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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Daniel Ramirez Medina,

Petitioner,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN KELLY, Secretary of Homeland Security; NATHALIE ASHER, Director of the Seattle Field Office of U.S. Immigration and Customs Enforcement; and LOWELL CLARK, Warden of the Northwest Detention Center,

Respondents.

CASE NO. 2:17-CV-00218-RSM-JPD

PETITIONER’S OBJECTIONS TO REPORT AND RECOMMENDATION AND REQUEST FOR EXPEDITED CONSIDERATION

Noted for Consideration: March 31, 2017

Petitioner – who is detained without probable cause – respectfully requests expedited consideration of these objections.

ORAL ARGUMENT REQUESTED

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Petitioner's Objections to Report and Recommendation
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INTRODUCTION

Petitioner Daniel Ramirez Medina (“Mr. Ramirez”) respectfully requests that the Court overrule Chief Magistrate Judge Donohue’s March 14, 2017 Report and Recommendation (“R&R”) with respect to Mr. Ramirez’s Emergency Motion for Conditional Release.¹ Mr. Ramirez further requests that the Court consider these objections on an expedited basis, and order him to be conditionally released pending resolution of his constitutional claims.²

REQUEST FOR EXPEDITED CONSIDERATION

As of the date of this filing, Mr. Ramirez—who has no criminal history and has not been charged with any unlawful conduct—has been detained for more than a month. Mr. Ramirez is a hard working young man who sought and received a work permit under the Deferred Action for Childhood Arrivals (“DACA”) program so that he could support his family, including his young son. To apply for this permit, Mr. Ramirez submitted to extensive background checks—most recently less than a year ago—and the government repeatedly found that he presented no threat to public safety or national security. The government has submitted no competent evidence to contradict this finding. Instead, the government falsely and publicly branded Mr. Ramirez as a “gang member,” thereby making him a target in the Northwest Detention Center, and greatly compromising his physical and psychological safety. The government has submitted no evidence to support this libelous claim. In stark contrast, Mr. Ramirez has submitted his own sworn testimony, that of his family members, and that of two notable experts on California gangs, all of which make clear that Mr. Ramirez is not, and never has been, a member of any gang.³

¹ In his Amended Petition, Mr. Ramirez asks this Court for immediate release, declaratory and injunctive relief, as well as reasonable costs and attorney’s fees and other and further relief that this Court may deem fit and proper. Dkt. 41. Only his request for immediate conditional relief is presently before this Court.

² The R&R provides that any “[o]bjections should be noted for consideration on the District Judge’s motion calendar for the third Friday after they are filed.” Dkt. 64 at 46. While this timeframe would be appropriate for an objection to the dispositive issues addressed in the R&R (*e.g.*, the recommendation that the Court deny the government’s Motion to Dismiss), *see* W.D. Wash. R. 72(b), it appears to conflict with Local Rule 72(a) to the extent that it also applies to these objections, *see* W.D. Wash. R. 72(a) (an objection to a Magistrate Judge’s nondispositive recommendation “must be noted for consideration for the day it is filed”). Because these objections address a nondispositive recommendation, Mr. Ramirez respectfully requests that the Court consider them as soon as possible, and respectfully proposes that any hearing occur no later than Monday, March 20, 2017.

³ And yet another notable expert was just quoted in further support of this conclusion: “Any argument about gang ties based on this tattoo is weak at best; this tattoo does not show any gang affiliation.” Jonathan Blitzer, *A Case That*

1 Mr. Ramirez’s counsel has repeatedly requested that he be conditionally released pending
 2 resolution of the merits of this case, but the government has refused to release him, without any
 3 explanation. Mr. Ramirez is willing to wear an ankle bracelet or consent to other reasonable
 4 conditions of release pending the Court’s determination of the merits of this case. And the parties
 5 have already submitted extensive briefing on Mr. Ramirez’s request for conditional release. *See, e.g.*,
 6 Dkt. 45 at 1–19; Dkt. 49 at 1–2; Dkt. 52 at 23–25; Dkt. 57 at 18–25; Dkt. 58 at 11–12. In all of this
 7 briefing, the government has failed to provide any evidence justifying Mr. Ramirez’s continued
 8 detention, nor has it demonstrated that he is a flight risk, poses a danger to the community, or has
 9 engaged in any unlawful conduct. There is no need to prolong Mr. Ramirez’s unconstitutional
 10 detention any longer, let alone for another three weeks.

