UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

OLIVER ELOY MATA VELASQUEZ, *Petitioner-Plaintiff*, v. STEPHEN KURZDORFER, in his official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; JOSEPH FREDEN, in his official capacity as Deputy Field Office Director of the Buffalo Federal Detention Facility; TODD LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, *Respondents-Defendants*.	Case No. 25-cv-00493 (LJV)

NOTICE OF MOTION FOR A PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that Petitioner-Plaintiff Oliver Eloy Mata Velasquez will move this Court on a return date to be determined by the Court for preliminary injunctive relief. As described more fully in his supporting memorandum and declaration, the petitioner seeks an order granting his request for release and enjoining Respondents-Defendants from rearrest absent the opportunity to contest his rearrest at a changed circumstances hearing.

In support of his motion, the petitioner files a Memorandum of Law in Support of Motion for a Preliminary Injunction (dated June 12, 2025), the Declaration of Brittany Triggs (dated June 12, 2025), and the Declaration of Sarah Gillman (dated June 12, 2025) with Exhibits 1-11.

Dated: June 12, 2025
New York, New York

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

OLIVER ELOY MATA VELASQUEZ,

Petitioner-Plaintiff,

v.

STEPHEN KURZDORFER, in his official capacity as Acting Field Office Director, Buffalo Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; JOSEPH FREDEN, in his official capacity as Deputy Field Office Director of the Buffalo Federal Detention Facility; TODD LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents-Defendants.

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Oral Argument Requested

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION FOR A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Immigration courthouses have transformed into places full of fear, heartbreak, anxiety, and despair in recent weeks, as the government has enacted a sweeping, brutal snatch-and-grab campaign against noncitizens appearing for required proceedings at courthouses across the country—sowing chaos and tearing communities apart. These unlawful arrests are pursuant to a new policy permitting arrests at courthouses targeting people who, by and large, were assessed by the government to be neither a risk to public safety nor a flight risk. People like the petitioner, Oliver Eloy Mata Velasquez, a 19-year-old asylum seeker who was summarily, unlawfully arrested without notice or cause while leaving immigration court on May 21, 2025, and who has remained in detention since.

His case presents two important and urgent questions related to these mass arrests. *First*, what process is required to arrest and detain an asylum seeker who was already inspected and paroled into the United States, has been granted work authorization and a social security number, has not been arrested for any criminal offense, and has dutifully appeared for his immigration court hearing? Respondents-Defendants ("Respondents") would have it be virtually none. But the Constitution does not allow such unreasonable arrests and unjustified detention. *Second*, may the government reverse course on a years-long policy of refraining from conducting civil immigration arrests at courthouses? Respondents would say yes. But federal law does not permit these arbitrary and capricious actions.

LEGAL STANDARD

To obtain a preliminary injunction the plaintiff must show that "he is likely to succeed on the merits; that he is 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." *ACLU v. Clapper*, 785 F.3d 787, 825 (2d Cir. 2015) (citing *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S.

7, 20 (2008)). Where "the government is a party to the suit, the final two factors merge." *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58-59 (2d Cir. 2020). Alternatively, a moving party "may show irreparable harm and either a likelihood of success on the merits or 'sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief,'" to obtain a preliminary injunction. *ACLU*, 785 F.3d at 825 (quoting *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc.*, 696 F.3d 206, 215 (2d Cir. 2012)).

ARGUMENT

I. OLIVER SUFFERS IRREPARABLE HARM EVERY DAY THAT HE REMAINS IN DETENTION.

"The irreparable harm requirement is the single most important prerequisite for the issuance of a preliminary injunction." *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 80 (2d Cir. 2024) (cleaned up).

Oliver faces irreparable injury to his liberty by his continued unconstitutional and unlawful detention. "Several courts in this circuit have . . . concluded that the deprivation of an alien's liberty is, in and of itself, irreparable harm." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 240–41 (S.D.N.Y. 2020) (internal quotation marks and citation omitted); *see also Rosales-Mireles v. U.S.*, 138 S. Ct. 1897, 1907 (2018) ("Any amount of actual jail time is significant[] and has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration." (cleaned up)); *Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a "serious" "detrimental impact on the individual"); *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (unconstitutional detention is irreparable harm).

Oliver—who is 19 years old and has never been incarcerated—is having an especially difficult experience. Am. Pet. ¶ 46. He arrived in the United States alone after leaving Venezuela

for fear of political persecution. Am. Pet. ¶ 38–40. Since arriving, he has been trying to learn English, working, and dutifully complying with all that the immigration system has asked of him, including attending his court date. Am. Pet. ¶ 2. For doing as this country asked of him, he was abruptly arrested. He is detained in an adult men's facility that has repeatedly been found to be akin to a criminal penal institution. *See, e.g., Gonzales Garcia v. Barr*, No. 6:19-CV-06327, 2020 WL 525377, at *15 (W.D.N.Y. Feb. 3, 2020) ("[T]he reality is that the [BFDF] houses aliens against their will with various restrictions on their freedom of movement. . . . the facility does not seem meaningfully different from at least a low-security penal institution for criminal detention.").

In addition, the deprivation of Oliver's Fourth and Fifth Amendment rights on their own is enough to constitute irreparable harm. *See Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (holding that the district court "properly relied on the presumption of irreparable injury that flows from a violation of constitutional rights."). Even "the *alleged* violation of a constitutional right . . . triggers a finding of irreparable harm." *Id*. (emphasis in original) (cleaned up).

II. OLIVER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS THAT HIS ARREST AND DETENTION VIOLATE THE ADMINISTRATIVE PROCEDURE ACT AND THE FIFTH AND FOURTH AMENDMENTS.

A. Oliver's detention violates his right to substantive due process because Oliver is neither a flight risk nor a danger to his community.

