JAMES M. BYRNE (SBN 098038)
LAW OFFICES OF JAMES M. BYRNE
1374 PACIFIC AVENUE
SAN FRANCISCO, CA 94109
TEL: (415) 777-4444
FAX: (415) 777-0282

Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

Martin Paul PRIOR, A[redacted]

Petitioner,

v.

Tonya ANDREWS, et al.

Respondents.

Case No. 1:25-cv-01131-JLT-EPG

REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

On September 8, 2025, this Court ordered Respondents to show cause as to why it should not grant Petitioner's motion for a temporary restraining order ("TRO") by ordering that a *Joseph* hearing be promptly conducted, as well as ordering Respondents not to remove Petitioner from the United States nor transfer him outside of the district. ECF No. 6.

In its response filed September 10, 2025, Respondents failed to show cause as to why this Court should not order that a *Joseph* hearing be promptly conducted. *See generally* ECF No. 9 (Opposition ("Opp.")). Rather, Respondents continue to assert that they are authorized to detain Petitioner under the mandatory detention statute at 8 U.S.C. § 1226(c) during the pendency of the government's administrative appeal and adjudication of his motion to terminate. *Id.* at 3-5. As explained below, Respondents' arguments fail to persuade.

REPLY

As an initial matter, Petitioner believes that a *Joseph* hearing is unnecessary and that the Court may decide in the first instance that he is not properly subject to mandatory detention given that each of the convictions underlying Respondents' charged grounds of inadmissibility have been vacated for procedural or substantive defects in their underlying proceedings. *See* ECF Nos. 3 However, if the Court believes that a *Joseph* hearing is necessary, Petitioner urges the Court to order that such a hearing be promptly conducted. However, the mere provision of a *Joseph* hearing does not provide full relief to Petitioner who is being unlawfully detained and deprived of his liberty. Accordingly, Petitioner requests that this Court retain jurisdiction over this TRO motion and the Petition for Writ of Habeas Corpus, given this Court's authority to consider in the first instance whether Petitioner's detention is lawful in light of his vacated convictions.

Respondents have failed to show cause why this Court should not order that the Immigration Judge conduct a *Joseph* hearing. Respondents' opposition to the TRO states a legal argument that Petitioner remains subject to mandatory detention despite the vacatur of his convictions but does not provide any colorable argument as to why a hearing on whether that detention is lawful should not be provided. *See* Opp. at 3-5. Rather, Respondents' insistence that they are authorized to detain Petitioner pursuant to the mandatory detention statute at 8 U.S.C. § 1226(c) illustrates the need for

this Court's intervention where Respondents make clear that they will continue holding Petitioner in immigration detention for as long as removal proceedings continue, absent a court order.

Respondents' suggestion that Petitioner simply wait in detention while the BIA adjudicates his motion to terminate ignores the fact that every day Petitioner remains in unlawful detention, he suffers additional serious and irreparable injury. *See* Docket Entry No. (MPA ISO TRO) at 19-20. In addition to the injuries outlined in Petitioner's TRO, Petitioner is suffering new harm following his recent transfer to a new immigration detention facility in California City, California on September 6, 2025; since the day of that transfer, Petitioner has been deprived of his prescription medications that he takes daily, [redacted], the deprivation of which adversely impacts him both mentally and physically. Exhibit A (Counsel Decl. in Support of Reply); *see also* Exhibit B (Photograph of Petitioner's medications). Petitioner asks the Court's leave to amend his TRO prayer for relief to include that Respondents be ordered to immediately provide him with his prescribed medications.