11 STANDARD OF REVIEW

12 In reviewing a nondispositive pretrial recommendation, the district court “must consider
 13 timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary
 14 to law.” Fed. R. Civ. P. 72(a); *see also* 28 U.S.C. § 636(b)(1)(A). “A magistrate judge’s factual
 15 determinations are reviewed for clear error,” and “[f]indings are ‘clearly erroneous’ if the court is
 16 ‘left with the definite and firm conviction that a mistake has been committed.’” *Walker v. Colvin*,
 17 No. 3:15-cv-5252, 2016 WL 3014734, at *1 (W.D. Wash. May 26, 2016) (quoting *United States v.*
 18 *U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)). “Legal conclusions are reviewed de novo to determine
 19 whether they are contrary to law.” *Id.* (citing *Perry v. Schwarzenegger*, 268 F.R.D. 344, 348 (N.D.
 20 Cal. 2010)); *see also id.* at *3 (finding magistrate judge’s order on page limits was contrary to law).

21 OBJECTIONS TO REPORT AND RECOMMENDATION

22 I. The R&R correctly recommends that Respondents’ motion to dismiss be denied.

23 In his lengthy and thorough R&R, Chief Magistrate Judge Donohue recommends:

- 24 1. that 8 U.S.C. § 1252 does not preclude Mr. Ramirez from seeking habeas relief in this
 25 Court, Dkt. 64 at 21–32;
- 26 2. that Mr. Ramirez has standing on all of his claims, *id.* at 32–34; and

27 *Could Determine the Future for Dreamers*, The New Yorker (Mar. 15, 2017),
 28 <http://www.newyorker.com/news/news-desk/a-case-that-could-determine-the-future-for-dreamers>.

1 3. that Mr. Ramirez is not required to exhaust his administrative remedies before seeking
2 release in this Court, *id.* at 34–40.⁴

3 The R&R notes that to adopt the government’s argument “would be to relegate the so-called Great
4 Writ to the museum and history books, as nothing more than a matter of historical interest,” and
5 accordingly recommends that the government’s Motion to Dismiss be denied. *Id.* at 45.

6 **II. Mr. Ramirez is entitled to immediate conditional release.**

7 The parties and Chief Magistrate Judge Donohue agree that this Court has the power to grant
8 Mr. Ramirez immediate conditional release pending resolution of his habeas petition if he
9 demonstrates *either* (1) that his is an extraordinary case involving special circumstances, *or* (2) a high
10 probability of success. *United States v. McCandless*, 841 F.3d 819, 822 (9th Cir. 2016); R&R at 41;
11 Dkt. 52 at 23–24. Here, the facts of this case are extraordinary *and* Mr. Ramirez is likely to prevail
12 on his constitutional claims—both of which independently entitle him to immediate conditional
13 release. Accordingly, the recommendation in the R&R that the Court deny Mr. Ramirez’s request for
14 immediate conditional release was clearly erroneous.

15 **A. Conditional release is appropriate at this stage of the case.**

16 Chief Magistrate Judge Donohue suggested that “the record is not sufficiently developed to
17 enable the Court to grant Petitioner’s request for release at this time,” R&R at 40, but such a standard
18 would prevent conditional release in virtually every case. The nature of preliminary relief—whether
19 in the form of a preliminary injunction, a temporary restraining order, or otherwise—is such that
20 there almost always will be unresolved questions of law or fact at the time the request for such relief
21 is made.⁵ Indeed, it is these outstanding questions that often create the need for temporary relief,

22 ⁴ The government has repeatedly insisted that Mr. Ramirez should be required to litigate his conditional release before
23 an immigration judge. Magistrate Judge Donohue rejected that position. And his conclusion makes sense. Given the
24 government’s insistence that this case must be in Immigration Court, there is no way to ensure that—once the case
25 started down that path—it would be returned to this Court, where the important constitutional questions presented
26 must be determined, in a timely manner. *See, e.g., Padilla-Padilla v. Gonzales*, 463 F.3d 972, 977 (9th Cir. 2006)
27 (“The BIA does not have jurisdiction to determine the constitutionality of the statutes it administers.”). And it cannot
28 be ensured that this Court’s review of any Immigration Court determination would be “de novo,” rather than for
“clear error.” Given the critical factual and legal issues to be determined—and their importance both to Mr.
Ramirez’s liberty and the status and well-being of hundreds of thousands of other DACA holders and their families
(*see, e.g.,* Dkt. 36-1)—this Court should determine these matters in the first instance.