Oliver is likely to succeed on his claim that his detention violates his substantive due process rights. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint— lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Noncitizens unquestionably have a substantive liberty interest to be free from detention. *See id*. Because "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception," the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *U.S. v. Salerno*,

481 U.S. 739, 755 (1987)). Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also Schall v. Martin*, 467 U.S. 253, 264 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective).

Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 853-54 (2d. Cir. 2020); *Faure v. Decker*, No. 15-CV-5128, 2015 WL 6143801, at *3 (S.D.N.Y. Oct. 19, 2015) (ordering release or a bond hearing where there was "no evidence" that the habeas petitioner "poses a danger to the public or would flee during the pendency of the removal proceedings"). Neither purpose is served by Oliver's detention.

Oliver is not a flight risk. The government already determined so when it decided to release him on parole. *See* 8 C.F.R. § 212.5(b); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). Since his release, Oliver has followed all of the procedures and requirements of the immigration system, including attending his immigration hearing. In that time, he has also deepened his ties to the United States, integrating into his community in Buffalo, learning English, finding work, and living with a family member. Am. Pet. ¶ 2. Nor is Oliver a threat to the community. The government knows this. When he arrived at the border, the government's criminal history check of Oliver returned negative, Ex. 4 to Decl. of Sarah T. Gillman ("Gillman Decl."), at 4, and Oliver has never been arrested in the United States.

The government is not detaining Oliver to serve its legitimate interests in protecting against

danger or flight risk. Instead, the government is detaining Oliver, along with countless others swept up in its courthouse arrests, for the understandable but patently illegitimate reason that he was easy to locate. He was where the government told him to be to pursue his asylum claim. But "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *1. Because Oliver's detention basis bears no "reasonable relation" to the government's interests in preventing flight and danger, *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), the Court should order his release.

In the alternative, the Court should order a bond hearing to ensure Oliver's detention bears a reasonable relation to the government's interests. In *Padilla v. U.S. Immigr. & Customs Enf't*, a district court found that a class of asylum-seekers detained under the same detention authority as Oliver had sufficiently alleged that their detention without bond hearings violated their substantive due process rights. 704 F. Supp. 3d 1163, 1172-73 (W.D. Wash. 2023). The court found that the government could not point to public safety concerns or flight risks that might justify mandatory detention of the plaintiffs. *Id*. at 1173. Like the plaintiffs in *Padilla*, Oliver's detention cannot be justified by a legitimate government interest.

B. Oliver's re-arrest and detention without the opportunity to seek release from a neutral decisionmaker violates his right to procedural due process.

Oliver's summary arrest and detention without the government making an affirmative showing of changed circumstances also violates Oliver's procedural due process rights. Even "[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner." *Salerno*, 481 U.S. at 746. "The Supreme Court long ago held that the Fifth Amendment entitles noncitizens to due process in removal proceedings." *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024). "To satisfy procedural due process, non-punitive detention must be accompanied by a prompt individualized hearing

before a neutral decisionmaker to ensure the detention serves the government's legitimate goals." *Padilla*, 704 F. Supp. 3d at 1174 (collecting cases).

The three-factor test articulated by the Supreme Court in *Mathews v. Eldridge*, 424 U.S. 319 (1976) provides the relevant framework "to determine what process is due to noncitizens in removal proceedings," *Black*, 103 F.4th at 147 (collecting cases), and confirms his entitlement to a hearing. The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

The first *Mathews* factor weighs heavily in Oliver's favor. The Second Circuit has repeatedly held in challenges to immigration detention that "the private interest affected by the official action is the most significant liberty interest there is—the interest in being free from imprisonment." *Black*, 103 F.4th at 151 (quoting *Velasco Lopez*, 978 F.3d at 851). Oliver's ongoing detention directly and substantially implicates this "most significant liberty interest . . . . '[c]ase after case instructs us that in this country liberty is the norm and detention is the carefully limited exception." *Id*. (quoting *Velasco Lopez*, 978 F.3d at 851) (cleaned up)). Like the petitioner in *Velasco Lopez*, the deprivation Oliver is experiencing "was not the result of a criminal adjudication." 978 F.3d at 851. Nor is it the result of any flight risk or danger. *See supra* Section II(A). Oliver intends to seek asylum among other immigration relief. The prospect of prolonged detention while he seeks relief, combined with Oliver's young age, only increase the infringement of his liberty interest. *See Padilla*, 704 F. Supp. 3d at 1173 (finding that noncitizens placed in expedited removal found to have a credible fear of persecution "face a median time of five to six

months for adjudication of their claim by an immigration judge, nearly a year for cases appealed to the BIA, and still longer for judicial review.").

As for the second *Mathews* factor, the erroneous deprivation of Oliver's liberty is the direct result of the insufficient safeguards and procedures used to initiate and continue his detention. The government purports to detain Oliver under the authority of 1225(b) which—like 1226(c)—contains "almost nonexistent procedural protections," *Black*, 103 F.4th at 152, and, critically, no opportunity to seek release before a neutral adjudicator. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B) (noting an IJ "may not" conduct a custody hearing). The limited review available is to seek release from ICE, the agency incarcerating him. *See* 8 U.S.C. § 1182(d)(5)(A). But due process requires a *neutral* adjudicator. *See, e.g.*, *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 239 (W.D.N.Y. 2019) (finding "detention could not continue without close scrutiny by a neutral decisionmaker"); *St. John v. McElroy*, 917 F. Supp. 243, 249 (S.D.N.Y. 1996), *as amended* (May 7, 1996). This lack of "procedural protections . . . markedly increase[s] the risk of an erroneous deprivation of Petitioner['s] private liberty interests." *Black*, 103 F.4th at 152. When evaluating the second *Mathews* prong, "[t]he only interest to be considered . . . is that of the detained individuals—not the government." *Id*. Section 1225(b) sweeps broadly, capturing countless law-abiding noncitizens who—like Oliver—seek only the opportunity to ask for safety in this country.

