Victoria Sun (California Bar #348176)
PANGEA LEGAL SERVICES
391 Sutter Street, Suite 500
San Francisco, CA 94108
Telephone: (415) 793-7290
Facsimile: (415) 593-5335
victoria@pangealegal.org

Pro Bono Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GUILLERMO MEDINA REYES,

Petitioner-Plaintiff,

v.

POLLY KAISER, in her official capacity as Acting ICE San Francisco Field Office Director; TODD M. LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; PAM BONDI, in her official capacity as Attorney General of the United States,

Respondents-Defendants.

Case No. 3:25-cv-05436-RFL

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE AND OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

IMMIGRATION HABEAS CASE

Date: July 14, 2025
Time: 1:00 p.m.
Judge: Hon. Rita F. Lin

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I. INTRODUCTION

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("*Zadvydas*"). Petitioner Guillermo Medina Reyes ("Mr. Medina Reyes") is presently living in San Jose, supporting his lawful permanent resident mother, working as a cabinetmaker and tattoo artist, participating in community organizing, and seeking community-based mental health treatment, rather than being locked away in an immigration detention center. Under the Due Process Clause, he should be provided notice and a hearing before a neutral adjudicator before Respondents can deprive him of his liberty. Respondents, in their Opposition, put forth varying arguments as to why Mr. Medina Reyes can be immediately re-detained without a hearing—each one is unavailing and should be rejected.

II. STATEMENT OF UPDATED FACTS

Immigration and Customs Enforcement ("ICE") now admit they were aware of Mr. Medina Reyes's May 14, 2025 arrest the very next day. ECF No. 17, Declaration of Deportation Officer Michael Canning ("Canning Decl.") ¶ 7. Yet they did not request the police report until June 23, 2025, five weeks later, due to "high priority" assignments in May and June 2025. *Id.* ¶¶ 9-10. ICE made the decision to re-detain Mr. Medina Reyes by June 26, 2025, without knowing the nature or alleged facts of the arrest, given that they did not receive the police report until the following day. *See* ECF No. 1-1, Declaration of Victoria Sun ("Sun Decl.") ¶ 30; Canning Decl. ¶ 10. On July 10, 2028, undersigned Counsel ("Counsel") learned that the District Attorney charged Mr. Medina Reyes with one count of California Penal Code section 594(a), vandalism. Supplemental Declaration of Victoria Sun ("Sun Supp. Decl.) ¶ 22.

After this Court issued a TRO, Mr. Medina Reyes was still required to report in-person to the ISAP appointment on July 1, 2025. Sun Supp. Decl. ¶ 5. Prior to the appointment time, Supervisory Detention and Deportation Officer Douglas A. Plummer ("SDDO Plummer") notified Counsel of ICE's intent to install a GPS monitor on Mr. Medina Reyes. *Id.* ¶ 8. Counsel contested this action as a violation of the custody status quo ordered in the TRO. *Id.* ¶¶ 8-9, 13. At the appointment, SDDO Plummer made a number of derogatory and intimidating comments towards Mr. Medina Reyes. *See id.* ¶ 14. In addition to the placement of a GPS ankle monitor, ICE also ordered a dramatic increase in Mr. Medina Reyes's ISAP supervision requirements, and notified Mr. Medina Reyes of geographic travel restrictions not present in his Order of Supervision. *See id.* ¶ 16. Later that day, ICE filed a Motion to Advance Mr. Medina Reyes's immigration court hearing. *Id.* ¶ 19. On July 8, 2025, Mr. Medina Reyes discovered that ISAP had reduced the ISAP supervision requirements back to the status quo frequency. *Id.* ¶ 21.