⁵ Nine federal circuits have held that district courts have the power to conditionally release habeas petitioners pending
the resolution of their underlying claims, and the Ninth Circuit has assumed that district courts have that power on at

1 giving the Court the time to address the complexities of a case. *See Univ. of Texas v. Camenisch*, 451
 2 U.S. 390, 395 (1981) (“[A] preliminary injunction is customarily granted on the basis of procedures
 3 that are less formal and evidence that is less complete than in a trial on the merits.”); *Am. Acad. of*
 4 *Pain Mgmt. v. Joseph*, 164 F.3d 629 (9th Cir. 1998) (table) (“[T]he parties’ desire to submit
 5 additional information and the existence of potentially disputed issues of fact is not a reason for
 6 reversing the district court’s preliminary injunction order concerning [constitutional] issues.”);
 7 *Charlton v. Estate of Charlton*, 841 F.2d 988, 989 (9th Cir. 1988) (explaining that a “hearing is
 8 required for preliminary injunction if essential facts are in dispute,” not that a preliminary injunction
 9 cannot issue); *Flynt Distributing Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984) (“The urgency
 10 of obtaining a preliminary injunction necessitates a prompt determination and makes it difficult to
 11 obtain affidavits from persons who would be competent to testify at trial. The trial court may give
 12 even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable
 13 harm before trial.”).

14 Even in cases like this one, where there are novel questions of law, potentially voluminous
 15 factual records, and broad and important ramifications, courts routinely grant preliminary relief
 16 where the relevant test has been met. *See, e.g., Order, Int’l Refugee Assistance Project v. Trump*, No.
 17 8:17-cv-361 (D. Md. Mar. 16, 2017), Dkt. 149; *Hawaii v. Trump*, No. 1:17-cv-50, 2017 WL 1011673
 18 (D. Haw. Mar. 15, 2017); *Order, Doe v. Trump*, No. 3:17-cv-112 (W.D. Wisc. Mar. 10, 2017), Dkt.
 19 34; *Aziz v. Trump*, No. 1:17-cv-116, 2017 WL 580855 (E.D. Va. Feb. 13, 2017); *Washington v.*
 20 *Trump*, No. 2:17-cv-141, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017), *stay denied, Washington v.*
 21 *Trump*, 847 F.3d 1151 (9th Cir. 2017); *Order, Arab Am. Civil Rights League v. Trump*, No. 2:17-cv-
 22 10310 (E.D. Mich. Feb. 2, 2017), Dkt. 8; *Mohammed v. Trump*, No. 2:17-cv-786, 2017 WL 438750
 23 (C.D. Cal. Jan. 31, 2017); *Louhghalam v. Trump*, No. 1:17-cv-10154, 2017 WL 386550 (D. Mass.

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 least three occasions. *United States v. McCandless*, 841 F.3d 819, 822 (9th Cir. 2016) (per curiam); *In re Roe*, 257
 F.3d 1077, 1080 (9th Cir. 2001) (per curiam); *Land v. Deeds*, 878 F.2d 318 (9th Cir. 1989) (per curiam); *see also*
Woodcock v. Donnelly, 470 F.2d 93, 94 (1st Cir. 1972); *Mapp v. Reno*, 241 F.3d 221, 226 (2nd Cir. 2001); *Johnston*
v. Marsh, 227 F.2d 528, 531 (3d Cir. 1955); *Boyer v. City of Orlando*, 402 F.2d 966, 968 (5th Cir. 1968); *Dotson v.*
Clark, 900 F.2d 77, 79 (6th Cir. 1990); *Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985); *Martin v. Solem*,
 801 F.2d 324, 329 (8th Cir. 1986); *Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981); *Baker v. Sard*, 420 F.2d 1342,
 1343 (D.C. Cir. 1969) (per curiam).

1 Jan. 29, 2017); *Aziz v. Trump*, No. 1:17-cv-116, 2017 WL 386549 (E.D. Va. Jan. 28, 2017); Order,
 2 *Darweesh v. Trump*, No. 1:17-cv-480 (E.D.N.Y. Jan. 28, 2017), Dkt. 8.

3 Here too, immediate conditional release is required at this early stage of the case, not in spite
 4 of the unresolved issues in the case, but because of them.

5 **B. Mr. Ramirez’s case is extraordinary and involves special circumstances.**

6 Mr. Ramirez currently finds himself in an extraordinary situation—more than one month after
 7 his unconstitutional arrest, he is being detained in dangerous conditions despite having no criminal
 8 record or pending criminal charges, and despite the fact that he poses no risk to the community and is
 9 not himself a flight risk. This case is extraordinary and involves special circumstances and, for these
 10 reasons, Mr. Ramirez is entitled to immediate conditional relief. As set forth below, the record is
 11 sufficiently developed to easily reach this conclusion.

