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9 **UNITED STATES DISTRICT COURT FOR THE**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **FRESNO DIVISION**

12 Isidro BENAVIDES CARBALLO

13 Petitioner,

14 v.
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16 Tonya ANDREWS, et. al.,

17 Respondents.
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No. 1:25-cv-00978-KES-EPG

**PETITIONER'S REPLY TO
RESPONDENTS' OPPOSITION
TO THE MOTION FOR
TEMPORARY RESTRAINING
ORDER**

INTRODUCTION

Respondents do not meaningfully address Mr. Carballo's claim that his sudden re-detention—without *any* showing that he presents a current flight risk or danger—violates the substantial liberty interest he accrued in the years since a federal judge ordered his release from ICE custody. Mr. Carballo's detention under 8 U.S.C. § 1226(c) does nothing to undermine his claim, and in fact reinforces the need for this Court's urgent intervention. Without it, Mr. Carballo will remain detained without ever receiving a neutral review of whether his custody meets a valid civil purpose. Each day of Mr. Carballo's ongoing detention causes irreparable harm to his health and wellbeing. To restore the status quo ante, Mr. Carballo urges the Court to grant his motion for temporary restraining order and order his immediate release.

ARGUMENT

I. RESPONDENTS DO NOT ADDRESS THE MERITS OF MR. CARBALLO'S CONSTITUTIONAL CLAIM FOR RELIEF

Respondents do not engage with Mr. Carballo's principal argument that he has accrued a substantial liberty interest in the five-plus years since a federal judge ordered his release from ICE custody. *See* Dkt. 2 at 24-28.¹ Mr. Carballo grounds this argument not only in well-settled Supreme Court case law including *Morrissey v. Brewer*, 408 U.S. 471 (1972) and its progeny, but also in many decisions from California courts that have recognized a noncitizen's protected liberty interest in release on bond. *Id.* at 26-27 (listing Northern District and Eastern District of California cases).

In the days since Mr. Carballo filed his TRO motion, at least three more courts have joined the chorus in holding that the due process clause protects a noncitizen's liberty interest even where a statute allows detention. *See Maklad v. Murray, et al.*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *10 (E.D. Cal. Aug. 8, 2025) (granting preliminary injunction and ordering release of noncitizen who had been paroled by DHS); *Alva v. Kaiser, et al.*, No. 25-CV-06676 (EKL), 2025 WL 2294917, at *3-4 (N.D. Cal. Aug. 7, 2025) (granting TRO and ordering

¹ Page citations refer to the Court's ECF-stamp pagination.

1 immediate release) (“This Order accords with many other recent grants of temporary relief in
 2 similar circumstances.”); *Ortiz Calderon v. Kaiser*, et al., No. 25-CV-06695, 2025 WL 2294914,
 3 at *3-4 (N.D. Cal. Aug. 8, 2025) (same).

4 Nor do Respondents entertain Mr. Carballo’s argument that his strong liberty interest
 5 requires a hearing before a neutral judge before he may be re-detained. *Compare* Dkt. 2 at 28-34
 6 with Dkt. 6. Notably, Respondents do not contest that a pre-deprivation hearing would injure any
 7 valid government interest. Indeed, Mr. Carballo contends that a neutral hearing will promote, not
 8 undermine the government’s interest in safeguarding the community while minimizing the
 9 impact of detention in cases where it serves no purpose. *See e.g., Hernandez-Lara v. Lyons*, 10
 10 F.4th 19, 33 (1st Cir. 2021) (“[L]imiting the use of detention to only those noncitizens who are
 11 dangerous or a flight risk may save the government, and therefore the public, from expending
 12 substantial resources on needless detention.”).

13 14 II. MR. CARBALLO’S STATUTORY DESIGNATION DOES NOT NEGATE HIS 15 CONSTITUTIONAL RIGHT TO DUE PROCESS

16 Respondents argue that Mr. Carballo’s detention is constitutional because it is authorized
 17 by section 1226(c). *See generally* Dkt. 6. Mr. Carballo does not contest that his statutory
 18 detention authority falls under 8 U.S.C. §1226(c), the so-called mandatory detention provision.
 19 But his designation only underscores the need for this Court’s searching constitutional review of
 20 his re-detention because the statute will never afford him a neutral hearing to assess whether his
 21 detention is warranted.