III. ARGUMENT

A. Mr. Medina Reyes Is Likely to Succeed on the Merits of His Claim: The Right to a Pre-Deprivation Hearing Before a Neutral Adjudicator

1. Respondent-Defendants' Analysis Contains Fundamental Errors

a. The Specific Detention Statute Is Immaterial to the Issue of What Due Process Is Owed to Mr. Medina Reyes

Respondents' attempts to distinguish Mr. Medina Reyes's case from the cases where detention was governed by 8 U.S.C. § 1226(a) are unpersuasive. *See, e.g.*, ECF No. 15, Opposition ("Opp.") at 13. Mr. Medina Reyes does not dispute that his detention is governed by 8 U.S.C. § 1231(a)(6) ("§ 1231(a)(6)"). *See* ECF No. 1, Petition ("Pet.") at 8; Sun Decl. ¶¶ 8, 11. However, his liberty interest stems not from the specific detention statute, but from his conditional release on bond and his freedom from imprisonment for the past two years. The

difference in detention statutes is immaterial. District Courts have rejected Respondents' arguments that the procedural due process owed depends on the specific detention authority. *See Jorge M. F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) ("*Jorge M.F.*"); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1606294 at *5 (N.D. Cal., May 20, 2022) ("*Romero*"); *c.f. Diouf v. Napolitano*, 634 F.3d 1081, 1084 (9th Cir. 2011) ("*Diouf II*") (holding that individuals detained under § 1231(a)(6) are entitled to the same procedural safeguards against prolonged detention those detained under § 1226(a)). Furthermore, judges in this District issued preliminary injunctions in pre-deprivation habeas cases where the Petitioners were also subject to mandatory detention, albeit under 8 U.S.C. § 1226(a)(c). *See Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277 (N.D. Cal. Sep. 14, 2020); *Romero*, 2022 WL 1606294 at *4-5.

Furthermore, unlike some noncitizens detained under Section 1231(a)(6) who have final, *executable* removal orders, and similar to the Petitioners in e.g., *Jorge M. F.* and *Ortega v. Bonnar*, 415 F.Supp.3d 963 (N.D. Cal. 2019) ("*Ortega*") Mr. Medina Reyes is not removable anytime in the near future. He has a pending application for relief in immigration court, and is entitled to future process in those proceedings, including appeal to the Board of Immigration Appeals ("BIA"). *See* Sun Decl. ¶ 23; Sun Supp. Decl. ¶ 24. If detained, he will be subject to mandatory detention throughout his proceedings, which could last for years. *See id.* Mr. Medina Reyes's liberty interest is therefore greater than that in e.g. *Ortega* and *Jorge M.F.*, where their denials for relief were already at the PFR stage. 415 F.Supp.3d at 966; 534 F.Supp.3d at 1053.

Like the Petitioners in many of the injunctions cited at Pet. At 15-16, Mr. Medina Reyes was released after an Immigration Judge ("IJ") found him to not be a danger nor a flight risk. Sun Supp. Decl. at Ex. DDD (Bond Transcript). Moreover, his liberty interest is even greater than in e.g., *Ortega*, *Vargas*, and *Jorge M.F.*, cases in which the IJ or BIA revoked bond,

because, here, the IJ's order has never been disturbed. *See* Sun Decl. at 14 (IJ Bond Order showing ICE waived appeal). In fact, Respondents have not even alleged that Mr. Medina is a danger or a flight risk. *See* Opp. at 21. They argue that no such finding is necessary before they strip him of his liberty. *Id.*

At bottom, what matters is whether "the specific conditional release in [his case]" approximates the "liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010). Here, just as in *Morrissey v. Brewer*, 408 U.S. 471 (1972);, Mr. Medina Reyes's release "enables him to do a wide range of things open to persons" who have never been in custody or convicted of any crime, including to including to live at home, work, support his mother, organize, and receive community-based mental health treatment. *See* 408 U.S. at 482.

b. Respondents Misapply *Zadvydas* And *Diouf II*

Respondents cite to *Zadvydas* and *Diouf II* in arguing that 8 U.S.C. § 1231(a)(6) mandates Mr. Medina Reyes's re-detention without a pre-deprivation hearing. *See* Opp. at 14, 20-21. However, *Zadvydas* and *Diouf II* are in the context of prolonged detention after the start of the § 1231(a)(6) removal period. 533 U.S. at 683; 634 F.3d at 1085. Mr. Medina Reyes's removal period began on December 28, 2021, the date his administrative removal order became final. *See* 634 F.3d at 1085; ECF No. 16-1 at 2 (Removal Order). He spent fifteen months in detention thereafter, Sun Decl. ¶¶ 8, 18, long past the six months that the Supreme Court found constitutionally permissible in *Zadvydas*, and the 180 days the Ninth Circuit found constitutionally permissible in *Diouf II*. *See* 533 U.S. at 701; 634 F.3d at 1092. The post-removal period clock does not restart at the moment Respondents re-detain Mr. Medina Reyes.