12 *First*, this case is extraordinary because Mr. Ramirez—a Dreamer—was arrested, had his
 13 DACA status purportedly terminated, and continues to be detained today, despite the fact that he has
 14 not been accused of any unlawful conduct whatsoever. *See* Dkt. 57 at 23–24. Indeed, the
 15 government’s only justification for Mr. Ramirez’s arrest and detention is the irrelevant claim that,
 16 years ago, he “hung out with” gang members. Dkt. 52 at 7. And despite multiple opportunities to do
 17 so, the government has never offered any evidence to support the abandoned claim that he is a gang
 18 member.⁶ To the contrary (and consistent with the results of the government’s background checks),
 19 multiple experts have concluded that Mr. Ramirez has no gang affiliation and his tattoo is not a gang
 20 tattoo.⁷ Most recently, Carlos García, “a Mexican researcher who is one of the world’s leading
 21 authorities on gangs from California and Central America, stated ‘Any argument about gang ties
 22 based on this tattoo is weak at best; this tattoo does not show any gang affiliation.’”⁸

23 ⁶ The evidence that the government has offered has been problematic at best. The government submitted two different
 24 Form I-213 documents describing what happened when Mr. Ramirez was arrested and booked, both purporting to be
 25 signed at the same time by the same person. But the second-filed version omitted several key statements that are
 26 directly relevant to the question of whether ICE officers had a good reason to keep Mr. Ramirez in custody. *See*
 R&R at 13 n.14. *Compare* Dkt. 32-3 at 3 (version attached to initial government brief), *with* Dkt. 52-9 at 3 (version
 attached to later government brief).

27 ⁷ Ramirez Decl. (Dkt. 35-1) ¶ 19, 23–25; Luz Decl. (Dkt. 35-3) ¶¶ 8–9; Nancy Decl. (Dkt. 35-5) ¶ 10; Lemus Decl.
 28 (Dkt. 45-5) ¶ 5; Hernandez Decl. (Dkt. 45-6) ¶¶ 8–9; Contreras Decl. (Dkt. 35-1) ¶¶ 3–4; Teresa Decl. (Dkt. 45-10)
 ¶¶ 9–10.

⁸ Blitzer, *supra* note 3.

1 The government’s detention of Mr. Ramirez for over one month without any allegation—let
 2 alone evidence—of unlawful conduct is truly extraordinary, and an injustice that should be remedied
 3 by conditional release pending determination of the merits.

4 **Second**, the government’s continued detention of Mr. Ramirez is extraordinary because he
 5 poses no risk to the community, is a hard-working and striving member of society, and is not a flight
 6 risk. The government has not and cannot provide any evidence to the contrary. In fact, on two
 7 occasions, the government expressly determined that Mr. Ramirez was neither “a danger to national
 8 security” nor “a risk to public safety.” Dkt. 45 at 3 (citing DACA FAQs (Dkt. 41-3) at Q.69).⁹ And
 9 the government alleges no changed circumstances following these thorough background checks that
 10 would call into question Mr. Ramirez’s DACA status. To the contrary, the evidence of
 11 Mr. Ramirez’s good character is voluminous, and goes unchallenged by the government.¹⁰

12 Mr. Ramirez is “a dedicated father, son, and brother as well as a benefit to the community.
 13 He is not a threat to anyone.” Hernandez Decl. (Dkt. 45-6) ¶ 9. And, far from being a flight risk, the
 14 focuses of Mr. Ramirez’s life are his son—a United States citizen—and his family, both of which are
 15 here in this country. Ramirez Decl. (Dkt. 35-1) ¶¶ 8 (“[Daniel Jr.] is my world.”), 10 (“I left
 16 California and came to Washington . . . so that I can provide better for my son.”), 13, 29; Luz Decl.
 17 (Dkt. 35-3) ¶¶ 10 (“Ever since Daniel Jr. was born, my son has lived for that child.”), 11; Josue Decl.
 18 (Dkt. 35-2) ¶ 2, 13; Nancy Decl. (Dkt. 35-5) ¶¶ 6, 7 (“Daniel’s motivation is his family.”); Hernandez
 19 Decl. (Dkt. 45-6) ¶ 4 (“Daniel’s life revolves around his son and his mother. Daniel is so loving
 20

21 ⁹ Each time Mr. Ramirez applied for and was granted DACA, he provided sensitive personal information, including
 22 biological and biometric data, and paid a substantial fee. Ramirez Decl. (Dkt. 35-1) ¶¶ 3 5, 9; DACA FAQs at Q.7,
 23 Q.22, Q.23. On each occasion, DHS subjected Mr. Ramirez to a rigorous background check, examining, among
 24 other things, his biometric and biographic information “against a variety of databases maintained by DHS and other
 25 federal government agencies,” *id.* at Q.23, and reviewing his application for any indication that his “presence in the
 26 United States threatens public safety or national security,” *id.* at Q.65.