To protect against the risk of erroneous deprivation, the government must provide a custody hearing in which the government must justify his detention based on a showing of changed circumstances. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("Release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."). The government already decided Oliver did not present a flight risk or danger sufficient to detain him

pending immigration proceedings. *See* 8 C.F.R. § 212.5 (provision under which the petitioner was granted humanitarian parole). Oliver was arrested by federal immigration officials when he presented at the border for his CBPOne appointment. Am. Pet. ¶ 40. At the border, he was taken into custody by immigration officials, searched, and interviewed. *Id*. Based on CBP's finding that he could be removed because he "was not in possession of valid travel documents," Ex. 4 to Gillman Decl. at 4; Ex. 6 to Gillman Decl. at 1, the government had statutory authority to detain him pending removal, 8 U.S.C. § 1225(b). Instead, the officials decided to grant him humanitarian parole based on their individualized determination that he presented neither a security nor a flight risk. 8 C.F.R. § 212.5(b). He was released to go live with a family member in the Buffalo area. Am. Pet. ¶ 40. In order to re-detain him, due process requires that he receive a prompt hearing in which the government must show a material change in circumstances specific to Oliver. In this hearing, Oliver must have the opportunity to rebut the government's showing, and a neutral decision maker must have the ability to order a return to the status quo.

Lopez v. Sessions, is instructive here, No. 18-CV-4189, 2018 WL 2932726 (S.D.N.Y. June 12, 2018). In *Lopez*, the petitioner—like Oliver—had been charged as removable when he presented himself at a port of entry but was paroled into the United States. *Id*. at *2. Less than one year after his arrival, ICE arrested the petitioner at an interview ICE requested he attend and detained without further process. *Id*. at *3. The court held that due to the lack of process prior to the petitioner's re-arrest, "the risk of erroneous deprivation of Mr. Lopez's liberty interest is manifest." *Id*. at *11. There, as here, almost no "deliberative process was undertaken with respect to the rearrest of [the petitioner] . . . ." *Id*. at 3. As the court noted, the government had already made a reasoned decision "that he was neither a danger to himself or others and that it was appropriate" to release him to live with a family member. *Id*. at 11. Therefore, "re-detention, in

the absence of any procedure or evidentiary findings, establishes the risk of erroneous deprivation of a liberty interest." *Id*. Here too, "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." *Id*. at 12..

Lopez is not an outlier. Courts routinely find that noncitizens are entitled to a custody hearing to justify rearrest and detention. Some courts have even required this hearing to take place *pre*-deprivation. In *Saravia v. Sessions*, the Ninth Circuit affirmed a preliminary injunction entitling noncitizen minors who had been released to a sponsor upon arrival in the United States to a prompt hearing before a neutral decision maker where the burden was on the government to show that change circumstances justified re-detention. 905 F.3d 1137, 1139-42 (9th Cir. 2018). In issuing the preliminary injunction, the district court in *Saravia* found that "[i]n the absence of a prompt adversarial hearing . . . there is a serious risk that minors who were appropriately placed with sponsors . . . will . . . erroneously be placed into ORR custody, and without an opportunity obtain prompt relief." 280 F. Supp. 3d at 1199. *See also Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1284720 (W.D.N.Y. May 2, 2025); *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 362-64, 373 (S.D.N.Y. 2019) (finding the detention of a noncitizen without written notice of the reinstatement of a removal order violated procedural due process and therefore ordering his release and enjoining the government "from attempting to detain Petitioner, while the outcome of his immigration proceedings are pending, so long as he is ably cooperating and participating in his proceeding"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (holding that a noncitizen released from detention on bond was entitled to a hearing before being re-arrested).

The third *Mathews* prong—the public interest—also weighs in Oliver's favor. Here, as in *Black*, the additional process sought would "do nothing to undercut" the government's interests

preventing flight and danger. 103 F.4th at 153. Nor do the limited administrative burdens weigh against the process sought. IJs routinely perform the type of custody hearing sought here. *See Saravia*, 280 F. Supp. 3d at 1197 (noting agency practice implementing *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981) which requires "a showing of changed circumstances both where the prior bond determination was made by an [IJ] and where the previous release decision was made by a DHS officer"); 8 C.F.R. § 1003.19(e). Thus, it would place "minimal" administrative and fiscal burdens on the immigration system, and any burdens would "likely be outweighed by costs saved by reducing unnecessary detention." *Black,* 103 F.4th at 154-55.

Because all three factors weigh heavily in Oliver's favor, this Court should find that he is entitled to a prompt hearing where the government has the burden of showing changed circumstances with respect to his risk of flight or any alleged danger.

C. The government violated Oliver's Fourth Amendment rights by executing a courthouse arrest without changed or exigent circumstances.

It is unreasonable under the Fourth Amendment to rearrest a person who has been released from custody based on the same charge that supported a prior arrest. The Fourth Amendment protects the right of the people to be secure in their persons against unreasonable seizures. U.S. Const. amend. IV. "It is axiomatic that seizures have purposes. When those purposes are spent, further seizure is unreasonable." *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020). Any seizure must be supported by probable causeWhen the purpose of a seizure is accomplished, "[f]urther seizure requires a court order or new cause" as "the original probable cause determination is no justification." *Id.*; *see also Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (stating that a lawful roadside seizure is supported by probable cause for the duration of the stop and terminates when the police no longer need to control the scene).

