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

Toribio Felipe Castanon Domingo,

Petitioner-Plaintiff,

v.

Polly KAISER, Acting Field Office Director of
San Francisco Office of Detention and Removal,
U.S. Immigrations and Customs Enforcement;
U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration
and Customs Enforcement, U.S. Department of
Homeland Security; and

Kristi NOEM, in her Official Capacity,
Secretary, U.S. Department of Homeland
Security,

Respondents-Defendants.

Case No. 5:25-cv-5893-NW

**PETITIONER-PLAINTIFF'S
REPLY IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Date: July 30, 2025

Time: 10:00 AM

Location: Zoom

The Honorable Noël Wise

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INTRODUCTION

Counsel acknowledges this reply is filed one day late and respectfully requests the Court's consideration.

The government's opposition fundamentally mischaracterizes both the facts and the law. Every case the government cites involves *initial* detention of individuals who had never been released. This case involves the revocation of Mr. Toribio Felipe Castanon Domingo's existing conditional liberty, which is a constitutionally distinct scenario requiring heightened due process protections. The government's reliance on *Rodriguez Diaz v. Garland* is misplaced because that decision explicitly addressed only initial detention procedures, not the revocation of an existing liberty interest.

ARGUMENT

I. RODRIGUEZ DIAZ DOES NOT APPLY TO RE-DETENTION CASES

The government's opposition is anchored by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), but that case is inapplicable here. *Rodriguez Diaz* concerned whether a noncitizen who had *never been released* was entitled to additional process before his *initial* detention. The Court held that existing procedures were constitutionally sufficient for someone with no pre-existing liberty interest.

Mr. Castanon's situation is constitutionally distinct. He was previously released on bond in April 2013 and maintained that conditional liberty for more than twelve years, demonstrating he poses no flight risk or danger to the community. The Supreme Court has long recognized that revocation of conditional liberty requires greater due process protections than initial denial. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

1 The government cites no authority applying *Rodriguez Diaz* to re-detention cases because
2 such authority does not exist. Courts consistently distinguish between initial detention and
3 revocation of existing conditional liberty. *See id.* (revocation of conditional liberty calls for more
4 stringent procedural safeguards).

5 II. ICE LACKS STATUTORY AUTHORITY ABSENT CHANGED
6 CIRCUMSTANCES

7
8 A. Ninth Circuit Precedent Supports Changed Circumstances Requirement

9 The government dismisses *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981), as non-
10 binding “dicta,” but the Ninth Circuit has assumed its precedential force. In *Panosyan v.*
11 *Mayorkas*, the Court stated: “Thus, absent changed circumstances...ICE cannot redetain
12 Panosyan.” 854 F. App’x 787, 788 (9th Cir. 2021). This language would be meaningless if *Sugay*
13 were merely non-binding dicta.
14

15 B. ICE’s Own Policy Requires Changed Circumstances

16 The government’s brief inadvertently supports Petitioner’s position by acknowledging
17 that ICE “generally only re-arrests [noncitizens] pursuant to 8 U.S.C. § 1226(b) after a material
18 change in circumstances.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017).
19 ICE cannot violate its own established policies without constitutional justification.
20

21 C. No Changed Circumstances Exist Here

22 The government argues that Mr. Castanon’s 2022 DUI conviction constitutes a “changed
23 circumstance,” but this is legally unsound. First, should a DUI conviction establish that an
24 individual is a “risk to public safety,” ICE would not have determined he was suitable for release
25 in 2013 after being aware of two other DUI convictions. The timing is particularly telling: ICE
26 waited until one day before his scheduled merits hearing to detain him based on a 2022
27 conviction that they had known about for years.
28

1 Additionally, the government's reading of *Sugay* overlooks its actual application of the
2 changed circumstances standard. The BIA did not merely "recognize counsel's argument"—it
3 applied that standard and found it satisfied based on specific developments. In *Sugay*, the
4 respondent first had his opportunity to present his case at his removal hearing, where "newly
5 developed evidence brought out at the deportation hearing, combined with the fact that the
6 respondent has been ordered deported and his applications for suspension and withholding of
7 deportation were denied," justified changed circumstances. 17 I&N Dec. at 640. Critically, the
8 respondent in *Sugay* had received his day in court and new evidence emerged during those
9 proceedings. Here, the circumstances are markedly different. Mr. Castanon was detained before
10 his scheduled merits hearing, depriving him of the opportunity to present his case for relief.
11 Moreover, no new evidence exists: DHS has been aware of his 2022 conviction for years through
12 his fingerprints submitted with his applications for relief. The government's current position
13 contradicts their argument in *Saravia*, where DHS maintained that they had complied with
14 *Sugay*'s requirements. *Saravia v. Sessions*, 905 F.3d 1137, 1145 n.10 (9th Cir. 2018).
15 Additionally, the government cites no Ninth Circuit authority dismissing *Sugay* as non-binding
16 dicta, instead relying on district court decisions that carry no precedential weight on this Court.
17 Unlike *Sugay*, where changed circumstances emerged through the administrative process, here
18 ICE acted on stale information while preventing Mr. Castanon from having his day in court.
19