27 ¹⁰ Mr. Ramirez is a “very family oriented” person who “spends most of his time hanging out at home and talking with
 28 family.” Hernandez Decl. (Dkt. 45-6) ¶ 3; *see* Josue Decl. (Dkt. 35-2) ¶ 5; Luz Decl. (Dkt. 35-3) ¶ 9; Lemus Decl.
 (Dkt. 45-5) ¶ 3; Contreras Decl. (Dkt. 45-7) ¶ 8; Teresa Decl. (Dkt. 45-10) ¶ 7 (“[Daniel] is a big homebody and
 prefers to be at home with his family.”). He is a religious person who has attended church and other religious
 services, who has pursued spiritual education, and for whom “[i]t is very important . . . to pass on his faith to his
 son.” Nancy L. Suppl. Decl. (Dkt. 45-13) ¶ 4; *see id.* ¶¶ 3–7; Contreras Decl. ¶ 10. He “is always willing to help
 others,” Luz Suppl. Decl. (Dkt. 45-14) ¶ 4, and is “a little kid at heart.” Hernandez Decl. ¶¶ 3, 4; *see* Luz Decl. ¶ 9
 (“My son is the opposite of a bad person; he is very noble and has a big heart.”); Teresa Decl. ¶ 8.

1 towards his son. Every decision and every opportunity is about Daniel Jr.”). “[F]amily is the most
 2 important thing to him.” Contreras Decl. (Dkt. 45-7) ¶ 8; *see* Teresa Decl. (Dkt. 45-10) ¶¶ 3–4, 11.
 3 Mr. Ramirez’s dedication to his family, and working hard to provide for them, is testament both to
 4 his good character and to the fact that he is not a flight risk. And the government has put forward not
 5 one shred of admissible evidence to contradict any of this.

6 **Third**, this case is extraordinary because the government itself has placed Mr. Ramirez in an
 7 unstable and dangerous situation by falsely accusing him of gang membership and then detaining him
 8 with violent criminals who are aware of that widely publicized claim.¹¹ *See* Dkt. 57 at 24–25. While
 9 the government has since abandoned the claim that Mr. Ramirez is a “self-admitted gang member,” it
 10 repeatedly pressed that point in its communications with the news media. *See* Dkt. 35-11 (attaching
 11 statements by ICE and DHS). Thus, through its own actions, the government has compromised
 12 Mr. Ramirez’s physical and psychological safety to the point that he is scared to leave his unit for
 13 fear that he will be assaulted. Dkt. 50 at ¶¶ 5–8. By branding Mr. Ramirez as a “gang member”—
 14 despite having no evidence to support that claim—the government has created a direct threat to his
 15 safety, creating the special circumstances justifying his immediate conditional release.

16 **Fourth**, the extraordinary nature of this case is thrown into especially harsh light when
 17 viewed against the background of DACA and what it stands for—the government’s promise that it
 18 will not arrest or detain the hundreds of thousands of children and young adults who were brought
 19 here by their parents, who know no other home, and who came forward and trusted the government
 20 with their personal information.¹² As recognized by this Court, “DHS policy, including the
 21 Napolitano memo, provides that U.S. Immigration and Customs Enforcement (“ICE”) officers who
 22 encounter individuals eligible for DACA ‘should immediately exercise their discretion, on an
 23 individual basis, in order to *prevent* low priority individuals from being placed in removal
 24

25 ¹¹ The R&R states that Mr. Ramirez “argues that his case is extraordinary and involves special circumstances because
 26 he is a DACA recipient, he is not a threat to the public or a flight risk, and his continued detention has created panic
 and confusion among the hundreds of thousands of DACA recipients.” R&R at 41. But as demonstrated herein and
 in the record, the evidence goes far beyond those assertions.

27 ¹² While DACA was an Obama Administration initiative, it has since been ratified and endorsed by the current
 28 Administration. Just last month, President Trump assured the nation “[w]e’re gonna deal with DACA with heart.”
 Dkt. 45-1, Ex. A, at 37. And on February 20, 2017, DHS stated that DACA would remain in place. *Id.*, Ex. B, at 2.

1 proceedings or removed from the United States.” R&R at 7 (emphasis in R&R). In other words,
 2 DACA was created expressly to prevent what happened here.¹³ Mr. Ramirez rightly believed that he
 3 was entitled to the protection of the promise made to him by this country—after he kept up his side of
 4 the DACA promise. That the government has now arbitrarily broken that promise makes the
 5 circumstances here compelling and extraordinary.

