Supreme Court noted in *Morrissey*, even where the State has an “overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole . . . the State has no interest in revoking parole without some informal procedural guarantees.” 408 U.S. at 483.

Release from custody until ICE assesses and demonstrates to a neutral adjudicator that Petitioner is actually a flight risk or danger to the community, and that his detention is not going to be indefinite, is far *less* costly and burdensome for the government than keeping him detained. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

iii. Without Release from Custody, the Risk of Erroneous Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden Would Decrease That Risk

Releasing Petitioner from civil custody, and ensuring he is provided a pre-deprivation hearing in the future, would decrease the risk of him being erroneously deprived of his liberty. Before he can be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the government is held to show that the circumstances have changed such that clear and convincing evidence exists to establish that he is a danger to the community or a flight risk and that his removal is reasonably foreseeable.

Under the process that ICE maintains is lawful—which affords Petitioner no process

whatsoever—ICE can simply re-detain him whenever the agency wants. The risk that Petitioner will be erroneously deprived of his liberty is high if ICE is permitted to re-incarcerate him after making a unilateral decision to re-arrest him. Pursuant to 8 C.F.R. § 241.4(l), revocation of release on an OSUP is at the discretion of the Executive Associate Commissioner. Thus, the regulations are actually insufficient to protect his due process rights, as they permit ICE to unilaterally re-detain individuals, even for an accidental error in complying with the conditions of supervision, for example. They permit ICE to unilaterally revoke a release determination without oversight of any kind—even if, as here, the individual has been living at liberty for years and no circumstances justify their arrest. After re-arrest, ICE again makes its own, one-sided custody determination and can decide whether the agency wants to hold him. 8 C.F.R. § 241.4(e)-(f).

By contrast, the procedure Petitioner seeks—a pre-deprivation hearing to assess whether he is a danger or a flight risk and whether his removal is reasonably foreseeable—is much more likely to produce accurate determinations regarding these factual disputes. *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement” are at issue, the “risk of error is considerable when just determinations are made after hearing only one side”). “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased where a neutral adjudicator, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure removal *if* reasonably foreseeable. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

As the above-cited authorities show, Petitioner is likely to succeed on his claim that the Due Process Clause required notice and a hearing before a neutral decisionmaker *prior to any* arrest and incarceration by ICE. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO.

4. Petitioner will Suffer Irreparable Harm Absent Injunctive Relief

Petitioner will suffer irreparable harm were he to be deprived of his liberty and subjected to continued and indefinite detention by immigration authorities without being immediately released and provided the constitutionally adequate process that this motion for a TRO seeks. Detainees in civil ICE custody are held in “prison-like conditions” which have real consequences for their lives. *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. INS*, 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. Finally, 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).¹¹

¹¹ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed June 27, 2025).

Petitioner has been in the United States seeking asylum since 2023. During that time, he started been employed, supported himself, and community. If he remains detained, he would likely be unable to continue supporting himself as he cannot work from detention.

Further, Petitioner will suffer irreparable harm were he to be removed from the United States without first being provided with constitutionally compliant procedures to ensure that his right to apply for fear-based relief is protected. Individuals removed to other countries under DHS's policy have reported that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.¹² Others removed in violation of their prior grant of protection have reported severe torture at the hands of government agents.¹³

It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a TRO is necessary to prevent Petitioner from suffering irreparable harm by being subject to unlawful and unjust detention, and by being summarily removed to any country where he may face persecution or torture.

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

The balance of hardships strongly favors Petitioner. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Therefore, the government cannot allege harm arising from a TRO or preliminary injunction ordering it to comply with the Constitution. Further, any burden imposed by requiring Respondents to release Petitioner from custody (and provide notice and a hearing before a neutral adjudicator prior to any future re-detention) is both *de minimis* and clearly outweighed by the substantial harm he will suffer as long as he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is

¹² NPR, “Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available at: <https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home>.

¹³ NPR, “Abrego Garcia says he was severely beaten in Salvadoran prison” (July 3, 2025), available at: <https://www.npr.org/2025/07/03/g-s1-75775/abrego-garcia-el-salvador-prison-beaten-torture>.

required.”). Similarly, any burden of requiring Respondents *not* to remove Petitioner to any country is outweighed by the substantial harm he may suffer if removed to a country where he will face persecution or torture. *See id.*

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

Therefore, the public interest overwhelmingly favors entering a TRO.

V. CONCLUSION

For all the above reasons, Petitioner warrants a TRO that orders Respondents to release him from custody, not re-detain him unless he is afforded notice and a hearing before a neutral adjudicator on whether it is justified by clear and convincing evidence that he is a danger to the community or a flight risk and that his removal is reasonably foreseeable, and refrain from removing him to any other country without first providing him constitutionally-compliant procedures.

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RESPECTFULLY SUBMITTED August 2, 2026, at Fairbanks, Alaska.

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