c. Respondents Assume as Fact That Mr. Medina Reyes Violated a Release Condition, an Assertion That Is in Dispute

Respondents repeatedly state as fact that Mr. Medina Reyes has violated a term of his conditions of release. Opp. at 14-15, 21-24. However, that claim is in dispute, and is exactly what a neutral adjudicator should consider in a pre-deprivation hearing. What is undisputed is that he was arrested on May 14, 2025. Sun Decl. ¶ 28. However, Respondents conflate an arrest with the commission of a crime. *See* Opp. at 6. An arrest and charge is insufficient evidence of the commission of a crime. *See Doe v. Noem*, No. 2:25-cv-00633-DGE, 2025 WL 1141279, at *14 (W.D. Wash. Apr. 17, 2025). "[I]t has long been clear that police reports are not generally reasonable, substantial, and probative evidence of what someone did." *See Olivas-Motta v. Holder*, 746 F.3d 907, 918 (9th Cir. 2013) (Kleinfeld, J., concurring). At a pre-deprivation hearing, a neutral adjudicator can consider the report and determine what weight to give it.

2. *Mathews* Factors Apply And Weigh in Mr. Medina Reyes's Favor

Respondents' arguments that the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) test does not apply here are unconvincing. *See* Opp. at 18. *Mathews* is a landmark decision widely accepted as setting forth the framework for establishing procedural due process violations. Courts in this district have regularly applied *Mathews* in pre-deprivation immigration habeas cases. *See, e.g., Ortega*, 415 F.Supp.3d at 970; *Jorge M.F.*, 534 F.Supp.3d at 1055. Although Respondents note that *Rodriguez Diaz v. Garland*, 53 F. 4th 1189, 1207 (9th Cir. 2022) left open the question of whether the *Mathews* test applies to constitutional challenges to immigration detention, Opp. at 18, they fail to mention that *Rodriguez Diaz* also acknowledged the long line of binding precedent applying *Mathews* in the immigration context, and then applied the *Mathews* test to the petitioner's procedural due process claim. *Id.* at 1206-10.

d. Mr. Medina Reyes Has a Substantial Private Interest

Respondents downplay Mr. Medina Reyes's weighty liberty interest by arguing that as a noncitizen, he has a reduced liberty interest, and by exaggerating his expectations of due process. First, the Supreme Court has long recognized the liberty interest of noncitizens. *See Zadvydas*, 533 U.S. at 690. Second, Mr. Medina Reyes's expectation under the Constitution is just that he be provided notice and a hearing before a neutral adjudicator. Overall, Mr. Medina Reyes has a liberty interest in remaining out of custody, which is further heightened because if detained, he will be subject to mandatory detention without the right to a bond hearing.

e. Existing Procedures Will Rubber Stamp Respondents' Re-Detention Decision And Have a High Risk of Erroneous Deprivation of Liberty

Respondents repeatedly cite to the *post*-deprivation processes at 8 C.F.R. § 241.4(*l*) and § 241.4(k). *See*, *e.g.*, Opp. at 11, 15. However, § 241.4(*l*) does not apply here,[1] and § 241.4(k) is insufficient to safeguard his due process rights without a high risk of erroneous deprivation. Notice and a hearing before a neutral adjudicator *prior* to re-arrest would guard against that risk.

The process Respondents cite to at 8 C.F.R § 241.4(*l*) does not apply to Mr. Medina Reyes, because he was ordered released by an IJ. But even assuming arguendo that it applies, the "initial informal interview" would not be conducted by a neutral adjudicator, but by ICE officers—likely the same officers who made the re-detention decision. *See id.* There is no right to have Counsel present, present evidence, examine and confront evidence, or cross-examine witnesses. *See id.* There is no evidentiary standard ICE must meet under this process. *See id.* The