6 **Fifth**, the widespread impact of Mr. Ramirez’s continued detention on hundreds of thousands
 7 of Dreamers and their families is an additional extraordinary circumstance justifying conditional
 8 release. The extraordinary nature of this case is evident, for example, from the letters that Mexican
 9 federal and state officials wrote to the Court to underscore the intense “sense of vulnerability” and
 10 “alarm and concern” created by Mr. Ramirez’s detention;¹⁴ national and international media have
 11 extensively covered this case and its wide-reaching effects;¹⁵ and hundreds if not thousands of
 12 protestors have taken to the streets to protest the government’s actions.¹⁶ If this case does not present
 13 special circumstances, then nothing does.

14 **Sixth**, Chief Magistrate Judge Donohue himself recognized in the R&R that this case involves
 15 special circumstances.¹⁷ For example, the R&R notes that “this case raises novel questions regarding
 16 the Government’s authority to arrest and detain a DACA recipient” (R&R at 39), and recommends

17 ¹³ The government’s failure to follow its own regulatory scheme further underscores the extraordinary nature of this
 18 case and is another reason to release Mr. Ramirez immediately. See *United States ex rel. Accardi v. Shaughnessy*,
 19 347 U.S. 260, 266–68 (1954) (finding that the government’s conduct deprived the petitioner of rights he was entitled
 20 to pursuant to the relevant statute by acting contrary to its own statutory scheme). In *Accardi*—which also involved a
 21 habeas corpus action in the immigration context—the Court insisted that the government, in coming to its decision,
 must provide the petitioner with “a fair hearing, which is nothing more than what the regulations accord petitioner as
 a right . . . [so that] at least he will have been afforded that due process required by the regulations in such
 proceedings.” 347 U.S. at 268 (footnote omitted).

22 ¹⁴ Letter from Mexican Consul Roberto Dondisch to the Honorable James P. Donohue (Feb. 16, 2017) (Dkt. 36-1);
 Letter from Governor Graco Ramírez Garrido Abreu to the Honorable James P. Donohue (Feb. 25, 2017) (Dkt. 56).

23 ¹⁵ See, e.g., Dkt. 35-11, Exs. B–D; Blitzer, *supra* note 3; *Dreamer arrestado por ICE demanda al gobierno*, Telemundo
 24 (Feb. 15, 2017), <http://www.telemundo.com/noticias/2017/02/15/dreamer-arrestado-por-ice-demanda-al-gobierno>;
DACA recipient Daniel Ramirez Sues US over His Arrest, Al Jazeera (Feb. 15, 2017),
<http://www.aljazeera.com/news/2017/02/daca-recipient-daniel-ramirez-sues-arrest-170215172735137.html>.

25 ¹⁶ See, e.g., Ted Land, *Crowd Protests Deportations at Tacoma Detention Center*, KING 5 (Feb. 27, 2017),
 26 <http://www.king5.com/news/local/crowd-protests-deportations-at-detention-center-in-tacoma/414947752>; *More than*
 27 *100 Protest for the Release of ‘Dreamer’ Daniel Ramirez*, Q13 Fox (Feb. 17, 2017),
<http://q13fox.com/2017/02/17/more-than-100-protest-downtown-for-the-release-of-dreamer-daniel-ramirez>.

28 ¹⁷ Chief Magistrate Judge Donohue acknowledged the “unique” circumstances surrounding this case at the hearing on
 Mr. Ramirez’s Emergency Motion for Conditional Release. Transcript of Motion Hearing (Mar. 8, 2017) at 68:6–7.

1 that the merits phase of this case proceed on an expedited schedule “[b]ecause Petitioner remains in
2 custody, and because there are nearly 800,000 DACA beneficiaries who are interested in the outcome
3 of these proceedings.” R&R at 45. Judge Donohue’s recognition of these facts underscores the
4 extraordinary nature of this case.¹⁸

5 Based on all the foregoing evidence, the Court should find that this case “is extraordinary or
6 involves special circumstances” and that Mr. Ramirez is entitled to immediate conditional release
7 pending a final determination on the merits of his habeas petition. Respectfully, Chief Magistrate
8 Judge Donohue’s determination otherwise was clearly erroneous.

9 **C. Mr. Ramirez has a high probability of success on his constitutional claims.**

10 Mr. Ramirez should be immediately conditionally released for the separate and independent
11 reason that he has a high probability of success on the merits of his constitutional claims.