This requirement that further seizure requires a court order or new probable cause "guards

against precipitate rearrest." *Carlson v. Landon*, 342 U.S. 524, 546 (1952). "Arrest ensures that a suspect appears to answer charges and does not continue a crime, and it safeguards evidence and enables officers to conduct an in-custody investigation." *Virginia v. Moore*, 553 U.S. 164, 173 (2008). When an arrestee is released on bond, , the purpose of their prior arrest has been accomplished. *Williams*, 967 F.3d at 635; *Carlson*, 342 U.S. at 546 ("[T]he rule in criminal cases is that a warrant once executed is exhausted"). As a result, any probable cause justifying the prior arrest is extinguished, and they cannot be rearrested absent changed circumstances. *See Carlson*, 342 U.S. at 546–47; *U.S. v. Holmes*, 452 F.2d 249, 260–61 (7th Cir. 1971); *U.S. v. Swims Under*, 990 F.2d 1265 (9th Cir. 1993).

This inability to justify arrest based on a prior arrest's probable cause is equally true in immigration proceedings. The Board of Immigration Appeals ("BIA") and DHS have long required a showing of changed circumstances to alter prior bond and release determinations. *See supra* 7-8. Again and again, courts have recognized noncitizens, including asylum seekers like Oliver, cannot be rearrested unless the government proffers evidence of changed circumstances to justify their rearrest. *Lopez*, 2018 WL 2932726, at *14 (S.D.N.Y. June 12, 2018) ("Such administrative warrants raise serious due process and Fourth Amendment questions when used in this way."); *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 367 (S.D.N.Y. June 14, 2019) (citation omitted) ("the Second Circuit suppressed evidence that the Government attained to deport aliens, where the government search violated fundamental Fourth Amendment rights by being conducted without: a warrant, consent, or exigent circumstances." has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings"); *Saravia*, 280 F. Supp. 3d at 1196 (citation omitted) ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under

the Fourth Amendment.").

Here, Oliver was arrested by CBP officials, charged as removable, and released after they determined he did not present a flight risk or danger. *See supra* Section II(B). This happened after he was instructed to return for a MASTER hearing on February 4, 2026. Ex. 1 to Gillman Decl., at 1. When he was re-arrested pursuant to the Immigration Courthouse Arrest Policy, his arrest was effectuated pursuant to the same charge of removability without any evidence that changed circumstances justified revocation of his parole. *Compare* Ex. 6 to Gillman Decl., at 1, *with* Exhibit 8 to Gillman Decl., at 5. No probable cause justifies his rearrest. He should be released from detention, and Respondents should be enjoined from seeking his detention absent a changed circumstances hearing.

D. The government arrested Oliver pursuant to a courthouse arrest policy that is arbitrary, capricious, and not in accordance with law.

In a reversal of a years-long policy and practice to minimize and rarely, if ever, conduct civil immigration arrests at courthouses, DHS, including ICE, issued a new interim directive on January 20, 2025 ("January 20, 2025 Memo"), finalized as the "Courthouse Arrest Memo" on May 27, 2025, permitting civil immigration arrests at courthouses generally. *See* Am. Pet. ¶¶ 27–33; *see generally* Exs. 10, 11 to Gillman Decl. In recent weeks, ICE has been aggressively arresting non-citizens appearing for required proceedings in immigration court in unprecedented numbers pursuant to a new Immigration Courthouse Arrests Policy, which is encapsulated in part by the Courthouse Arrest Memo as well as ICE's recent practice of widespread arrests at immigration courthouses across the country. *See* Am. Pet. ¶¶ 34, 36–37. This new Immigration Courthouse Arrests Policy to arrest noncitizens like Oliver at immigration courthouses is arbitrary and capricious and/or not in accordance with law for three independent reasons: (1) the policy is a reversal of ICE's prior policy and practice to not perform arrests at immigration courts and the

agency has not provided an adequate explanation of this reversal; (2) the policy fails to consider several important aspects of the problem as well as reasonable alternatives; and (3) the policy is without statutory authorization because the Immigration and Nationality Act ("INA") incorporates a common-law privilege against civil arrests at courthouses.

a. ICE's new immigration courthouse arrests policy is arbitrary and capricious because it is a reversal in position that the agency has failed to adequately explain

Where an agency changes its previous position, it must (1) "display awareness that it is changing position," (2) "show that there are good reasons for the new policy," and (3) balance those good reasons against "engendered serious reliance interests." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016); *see also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (alteration to prior agency position can require "more detailed justification than what would suffice for a new policy created on a blank slate").

The recent civil arrests at immigration courts by ICE is a changed policy and practice. While an April 27, 2021 Memorandum to ICE and CBP officers restricted arrests at immigration courts to limited circumstances on the reasoning that, *inter alia*, "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and as a result, impair the fair administration of justice," Ex. 9 to Gillman Decl., at 1, the January 20, 2025 Memo, finalized as the Courthouse Arrest Memo on May 27, 2025, marked a clear departure from this prior policy by authorizing widespread arrests at courts, s*ee supra* Section II(D)(a); Exs. 10, 11 to Gillman Decl. And ICE's recent, unprecedented level of arrests of noncitizens at immigration courthouses is a sharp reversal of prior agency practice. Decl. of Brittany Triggs ("Triggs Decl.") ¶¶ 5–10. Taken together as the new Immigration Courthouse Arrests Policy, the government has failed to provide "good reasons for the new policy," *Encino Motorcars*, 136 S. Ct. at 2126 (quotation marks and citation omitted), even though "an agency changing its course must supply

a reasoned analysis." *Motor Vehicle Manufacturers Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 57 (1983).