[1] 8 C.F.R. § 241.4(*l*) allows ICE discretion to revoke release due to a release condition violation, but only for individuals released upon a decision by ICE under § 241.4, not those ordered released by an IJ. *See* 8 C.F.R. § 241.4(*l*)(1). Here, an IJ, Sun Decl. at 13, not ICE, ordered release on bond, therefore, 8 C.F.R. § 241.4 does not apply. Respondents' reliance on § 241.4 to justify conditions of release, unilateral revocation of release, and post-deprivation process are therefore unconvincing. The only relevant subsections of § 241.4 are subsections (h) and (k), in the context of what little process will be afforded Mr. Medina Reyes long after he is already detained.

decision is only reviewed approximately three months later by the ICE Headquarters Post-Order Detention Unit ("HQPDU"), not any neutral adjudicator. *See id.* § 241.4(*l*)(3).[2]

Respondents also cite to the 90-day and 180-day custody review at 8 C.F.R. § 241.4(k). Opp. at 20. In reality, this process is a rubber-stamp to continue detention for individuals in Mr. Medina Reyes's procedural posture, as evident in ICE's repeated denials of release under these very procedures when he was previously detained. *See*, *e.g.*, Sun Decl. ¶ 13; *see also Diouf II*, 634 F.3d at 1092 (concluding a prolonged detention hearing is a basic safeguard because ICE twice denied Diouf release in § 241.4 custody reviews, but an IJ subsequently ordered release). The review is conducted by an ICE officer, not a neutral adjudicator. *Id.* § 241.4(h)(1); 634 F.3d at 1091. It is conducted exclusively in writing. *See* 8 C.F.R. § 241.4(h)(2). There is no right to an in-person hearing or interview. 634 F.3d at 1091. Furthermore, the review will only take place after Mr. Medina Reyes will have already suffered 90 or 180 days of harm.

Respondents cite to *Diouf II* to argue that the 90-day and 180-day custody reviews are constitutionally sufficient. Opp. at 15-16. However, *Diouf II* was in the context of prolonged detention, whereas here, the liberty interest is significantly greater, given that Mr. Medina Reyes has been enjoying his liberty for the past two years. *See* 634 F.3d at 1083. The Ninth Circuit also found in *Diouf II* that at 180 days of detention, the ICE custody reviews are constitutionally inadequate, the private interest is "profound," and the risk of erroneous deprivation of liberty in the absence of a hearing before a neutral adjudicator is "substantial." *Id.* at 1091-92.

Next, Respondents' contention that Mr. Medina Reyes is "entitled" to a prolonged detention bond hearing after six months is misleading. *See* Opp. at 15. Whether the *Aleman*

---

[2] Respondents claim that Justice Sotomayor's discussion of 8 C.F.R. § 241.4(*l*) in *Noem v. Garcia*, 145 S. Ct. 1017, 1019 (2025) (Statement of Sotomayor, J.) signals her approval. Opp. at 16. However, Justice Sotomayor simply describes this statutory procedure in her statement, she does not pass any judgment on it. 145 S. Ct. at 1019.

Gonzalez injunction will remain in place[3] or whether Mr. Medina Reyes could be successful on a prolonged detention habeas petition are speculative. There is no statutory nor regulatory mechanism whereby he could seek review before a neutral adjudicator.

Finally, other courts in this District have found that the due process clause requires the government to prove by clear and convincing evidence the necessity of a noncitizen's re-detention, both in the pre- and post-deprivation habeas context. *See Jorge M.F.*, 534 F.Supp.3d at 1057 (pre-deprivation); *Perera v. Jennings*, 598 F.Supp.3d 736, 746-47 (N.D. Cal. 2022) (post-deprivation); *Pham v. Becerra*, 717 F.Supp.3d 877 (N.D. Cal. 2024) (post-deprivation).

f. Respondents Overstate the Government's Interest in Detaining Mr. Medina Reyes Without First Providing a Hearing

The evidence contradicts Respondents' claims of the government's strong interest in re-detaining Mr. Medina Reyes without first providing a hearing. Potential re-detention of Mr. Medina Reyes was not a "high priority" for the agency. *See* Canning Decl ¶ 9. ICE was aware of the May 14, 2025 arrest the next day, yet did not request the police report until five weeks later. *Id.* ¶¶ 7, 9-10. He had an in-person check-in on June 23, 2025, where ICE made no move to redetain him. Sun Decl ¶ 29. Instead, their agent recommended a de-escalation of supervision. *Id.* Then, after deciding to re-detain him, ICE provided five days advance notice and an office appointment, rather than immediately re-arresting him. *See id.* ¶ 30. Respondents attempt to justify the delay by claiming they only determined he allegedly violated his release conditions *after* receiving the police report on July 27. Opp. at 22. However, this is contradicted by the fact that Respondents decided to re-detain him at latest on July 26—the day before they received the