20 Moreover, the only actual change is the current administration's enforcement priorities.
21 However, policy shifts cannot constitute "changed circumstances" justifying revocation of
22 individual liberty interests. *See, e.g., Morton v. Ruiz*, 415 U.S. 199, 232–33 (1974) ("The
23 Administrative Procedure Act was adopted to provide, *inter alia*, that administrative policies
24
25
26
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28

1 affecting individual rights and obligations be promulgated pursuant to certain stated procedures
2 so as to avoid the inherently arbitrary nature of unpublished *ad hoc* determinations.”).

3 III. *MATHEWS V. ELDRIDGE* ANALYSIS MANDATES PRE-DEPRIVATION
4 HEARING

5 The government’s *Mathews* analysis ignores the fundamental distinction between initial
6 detention and revocation cases.

7
8 A. Private Interest: Vested Liberty Interest in Conditional Freedom

9 Mr. Castanon possesses a vested liberty interest in his conditional release that cannot be
10 revoked without due process. *See Morrissey v. Brewer*, 408 U.S. at 482 (“the liberty of a parolee,
11 although indeterminate, includes many of the core values of unqualified liberty and its
12 termination inflicts a grievous loss”). This interest is qualitatively different from the liberty
13 interest of someone never released, as in *Rodriguez Diaz*.

14 The consequences of re-detention are severe: separation from family, loss of
15 employment, and potential transfer outside this judicial district where his removal proceedings
16 are pending. These harms are irreparable and cannot be adequately compensated later.

17 The government dismisses Mr. Castanon’s liberty interest, arguing that his “status and
18 recidivism reduce his liberty interest” and characterizing his desire for freedom as mere
19 “personal reasons for wanting to remain out of custody.” This fundamentally misunderstands
20 constitutional liberty. The Due Process Clause protects all persons from arbitrary detention,
21 regardless of immigration status. *See Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well
22 established that the Fifth Amendment entitles aliens to due process of law.”).

23 The government further argues that Mr. Castanon seeks not merely liberty, but “liberty in
24 the United States,” and that his detention “arose because of his choice to seek relief from
25

1 removal." This theory is constitutionally untenable. The Supreme Court has recognized that
2 fundamental liberty interests apply regardless of immigration status. *Zadvydas v. Davis*, 533 U.S.
3 678, 690 (2001). Moreover, the government's "choice" theory would eviscerate due process by
4 suggesting that anyone who contests government action forfeits constitutional protection. Under
5 this logic, criminal defendants "choose" detention by pleading not guilty, and civil litigants
6 "choose" adverse judgments by filing suit. The Constitution does not punish people for asserting
7 their legal rights.
8

9 **B. Risk of Error and Value of Additional Safeguards**

10 The government's argument that existing procedures are sufficient fundamentally
11 misunderstands the constitutional violation. Under current procedures:
12

- 13 1. ICE unilaterally revokes the bond without any neutral review
- 14 2. Mr. Castanon is immediately seized and detained
- 15 3. Only after deprivation can he request a hearing where he bears the burden to prove
16 release is warranted
17

18 This process is constitutionally backwards. In revocation proceedings, the government
19 should bear the burden to prove, before seizure, that circumstances have changed such that
20 continued liberty is no longer appropriate. The Ninth Circuit has held that, when there is a
21 substantial liberty interest at stake, the government should have the burden of proof by clear and
22 convincing evidence that an individual is a flight risk or danger before depriving the individual
23 of that liberty. *Singh v. Holder*, 638 F.3d 1196, 1203–04 (9th Cir. 2011).
24

25 The circumstances of Mr. Castanon's detention demonstrate the high risk of erroneous
26 deprivation. ICE officers told his counsel the check-in was "just an interview" and refused to
27 reschedule it. He was then detained due to a conviction from 2022, despite his counsel presenting
28

1 his positive equities. This timing undercuts any claim that ICE made a careful, individualized
2 assessment of flight risk or public safety.

3 Moreover, the government's reliance on post-detention bond hearings is illusory given
4 ICE's legal interpretation of recent BIA precedent. In *Matter of Q. Li*, the BIA held that
5 noncitizens "who [are] arrested and detained without a warrant while arriving in the United
6 States, whether or not at a port of entry, and subsequently placed in removal proceedings, [are]
7 detained under [8 U.S.C. § 1225(b)], and [are] ineligible for any subsequent release on bond
8 under [8 U.S.C. § 1226(a)]." 29 I&N Dec. 66, 71 (BIA 2025).