12 The key facts necessary to find that Mr. Ramirez is likely to prevail on the merits are not in
13 dispute. As the R&R recognizes, there is no dispute about that fact that “early on in the process [of
14 his initial arrest and questioning], ICE officers discovered that [Mr. Ramirez] was a DACA
15 beneficiary.” R&R at 42.¹⁹ Resolving the dispute about what happened prior to that critical
16 discovery—which should have ended this entire matter—is not necessary to determine that
17 Mr. Ramirez is entitled to immediate conditional release. The government concedes other critical
18 facts, including that Mr. Ramirez is a two-time DACA recipient, that he has no criminal history, and
19 that on multiple occasions it has been determined that he is not a threat to public safety. *See* Dkt. 52
20 at 6; Dkt. 32-3 at 4; Dkt. 41-6 at 1. In short, there is no reason that the Court cannot now
21 determine—as courts often do at early stages of litigation—that Mr. Ramirez is likely to prevail on
22 his claims, and therefore should be conditionally released.²⁰

23
24 ¹⁸ The R&R also notes significant and unexplained “discrepancies” in two supposedly identical documents submitted
by the government, and highlights critical language that was “excised” from the later-filed version. R&R at 13 n.14.

25 ¹⁹ *See also* R&R at 43 n.32 (“At oral argument, counsel for the Government stated that he did not disagree with the
26 Court that it was likely the ICE officers discovered Petitioner was a DACA beneficiary before he was questioned
about gang affiliation.”).

27 ²⁰ That some factual issues may be disputed does not preclude the Court from determining the likelihood of success on
28 the merits, especially where the parties agree on some of the key facts. *See, e.g., Int’l Molders’ & Allied Workers’
Local Union No. 164 v. Nelson*, 799 F.2d 547, 555 (9th Cir. 1986) (upholding preliminary injunction where “some
facts are in dispute, but the real problem involves the application of correct substantive law to those facts”).

1 It cannot be that Mr. Ramirez must languish behind bars merely because this case involves
 2 complex legal issues. This is especially true where, as here, Mr. Ramirez is not accused of any
 3 wrongdoing, and, as set forth below, is likely to succeed on the merits of his constitutional claims.

4 ***Procedural and Substantive Due Process:*** The government violated Mr. Ramirez’s Fifth
 5 Amendment rights by depriving him of protected liberty and property interests without due process of
 6 law. By establishing and operating DACA according to specific criteria and a well-defined
 7 framework, the government created a reasonable expectation among Dreamers like Mr. Ramirez that
 8 they would be able to live and work in the United States without being subject to arrest and detention
 9 based on their immigration status.²¹ Indeed, as noted in the R&R, several courts have recognized that
 10 DACA confers lawful presence. R&R at 43 (citing *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053,
 11 1058–59 (9th Cir. 2014) (“DACA recipients enjoy no formal immigration status . . . DHS considers
 12 DACA recipients not to be unlawfully present in the United States because their deferred action is a
 13 period of stay authorized by the Attorney General.”); *Texas v. United States*, 809 F.3d 134, 148
 14 (5th Cir. 2015) (“‘Lawful presence’ is not an enforceable right to remain in the United States and can
 15 be revoked at any time, but that classification nevertheless has significant legal consequences.”)).

16 As a result, Mr. Ramirez and other Dreamers have a constitutionally-protected property
 17 interest in the benefits conferred under DACA, and the government cannot summarily revoke these
 18 benefits without due process of law. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Perry v.*
 19 *Sindermann*, 408 U.S. 593, 601 (1972) (“A person’s interest in a benefit is a ‘property’ interest for
 20 due process purposes if there are such rules or mutually explicit understandings that support his claim
 21 of entitlement to the benefit and that he may invoke at a hearing.”); *Nozzi v. Hous. Auth. of L.A.*, 806
 22 F.3d 1178, 1191 (9th Cir. 2015) (finding a protected property right in government benefits where
 23 government regulations “‘greatly restrict the discretion’” of those who administer the benefits
 24 (quoting *Griffith v. Detrich*, 603 F.2d 118, 121 (9th Cir. 1979)); *Newman v. Sathyavaglswaran*, 287

25 ²¹ The official website of U.S. Citizenship and Immigration Services (“USCIS”) describes the effect of DACA as
 26 follows: “Deferred action is a discretionary determination to defer a removal action of an individual as an act of
 27 prosecutorial discretion. For purposes of future inadmissibility based upon unlawful presence, an individual whose
 28 case has been deferred is not considered to be unlawfully present during the period in which deferred action is in
 effect. *An individual who has received deferred action is authorized by DHS to be present in the United States, and
 is therefore considered by DHS to be lawfully present during the period deferred action is in effect.*” DACA FAQs
 (Dkt. 41-3) at Q.1 (emphasis added).

1 F.3d 786, 797 (9th Cir. 2002) (“[T]he identification of property interests under constitutional law
 2 turns on the substance of the interest recognized, not the name given that interest by the state.”
 3 (citations omitted)). Additionally, the R&R fails to acknowledge that Mr. Ramirez asserts that he has
 4 a protected *property* interest in the benefits conferred under DACA, in addition to his liberty interest
 5 in being free from government detention.