[3] The injunction is still in place but is expected to be lifted in the near future. *Aleman Gonzalez v. Whitaker*, No. 3:18-cv-01869 (N.D. Cal. May 27, 2025) (order continuing case management conference to August 20, 2025).

police report. *See* Sun Decl. ¶ 30; Canning Decl. ¶ 10.[4]

Furthermore, the government interest in enforcing removal of noncitizens and protecting public safety, *see* Opp. at 21-22, will be addressed by the neutral adjudicator's determination of whether Mr. Medina Reyes poses a flight risk or a danger to the community. The burden of such a hearing is immaterial in the face of the more than one million cases in the backlog—a consequence of the government's own making—and does not pose a substantial burden to the government. *See* Opp. at 22. Rather, it may result in substantial cost savings compared to the price of erroneous re-detention. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

B. Mr. Medina Reyes Has Established That He Will Suffer Immediate and Irreparable Harm Absent a Preliminary Injunction

Respondents fail to address the irreparable psychological harm Mr. Medina Reyes is likely to suffer as a result of wrongful re-detention. The Ninth Circuit recognized "the irreparable harms imposed on anyone subject to immigration detention." *Hernandez*, 872 F.3d at 995. That risk of harm is particularly heightened here, [redacted] Sun Decl. ¶ 26; *id.* at 39-40 (Ex. K, Letter of Dr. Luis A. Perez Ramirez, Psy.D.). Just the mere prospect of returning to detention, where he already spent fifteen months, has caused increasing paranoia symptoms. Sun Decl. ¶ 27; *id.* at 39-40. Detention itself, even for 90 or 180 days, will likely have a "profoundly destabilizing effect" on his mental health and lead to rapid decompensation, *see id.* at 39-40, especially given the inadequacy of mental health treatment in ICE detention.[5]

Respondents confusingly argue that Mr. Medina Reyes's claimed injuries arise from

---

[4] Respondents also lacked the urgency to finalize their evidence in a timely manner, resulting in opposing counsel needing to request a briefing deadline extension and stipulate to an extension of the TRO. ECF Nos. 12, 18.

[5] *See, e.g.*, Cal. Dep't J., *Immigration Detention in California: A Comprehensive Review with a Focus on Mental Health* (May 2025), *available at* https://oag.ca.gov/system/files/media/immigration-detention-2025.pdf.

detention, not from lack of a bond hearing. Opp. at 23. Yet that does not undermine his request for injunctive relief to prevent re-detention without a pre-deprivation hearing. Pet. at 26; ECF No. 2, Motion at 27. Respondents assume he is "unlikely" to prevail in a pre-deprivation hearing, yet cite no evidence to support that assertion. *See* Opp. at 23. Even assuming arguendo that the neutral adjudicator does order re-detention, the only difference for the government in providing such a hearing would be a short delay in re-detention. Finally, the deprivation of constitutional rights in and of itself "unquestioningly constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

C. The Balance of Equities Tips Sharply in Mr. Medina Reyes's Favor

The balance of equities and the public interest tip sharply in Mr. Medina Reyes's favor. "The public has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312 at *13 (N.D. Cal. Aug. 23, 2020); *see also Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). Respondents "cannot reasonably assert that they are harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Simply put, the government's interest in enforcing immigration laws cannot come at the expense of a violation of Mr. Medina Reyes's Constitutional rights.

For the foregoing reasons, this Court should grant a preliminary injunction enjoining Respondents from re-arresting Mr. Medina Reyes, unless and until he is provided notice and a hearing before a neutral decisionmaker.

Dated: July 10, 2025

Respectfully Submitted,

/s/ Victoria Sun
Victoria Sun
PANGEA LEGAL SERVICES
Pro Bono Attorney for Petitioner-Plaintiff