10 Mr. Castanon was not arrested under 8 U.S.C. § 1225(b). Therefore, he should not be
11 subject to the mandatory detention under *Q. Li*. However, ICE has interpreted *Q. Li* even more
12 broadly than the BIA intended. According to recent ICE guidance, the agency now takes the
13 position that any noncitizen who entered without inspection is subject to mandatory detention
14 under § 1225(b) regardless of the statutory authority under which they were originally detained.¹
15 This interpretation would render bond hearings unavailable for vast numbers of individuals,
16 including those like Mr. Castanon who were previously found suitable for release.

19 Because § 1225(b) "mandate[s] detention" without possibility of bond, many individuals
20 may have no meaningful post-detention remedy at all. The government cannot simultaneously
21 argue that post-detention procedures are constitutionally adequate while taking the position that
22 those same procedures should be unavailable to most detainees. If ICE's interpretation of *Q. Li* is
23 correct, then pre-deprivation hearings become constitutionally essential, not optional.
24
25
26

27 ¹ Maria Sacchetti and Carol D. Leonnig, *ICE declares millions of undocumented immigrants*
28 *ineligible for bond hearings*, THE WASHINGTON POST,
<https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented-immigrants-bond-hearings/> (July 15, 2025).

1 The value of a pre-deprivation hearing is substantial. A neutral adjudicator could assess
2 whether ICE's claimed "changed circumstances" actually justify revocation, preventing
3 erroneous deprivation based on stale or inadequate information.

4 **C. Government Interest is Minimal**

5 The government vastly overstates its interest. Mr. Castanon arrived to his interview on
6 July 14, 2025, patently proving he poses no flight risk. Moreover, the government's claimed
7 urgency about public safety is belied by their own conduct. The government now argues that Mr.
8 Castanon's DUI convictions mean that "repeated violations absolutely pose a danger to the
9 community." Yet ICE released him on bond in 2013 despite knowing of his prior DUI
10 convictions, and waited three years after his 2022 conviction to act. If Mr. Castanon truly posed
11 such an "absolute" danger, ICE's three-year delay in addressing it undermines any claim of
12 genuine public safety concern. His conviction history was fully known to ICE for years at that
13 time, and he was never summoned to an interview or check-in with ICE before this date while
14 his removal proceedings were pending.
15

16 Administrative convenience cannot justify constitutional violations. *Stanley v. Ill.*, 405
17 U.S. 645, 656 (1972). The burden of a single hearing before re-arrest is minimal compared to the
18 costs of indefinite detention and the constitutional imperative to protect liberty.
19

20 **IV. PUBLIC INTEREST SUPPORTS PRELIMINARY INJUNCTION**

21 The government argues that public safety requires Mr. Castanon's detention, but this
22 argument fails on multiple levels.
23

24 First, "[i]t is always in the public interest to prevent the violation of a party's
25 constitutional rights." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023). Constitutional
26 compliance is paramount.
27
28

1 Second, Mr. Castanon poses no demonstrated risk to public safety. Despite the
2 government's argument that his 2022 conviction makes him a risk to public safety, their lack of
3 urgency to deem him so before now undercuts that determination.

4 Third, the economic costs of immigration detention are staggering. The Ninth Circuit has
5 recognized that these costs constitute a significant public burden. *See Hernandez v. Sessions*, 872
6 F.3d 976, 996 (9th Cir. 2017).

8 V. LIKELIHOOD OF SUCCESS ON THE MERITS IS CLEAR

9 Mr. Castanon has demonstrated a likelihood of success on both his statutory and
10 constitutional claims.

11 ICE lacks the authority under *Sugay* and its own policies to re-detain him absent changed
12 circumstances, which do not exist here.

14 Further, the Due Process Clause requires a pre-deprivation hearing before the government
15 can revoke his vested liberty interest in conditional release.

16 The government offers no authority supporting re-detention without changed
17 circumstances or due process. Every case it cites involves detention of individuals with no pre-
18 existing liberty interest.

20 CONCLUSION

21 The government's opposition confirms that it seeks to revoke Mr. Castanon's
22 constitutional liberty based on stale information and without any neutral review. This violates
23 fundamental due process principles.

24 For these reasons, the Court should grant Petitioner's motion for preliminary injunction
25 to prevent Mr. Castanon's detention before he is able to enjoy his right to a full and fair hearing
26 before an Immigration Judge in his removal proceedings.
27
28

Respectfully submitted,

Date: July 23, 2025

By: /s/ Caitlyn DeWitt

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CERTIFICATE OF SERVICE

I, Caitlyn DeWitt, hereby certify that on July 23, 2025, I electronically filed the foregoing documents with the Clerk of the Court for the United States District Court for the Northern District of California using the Court's CM/ECF system, which will send notification of such filing to all registered CM/ECF participants.

Those parties who are not registered or do not receive electronic service of process may access this filing at any time through the Court's CM/ECF system. I am not aware of any errors or delays that prevented timely submission through the electronic system.

Date: July 23, 2025

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