Here, the government has provided no reasoned analysis, and the Court may not infer the agency's reasoning from mere silence. *See id.* Instead, the Courthouse Arrest Memo offers two demonstrably unreasonable justifications. First, ICE asserts that courthouse arrests "can reduce safety risks" during the arrest itself because noncitizens are screened for weapons and other contraband upon entering a courthouse. Ex. 11 to Gillman Decl., at 1. But there is no basis to assume people who are appearing for their hearings present any kind of danger. The government has, at some prior point, decided not to detain the vast majority of them because they were deemed to be neither a public safety threat nor a flight risk. This group of people is already, definitionally, following the rules and complying with the government's process. ICE has failed to explain why its prior policy of not conducting arrests at courthouses endangered noncitizens, ICE agents, or the public such that this policy change is now necessary.

ICE's second rationale—that this change is necessary "when jurisdictions refuse to cooperate with ICE, including when such jurisdictions refuse to honor immigration detainers and transfer aliens directly to ICE custody," Ex. 11 to Gillman Decl., at 1,—is not a reasoned justification; arresting people simply because they are easy to find at required court proceedings does not explain the need for their arrest at courthouses. This rationale also suggests the new policy improperly seeks to retaliate against states that make the constitutionally protected choice not to "enforce federal law" using state resources. *Printz v. U.S.*, 521 U.S. 898, 925 (1997).

Relatedly, the new policy, viewed alongside DHS's new enforcement initiative, *see* Am. Pet. ¶ 34, "attempt[s] to strip [non-citizens'] right to engage in an immigration process made available to [them]" and the agency "provided no explanation or justification" for such. *Calderon*

v. Sessions, 330 F. Supp. 3d 944, 958 (S.D.N.Y. 2018); *see also De Jesus Martinez v. Nielsen*, 341 F. Supp. 3d 400, 410 (D.N.J. 2018); *Wanrong Lin v. Nielsen*, 377 F. Supp. 3d 556, 564 (D. Md. 2019). The INA and its implementing regulations clearly contemplate that seeking immigration relief in immigration court will actively participate in the process. *See generally* 8 U.S.C. § 1229a (removal proceedings); 8 C.F.R. § 1003.14 (jurisdiction and commencement of removal proceedings in immigration court). This change in policy "effectively use[s] [required immigration processes] to lure [noncitizens] to [their] arrest" and "prevent[s]" many non-citizens, especially those subjected to dismissal of their 240 proceedings and placement in expedited removal, from pursuing rights and relief afforded to them by the INA. *Wanrong Lin*, 377 F. Supp. 3d at 564; *see also* Triggs Decl. ¶¶ 6, 9, 12–15. Indeed, after Oliver's arrest on May 21, 2025, DHS moved to dismiss Oliver's removal proceedings on May 28, 2025, and the court granted this motion on June 6, 2025, despite the lack of a hearing and Oliver's immigration counsel filing a notice of appearance on June 2, 2025. Am. Pet. ¶¶ 44–45, 48–49, 51; Ex. 3 to Gillman Decl., at 1; Ex. 5 to Gillman Decl., at 2. On June 10, 2025, DHS initiated expeditated removal proceedings against Oliver, even though his appeal of the dismissal of his Section 240 proceedings was pending before the BIA. Am. Pet. ¶ 52. Such circumstances resulting from appearing in mandatory court proceedings—unlawful arrest, prolonged and indefinite detention, and subsequent loss of due process rights—undoubtedly chill all noncitizens from attending court. Triggs Decl. ¶¶ 14–15.ICE fails to explain why this is proper or comports the INA's mandates, in violation of the APA.

Finally, ICE has failed to balance its reasons for the new policy against "engendered serious reliance interests." *Encino*, 579 U.S. at 222 (cleaned up). Specifically, those pursuing relief in immigration court, as well as court officials, have long expected that noncitizens could appear in immigration court to vindicate their rights and interests without risk of civil arrest. Noncitizens

have relied on this expectation to attend court proceedings without making childcare, elder care, and employment arrangements in the event of arrest. Courts have relied on this expectation to set deadlines and manage their dockets. The new policy does not even acknowledge these "serious reliance interests," let alone take them "into account." *Fox Television Stations*, 556 U.S. at 515.

b. ICE's new immigration courthouse arrests policy is arbitrary and capricious because it fails to consider important aspects of the problem and reasonable alternatives

Even where an agency explains the basis for its action, an agency action is still arbitrary and capricious when the agency has, *inter alia*, "entirely failed to consider an important aspect of the problem" and did not articulate a "'rational connection between the facts found and the choice made.'" *State Farm*, 463 U.S. at 43 (citation omitted). To be "reasoned decisionmaking," agencies must "look at the costs as well as the benefits" that will flow from their actions. *Id.* at 52, 54.

Here too ICE has failed to consider how the new Immigration Courthouse Arrests Policy will chill access to immigration courts; impede the fair administration of justice, including by disturbing immigration courts' dockets; and effectively strip noncitizens' ability to access immigration relief available to them pursuant to the INA and other laws. *See supra* Section II(D)(a); Triggs Decl. ¶¶ 14–15. The January 20, 2025 Memo and Courthouse Arrest Memo "offer[] no reason" for why these concerns—two of which were in the April 27, 2021 Memo—are inapplicable, do not seriously undermine the courthouse arrests policy, or could not be addressed through reasonable alternatives, such as conducting arrests elsewhere. *U.S. Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1912 (2020) (hereinafter "*DHS v. Regents of U. of CA*"); *see supra* Section II(D)(a).