22 The Supreme Court’s decision in *Demore v. Kim*, 538 U.S. 510 (2003) is not to the
 23 contrary. In *Demore v. Kim*, 538 U.S. 510 (2003), the Supreme Court rejected a *facial* challenge
 24 to detention 8 U.S.C. § 1226(c), holding that what was then-assumed to be “brief” civil detention
 25 without a bond hearing does not offend due process.² *See Lopez Gramajo v. Garland*, 631

26 ² U.S. Solicitor General has since acknowledged significant errors in the data underlying
 27 the decision in *Demore*, leading to an *under*-estimation of the average length of detention. *See*
 28 Letter from Ian Heath Gershengorn, Acting Solicitor General, to Hon. Scott S. Harris, Clerk,
 Supreme Court of the United States 2 (Aug. 26, 2016), *Demore v. Kim*, 538 U.S. 510, 123 S.Ct.
 (continued on next page)

F.Supp.3d 870, 877 (E.D. Cal. 2022) (“*Demore* rejected a *facial* challenge to mandatory detention[.]”) (emphasis in original). *Demore* did not, as Respondents imply, countenance an individual’s *re-detention* without basis after five years of successful release on bail. Nor did it prohibit as-applied challenges to the statute.

As Respondents concede, civil detention is only constitutional so long as it “continues to serve its purported immigration purpose.” See Dkt. 2 at 6 (quoting *Demore*). Here, no neutral factfinder has found whether Mr. Carballo’s re-detention serves either of the twin purposes allowed for civil detention—safeguarding the community and preventing risk of flight. See *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001). If it were up to Respondents, no judge would ever conduct this evaluation. The Court should reject this extreme view, and follow its prior decisions in holding that due process requires Mr. Carballo’s release and a pre-deprivation hearing. See *Galindo Arzate, v. Andrews, et al.*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679 (E.D. Cal. July 11, 2025).

III. RESPONDENTS ALLEGE NO NEW FACTS RELATED TO DANGER OR FLIGHT RISK SINCE MR. CARBALLO’S RELEASE ON BAIL

Judge Chhabria granted Mr. Carballo’s release from ICE custody on bail after considering whether he would pose a danger to the community or flight risk. See Dkt. 1-5 (Bail Order); *Zepeda Rivas v. Jennings*, Standard for Considering Bail Requests, Dkt. 90 (N.D. Cal. May 4, 2020). Respondents allege no new facts or circumstances in the intervening five years which would support a finding that Mr. Carballo presents a current flight risk or danger. Dkt. 6.

The only change Respondents allege is the expiration of a protection in the *Zepeda Rivas* settlement agreement which prohibits the re-detention of released class members unless specified conditions are met. See Dkt. 6 at 4-5. Mr. Carballo acknowledges the expiration of the settlement agreement. But his arrest immediately following its expiry highlights that there has been no

1708, 155 L.Ed.2d 724 (2003) (No. 01-1491), available at <https://trac.syr.edu/immigration/reports/580/include/01-1491%20-%20Demore%20Letter%20-%20Signed%20Complete.pdf>.

1 change in *his* circumstances, but a change of legal regime. *See Valdez v. Joyce*, No. 25 CIV.
2 4627 (GBD), 2025 WL 1707737, at *3, n.6 (S.D.N.Y. June 18, 2025) (“The law requires a
3 change in relevant facts, not just a change in attitude.”). If anything, the facts have improved
4 since Judge Chhabria evaluated Mr. Carballo’s case, as he has spent five years in perfect
5 compliance, validating the prior decision to grant him bail.

6 In an analogous circumstance, the Northern District ordered a pre-deprivation hearing
7 despite a change in the Petitioner’s legal posture. There, the Petitioner had been released on bond
8 after a bond hearing with an immigration judge (“IJ”), only to have that determination reversed
9 by the Board of Immigration Appeals (“BIA”). Similar to Mr. Carballo’s case, there was no
10 factual change to newly suggest that Petitioner was a danger or flight risk while he was out on
11 bond. Judge Hixson agreed that Petitioner’s liberty interest in his conditional release required a
12 neutral pre-deprivation hearing, despite the change in legal posture occasioned by the BIA
13 decision. *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1606294, at*3 (N.D. Cal. May
14 20, 2022).

15 The same result is required here. In the last years while the settlement was in effect,
16 Respondents *could* have exercised their authority to attempt to re-detain Mr. Carballo based on
17 new information that he presented a flight risk or danger. That they did not supports his claim
18 that his re-detention serves no valid civil purpose.

19 20 CONCLUSION

21 For the foregoing reasons, this court should find that Mr. Carballo warrants immediate
22 release from ICE custody to restore him to the status quo ante.

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24 Dated: August 12, 2025

Respectfully submitted,

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26 /s/ Genna Beier

27 Genna Beier
28 Attorney for Petitioner