6 The Due Process Clause also forbids the bait-and-switch that Mr. Ramirez has been subjected
 7 to, and the government cannot punish Mr. Ramirez for engaging in conduct that the government itself
 8 has encouraged. *See, e.g., Raley v. State of Ohio*, 360 U.S. 423, 438 (1959). For the government
 9 now “‘to say to [Mr. Ramirez], ‘The joke is on you. You shouldn’t have trusted us,’ is hardly worthy
 10 of our great government.’” *Moda Health Plan, Inc. v. United States*, No. 16-649C, 2017 WL 527588,
 11 at *26 (Fed. Cl. Feb. 9, 2017) (quoting *Brandt v. Hickel*, 427 F.2d 53, 57 (9th Cir. 1970)).

12 **Equal Protection:** The government also violated Mr. Ramirez’s rights under the Fifth
 13 Amendment by arresting and detaining him based on impermissible racial and national origin
 14 discrimination. *See Williams v. Lindenwood Univ.*, 288 F.3d 349, 356–57 & n.7 (8th Cir. 2002)
 15 (finding discriminatory intent where officials “interchangeably used race to describe people who
 16 allegedly were criminals and whose presence supposedly put the safety of the female students at risk”
 17 and noting that the “use of the term ‘black’ as a proxy for ‘gang member’ still reflects a negative
 18 attitude about black people.”). Here, ICE agents had no factual basis to conclude that Mr. Ramirez
 19 was a gang member, and instead simply assumed that fact based on stereotypes about Mexican men
 20 with tattoos. *See* Dkt. 35-1 ¶¶ 19–25. The ICE agents further assumed that Mr. Ramirez was in the
 21 country illegally because he stated that he was born in Mexico, despite the fact that he had work
 22 authorization under DACA, and told the agents as much. *Id.* ¶¶ 15–17. Such conduct violates the
 23 Equal Protection Clause. *See Flores v. Pierce*, 617 F.2d 1386, 1389–91 (9th Cir. 1980).

24 **Fourth Amendment:** The government violated Mr. Ramirez’s Fourth Amendment rights by
 25 arresting and detaining him without reasonable suspicion or probable cause. As the R&R notes,
 26 “[c]ourts have recognized that DACA confers lawful presence,” R&R at 43, and DHS policy
 27 provides that ICE officers “who encounter individuals eligible for DACA ‘should immediately
 28 exercise their discretion, on an individual basis, in order to *prevent* low priority individuals from

1 being placed in removal proceedings or removed from the United States,” *id.* at 7 (emphasis in
 2 R&R). Here, ICE agents arrested and detained Mr. Ramirez even though they knew that he was
 3 granted deferred action under DACA, and was therefore authorized by DHS to live and work in the
 4 United States. By arresting and detaining Mr. Ramirez under these circumstances, the government
 5 violated his Fourth Amendment rights. *See Benitez-Mendez v. INS*, 760 F.2d 907, 909 (9th Cir. 1983)
 6 (finding no basis for detention where immigrant admitted foreign alienage but alleged that he
 7 possessed documents establishing his legal status).²²

8 For each of these reasons, which are discussed in greater detail in Mr. Ramirez’s Amended
 9 Petition, Emergency Motion for Conditional Release, and Opposition to Respondents’ Motion to
 10 Dismiss, there is no doubt that Mr. Ramirez is likely to succeed on the merits of his constitutional
 11 claims. *See* Dkt. 41 at 15–24; Dkt. 45 at 1–19; Dkt. 57 at 18–25. Respectfully, Chief Magistrate
 12 Judge Donohue’s determination otherwise was clearly erroneous. For this additional reason,
 13 Mr. Ramirez is entitled to immediate conditional release.

14 CONCLUSION

15 For the foregoing reasons, Mr. Ramirez respectfully requests that the Court deny the
 16 government’s Motion to Dismiss and grant his Emergency Motion for Conditional Release on an
 17 expedited basis, thereby ordering his immediate release on bail pending the resolution of his habeas
 18 petition.

19 DATED: March 16, 2017
 20 Seattle, Washington

21 Respectfully submitted,

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26 ²² In addition to its constitutional violations, the government’s failure to follow its own regulatory scheme is another
 27 reason to immediately release Mr. Ramirez. *See Accardi*, 347 U.S. at 266–68 (the government’s conduct in
 28 contravention of its own statutory scheme deprived petitioner of rights he was entitled to under that scheme). Here,
 as noted in the R&R, a similar scheme exists and clearly instructs ICE officers to prevent low priority individuals
 from being removed, and the government has acted in contravention of its own policies and procedures. R&R at 7.

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Theodore J. Boutrous, Jr.

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