Such failure to consider is undoubtedly arbitrary and capricious. *DHS v. Regents of Univ. of CA*, 140 S. Ct. at 1910–13 (holding DHS's decision to terminate Deferred Action for Childhood Arrivals ("DACA") was arbitrary and capricious because DHS failed to consider one of two

defining features of DACA—forbearance of removal); *State Farm*, 463 U.S. at 46, 51 (holding National Highway Traffic Safety Administration acted arbitrarily and capriciously by rescinding a standard that required car manufacturers to include passive restraints in their vehicles because the agency "gave no consideration whatever to modifying the Standard to require that airbag technology be utilized" and "was too quick to dismiss the safety benefits of automatic seatbelts").

c. The immigration courthouse arrests policy is in excess of statutory authority because the INA incorporates the common-law privilege against courthouse arrests

A court may also hold unlawful and set aside an agency action that is "in excess of statutory jurisdiction, authority, [and] limitations, [and] short of statutory right." 5 U.S.C. § 706(2)(C). While ICE has broad authority to arrest noncitizens during their removal proceedings pursuant to the INA, 8 U.S.C. § 1226(a); 8 U.S.C. § 1357(a)(2), such authorization is limited by the INA's incorporation of the common law, specifically the privilege against courthouse arrests. Tracing its origins to English common law, the privilege was incorporated into American common law, and recognized by the Supreme Court shortly before the passage of the INA in 1952. *See State v. U.S. Immigr. & Customs Enf't*, 431 F. Supp. 3d 377, 388–94 (S.D.N.Y. 2019). Accordingly, since "[s]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident[,]," *U.S. v. Texas*, 507 U.S. 529, 534 (1993) (internal quotation marks and citations omitted), and the INA does not "speak directly" to authorizing courthouse arrests, *Pasquantino v. U.S.*, 544 U.S. 349, 359 n.5 (2005) (internal quotation marks and citation omitted), ICE's arrest powers pursuant to the INA is limited by the privilege. *See State*, 431 F. Supp. 3d at 392 (holding that the INA incorporates the common-law privilege against courthouse arrests); *Doe v. U.S. Immigr. & Customs Enf't*, 490 F. Supp. 3d 672, 692–93 (S.D.N.Y. 2020) (same); *New York v. U.S. Immigr. & Customs Enf't*, 466 F. Supp. 3d 439, 449 (S.D.N.Y. 2020) (same), *vacated and*

remanded on other grounds sub nom. New York v. U.S. Immigr. & Customs Enf't, No. 20-2622, 2023 WL 2333979 (2d Cir. Feb. 28, 2023); *Velazquez-Hernandez v. U.S. Immigr. & Customs Enf't*, 500 F. Supp. 3d 1132, 1144–45 (S.D. Cal. 2020) (same); *cf. Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 28 (1st Cir. 2020) (holding privilege not incorporated into the INA).

i. Scope of the privilege

"As a starting point, it is patently clear that English common law provided a privilege against any civil arrests in and around courthouses, and also against civil arrests of witnesses and parties necessarily traveling to and from the courthouse." *State*, 431 F. Supp. 3d at 388. Blackstone's Commentaries on the Laws of England, "on which early U.S. courts heavily relied in incorporating English common law into" American state and federal law, provided,

> "Suitors, witnesses, and other persons, necessarily attending any courts of record upon business, are not to be arrested during their actual attendance, which includes their necessary coming and returning. And no arrest can be made in the king's presence, nor within the verge of his royal palace, nor in any place where the king's justices are actually sitting."

Id. (quoting 3 William Blackstone, *Commentaries on the Laws of England* 289 (1768)). This summary by Blackstone shows that the privilege applied to both (1) the person who is attending court upon business and (2) the physical courthouse and its environs. *See* Christopher N. Lasch, *A Common-Law Privilege to Protect State and Local Courts During the Crimmigration Crisis*, 127 Yale L. J. Forum 410, 423 (2017); *see also, e.g.*, *Ex Parte Jackson*, 15 Ves. Jun. 117, 699 (1808) ("all persons, having a relation to a suit, calling for their attendance, whether compelled by process, or not, including bail, are entitled to protection") (citing *Meekins v. Smith*, 126 Eng. Rep. 363, 1 H. Bl. 636 (1791)); *Cole v. Hawkins*, 95 Eng. Rep. 396, 396, Andrews 275, 275 (1738) (service of process in the sight of the Court is a great contempt").

American common law incorporated this privilege, *see State*, 431 F. Supp. 3d at 389; *Doe*,

490 F. Supp. 3d at 690; *Velazquez-Hernandez*, 500 F. Supp. 3d at 1143; *see also, e.g.*, *Sanford v. Chase*, 1824 WL 2269 (N.Y. 1824) (recognizing and discussing the privilege); *Williamson v. U.S.*, 207 U.S. 425, 443 (1908) (same); recognized that it attached to persons coming to, attending, and leaving from court business and to the physical courthouse itself, *Norris v. Beach*, 2 Johns. 294, 294 (1807) (courts "have power to compel the attendance of witnesses, and when they do attend, we are bound to protect them *redeundo*"); *Blight v. Fisher*, 3 F. Cas. 704, 704–05 (C.C.D.N.J. 1809) ("The service of process, whether a[n arrest] or summons, in the actual or constructive presence of the court, is a contempt, for which the officer may be punished."); *see also* Simon Greenleaf, A Treatise on the Law of Evidence, pt. III, ch. 1, § 316, at 458 (14th ed. 1888) (discussing how the privilege applies to people); *id*. at § 316, at 458–59 (discussing how the privilege applies to the courthouse); and "enlarge[ed] the right of the privilege," *Parker v. Marco*, 32 N.E. 989 (N.Y. 1893) (citing *Larned v. Griffin*, 12 *Fed. Rep.* 592 (C.C.D. Mass. 1882)), including to apply to service of process as such replaced civil arrest as the means of commencing civil cases, *New York*, 466 F. Supp. 3d at 445; *see also Stewart v. Ramsay*, 242 U.S. 128, 129–31 (1916) (collecting cases); Greenleaf, A Treatise on the Law of Evidence, pt. III, ch. 1, §§ 316–17, at 458–60 (counseling that courts should be "liberal" in applying the privilege).

At English and American common law, the privilege serves the fair administration of justice by ensuring (1) that parties and witnesses are not deterred from coming forward and (2) decorum and order at courthouses. *State*, 431 F. Supp. 3d at 391–92; *Halsey v. Stewart*, 4 N.J.L. 366 (1817) ("the privilege . . . 'was designed to prevent any interruption of the business of the court'") (quoting *Cole v. Hawkins*, 2 Str. 1094); *Person v. Grier*, 66 N.Y. 124, 126 (1876) ("This immunity is one of the necessities of the administration of justice."); *Netograph Mfg. Co. v. Scrugham*, 90 N.E. 962, 963 (N.Y. 1910) (explaining "the obvious reason of the rule is to

encourage voluntary attendance upon courts and to expedite the administration of justice").

The Supreme Court has recognized the dual purpose of the privilege and its necessity for courts to function properly. *See, e.g.*, *Stewart v. Ramsay*, 242 U.S. 128, 129 (1916) (in discussing the privilege's purpose, stating that "this great object in the administration of justice would in a variety of ways be obstructed if parties and witnesses were liable to be served with process while actually attending the court") (quoting *Halsey*, 4 N.J.L. 366); *Lamb v. Schmitt*, 285 U.S. 222, 225 (1932) (explaining that the Court's holding was concerned with ensuring that the privilege meets its purpose of ensuring "the due administration of justice"). The privilege's main purpose is why it is held both by the court and individuals. *Id*. (stating that the privilege is "founded, not upon the convenience of the individuals, but of the court itself."); *Parker*, 32 N.E. 989 ("It is not simply a personal privilege, but it is also the privilege of the court, and is deemed necessary for the maintenance of its authority and dignity, and in order to promote the due and efficient administration of justice"); *Stewart*, 242 U.S. at 130 ("'[t]he privilege which is asserted here is the privilege of the court, rather than of the defendant'") (quoting *Parker v. Hotchkiss* (1849) 1 Wall. Jr. 269, Fed. Cas. No. 10,739). That is why "the proper test [for application of the privilege] is not . . . whether the appearance be voluntary or not, but whether the privilege will promote the purposes of justice." *Dwelle v. Allen*, 193 F. 546, 548–49 (S.D.N.Y. 1912); *see also Lamb*, 285 U.S. at 228 ("[t]he test is whether the immunity itself, if allowed, would so obstruct judicial administration in the very cause for the protection of which it is invoked as to justify withholding it.").

ii. Incorporation of the privilege into the INA

The non-derogation canon of statutory interpretation is based on the principle that "[s]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." *U.S. v. Texas*, 507 U.S. 529, 534 (1993) (quotation marks and citations

omitted). This presumption applies unless "the statute 'speak[s] directly' to the question addressed by the common law." *Pasquantino v. U.S.*, 544 U.S. 349, 359 (2005) (quotation marks and citation omitted). The non-derogation canon applies to a statute if the common-law rule was well-established at the time of the statute's passage, *see id*. at 360–62, and if the "purposes" of the common-law rule applies to the statutory context at issue. *Id*. at 368; *see also id*. 368–70.

As described *supra* Section II(D)(c)(i), the common-law privilege against civil arrests at courthouses has long been incorporated into American common law. Further, the privilege was acknowledged by the Supreme Court in the decades before the INA passed in 1952. *See Lamb*, 285 U.S. at 225; *Long*, 293 U.S. at 83. Immigration arrests for civil immigration offenses are undoubtedly civil arrests. *See I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country, not to punish an unlawful entry"). And looking to the plain language of 8 U.S.C. § 1226(a) and 8 U.S.C. § 1357(a)(2), which govern ICE's arrest authority, there is no indication of Congress "speak[ing] directly" to abrogate the common-law privilege against courthouse arrests. *U.S. v. Texas*, 507 U.S. at 534. Thus, the presumption that the INA incorporated the common law-privilege applies in interpreting the INA, and the privilege limits ICE's and other federal agencies' authority to conduct civil immigration arrests in and around courthouses, including at federal courthouses. *See Velazquez-Hernandez*, 500 F. Supp. 3d at 1143 (in considering a challenge to civil immigration arrests at federal courthouses, concluding that "the statutes on their face do not indicate that Congress intended to abrogate the common-law privilege").

iii. The privilege applies to immigration courts and petitioner's arrest

The common-law privilege applies to immigration courts because they are courts of law exercising judicial power, and application of the privilege to such courts "will promote the purposes of justice." *Dwelle*, 193 F. at 548–49. Specifically, immigration courts were created

pursuant to the INA by Congress, and thus qualify as Article I legislative courts. 8 U.S.C. § 1229a(a)(1) ("An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien."); *U.S. v. Bastide-Hernandez*, 39 F.4th 1187, 1191–92 (9th Cir. 2022) (discussing how immigration courts' adjudicatory authority comes from the INA and Congress); *Campos-Luna v. Lynch*, 643 Fed. App'x 540, 542 (6th Cir. 2016) ("immigration court . . . is not an Article III court. It is an Article I court"); *Hernandez v. Longshore*, No. 13–CV–02675, 2013 WL 6132713, at *1 (D. Colo. Nov. 21, 2013) (stating immigration courts are Article I courts); *Argueta v. U.S. Immigr. and Customs Enf't*, No. 08-CV-1652, 2009 WL 1307236, at *13 (D.N.J. May 7, 2009) (same).

Courts have held that other Article I courts similar to immigration courts exercise judicial power. In *Freytag v. C.I.R.*, the Supreme Court held that the Tax Court—a court, like immigration courts, that was created by Congress—was a "'Cour[t] of Law' within the meaning of the Appointments Clause" that it "exercises a portion of the judicial power of the United States." 501 U.S. 868, 890-91 (1991). There, the Court based, in large part, its ruling on how the Tax Court exercises powers that are "quintessentially judicial in nature" and has a "function and role in the federal judicial scheme [that] closely resemble[s] those of the federal district courts." *Id*. at 891. Immigration courts are no different. Congress granted immigration judges ("IJs") judicial powers, including the power to "administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses," "issue subpoenas for the attendance of witnesses and presentation of evidence," and "to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority under this chapter." 8 U.S.C. § 1229a(b)(1); *see also* 8 C.F.R. § 1003.35. Further, immigration court proceedings have a variety of procedural safeguards, including IJs being bound by precedent, C.F.R. § 1003.1(g); s having a right to retain

attorneys, 8 U.S.C. § 1229a(b)(4)(A); 8 C.F.R. § 1003.16(b); and noncitizens having a right to present evidence and testimony, 8 U.S.C. § 1229a(b)(4)(B), a written decision, 8 C.F.R. §§ 1003.37, 1240.13(a), and to seek review of IJ's decisions, including by the federal court, 8 U.S.C. § 1252(a)(2)(D); 8 C.F.R. § 1003.38. *See also generally* 8 U.S.C. § 1252; 8 C.F.R. §§ 1003.31, 1240.12(a). Immigration courts must also maintain a complete record of all proceedings, 8 U.S.C. § 1229a(b)(4)(C); 8 C.F.R. § 1240.9, with such proceedings being governed by a burden of proof prescribed by the INA, 8 U.S.C. § 1229a(c). And like the Tax Court, immigration courts "interpret and apply" the INA "in disputes between [noncitizens] and the Government" and its resolution of "these disputes" is the "exercise[of] a portion of the judicial power of the United States." *Freytag*, 501 U.S. at 891.

For these very reasons, courts have concluded that IJs are entitled to absolute judicial immunity, relying on a function approach that considers the nature of IJs' work. *See, e.g.*, *Stevens v. Osuna*, 877 F.3d 1293, 1304 (11th Cir. 2017) ("Considering both the adjudicatory role that Immigration Judges play within the immigration-hearing process and the existence of . . . sufficient pertinent safeguards, we are persuaded that [IJs] are judges entitled to absolute immunity for their judicial acts"); *Hernandez–Ortiz v. Godinez,* No. 88 C 5925, 1988 WL 129997, at *1 (N.D. Ill. Nov. 30, 1988) (IJ presiding over deportation entitled to absolute immunity); *Okwuego v. Pope*, No. 22-2590, 2024 WL 722543, at *1 n.2 (3d Cir. Feb. 22, 2024) ("[IJs] enjoy absolute immunity from suits for monetary damages") (citing *Stevens*, 877 F.3d at 1304); *see also Butz v. Economou*, 438 U.S. 478, 512–13 (1978) (administrative law judges entitled to absolute judicial immunity for their judicial acts)).

Finally, immigration courts meet the test for the application of the privilege because prohibiting civil arrests at immigration courthouses "will promote the purposes of justice" by

ensuring that noncitizens are not disincentivized from appearing for required court proceedings, immigration courts' dockets are not disturbed, and that the full purpose and functioning of the INA is carried out. *Dwelle*, 193 F. at 548–49. Since the common-law privilege was incorporated into the INA and constrains ICE officers' authority to arrest s at immigration court, Oliver's arrest pursuant to the new Immigration Courthouse Arrests Policy was "in excess of statutory jurisdiction, authority, [and] limitations, [and] short of statutory right." 5 U.S.C. § 706(2)(C).

III. PROTECTING OLIVER'S CONSTITUTIONAL AND STATUTORY RIGHTS OUTWEIGHS ANY POTENTIAL HARDSHIP TO RESPONDENTS AND ENTRY OF PRELIMINARY RELIEF IS IN THE PUBLIC INTEREST.

In evaluating a motion for preliminary relief, "balancing of the equities merges into [the court's] consideration of the public interest." *SAM Party of N.Y. v. Kosinski*, 987 F.3d 267, 278 (2d Cir. 2021). "[T]he public interest lies with enforcing the Constitution and federal law." *P.G. v. Jefferson Cty.*, No. 21-CV-388, 2021 WL 4059409, at *5 (N.D.N.Y. Sept. 7, 2021). The government has no valid interest in maintaining an unconstitutional practice, *see N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013), even when "granting a preliminary injunction would cause financial or administrative burdens on the Government," *Averhart v. Annucci*, No. 21-CV-383, 2021 WL 2383556, at *16 (S.D.N.Y. June 10, 2021) (citation omitted); *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984) (where there is "conflict between the [government's] financial and administrative concerns . . . , and the risk of substantial constitutional harm . . . the balance of hardships tips decidedly in [plaintiff's] favor.").

By contrast, each day Oliver spends in unlawful detention extends the ongoing violation of his constitutional rights. And the public's interests are only served by "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Black*, 103 F.4th at 154; *see Hernandez Aguilar v. Decker*, 482 F. Supp. 3d 139, 150 (S.D.N.Y. 2020) (holding balance of equities favored ordering bond hearing for detained noncitizen where hearing would not

"unreasonably strain" government resources or undermine the enforcement of U.S. immigration law).

Finally, the government's Courthouse Arrest Policy has sown fear and discord throughout the United States, leaving asylum-seekers like Oliver in indefinite detention for appearing for their routine court dates. It is squarely within the public interest to enjoin this unlawful policy.

CONCLUSION

For the foregoing reasons, Petitioner-Plaintiff Oliver Eloy Mata Velasquez respectfully moves this Court for an order granting his request for release and enjoining Respondents from rearrest absent the opportunity to contest his rearrest at a changed circumstances hearing.

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New York, N.Y.

Respectfully submitted,

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