Moreover, Respondents' position ignores the larger context, in which the BIA's workforce has been significantly reduced, likely leading to adjudication delays and reduced quality in BIA decisions. *See* Letter from Congress Members to Attorney General Pamela Bondi dated March 28, 2025 (explaining Congress Members' concerns about the Executive Office for Immigration Review having forced out every BIA member appointed during the Biden Administration through threats of demotion or reduction in force notices, despite the governing regulation stating that the BIA shall consist of 29 members).[1] Concerned Members of Congress reasonably predict that reducing the size of the BIA from 28 to 15 members will have practical repercussions on the Board's caseload and quality of decisions. *See id.* (citing Britain Eakin, Trump Admin to Nearly Halve Immigration Appeals Board, LAW360 (Feb. 20, 2025), (When the George W. Bush Administration whittled down the BIA to twelve members, staff attorneys filled in to manage the case load and the quality of the decisions significantly declined.)).[2] Petitioner should not be forced to await the BIA's

[1] Available at https://www.judiciary.senate.gov/imo/media/doc/2025-03-28%20-%20Letter%20to%20DOJ%20re%20IJ%20Firings.pdf (last visited Sept. 11, 2025).

[2] Available at https://www.law360.com/articles/2300903/trump-admin-to-nearly-halve-immigration-appeals-board (last visited Sept. 12, 2025).

adjudication of his motion to terminate under such circumstances, particularly when the government's legal position is so clearly lacking in merit.

The Court need only look at the arguments advanced by the Department of Homeland Security ("DHS") in its opposition to Petitioner's pending motion to terminate pending before the Board of Immigration Appeals ("BIA") to see that Respondents intend to continue to double-down on its refusal to recognize the legal impact of Petitioner's vacatur orders. *See* Docket Entry No. 9-1 at 42-71 ("DHS MTT Opp."). DHS takes the novel legal position that a vacatur under California Penal Code ("CPC") section 1473.7(a)(1) does not – despite its plain language as discussed in *Bent v. Garland*, 115 F.4th 934, 940-41 (9th Cir. 2024) – necessarily involve a procedural or substantive defect, and it suggests that adjudicators must look to other record evidence to determine the state court's reason for the vacaturs. *Id.* Even if the DHS could persuade a court to adopt its novel legal theory, its argument clearly fails because the burden of proof in the instant context is squarely on the government.

Where, as here, the vacated convictions form the basis for the immigration charges underlying removal proceedings and detention, the *government* – and *not* the noncitizen – bears the burden of establishing that the vacated convictions remain valid for immigration purposes. *See Cardoso-Tlaseca v. Gonzales*, 460 F.3d 1102, 1107 n.3 (9th Cir. 2006) ("[F]or the government to carry its burden in establishing that a conviction remains valid for immigration purposes, the government must prove 'with clear, unequivocal and convincing evidence, that the Petitioner's conviction was quashed *solely* for rehabilitative reasons or reasons related to his immigration status, i.e., to avoid adverse immigration consequences.'" (internal citation omitted)); *see also Nath v. Gonzales*, 467 F.3d 1185, 1189 (9th Cir. 2006) ("The record before us does not reveal the reasons for setting aside the conviction. The government has, therefore, failed to carry its burden of proof on the question of the reasons the state set aside the first conviction."); *cf. Matter of De Jesus-Platon*, 29 I. & N. Dec. 7, 10-11 (BIA 2025) (denying De Jesus-Planton's motion to remand where he bore the burden of showing prima facie eligibility for relief, and the state court order vacating his disqualifying conviction failed to specify under which subsection of CPC § 1473.7 vacatur had been granted). In other words, even if CPC § 1473.7(a)(1) were overbroad in the way the DHS

attempts to paint it – which it is not – such overbreadth would simply mean that the DHS has failed to meet its burden of proving by clear and convincing evidence that Petitioner's CPC § 1473.7(1)(a) vacaturs were solely for rehabilitative or immigration reasons.[3] This court should therefore recognize Respondents' non-meritorious efforts to justify its continued unlawful detention of Petitioner as further evidence that this Court must intervene by granting Petitioner's TRO to prevent him from suffering further irreparable harm pending resolution of his habeas petition.

CONCLUSION

In sum, Respondents have failed to show cause as to why this Court should not order a *Joseph* hearing to be promptly conducted. If such a hearing does not result in Petitioner's prompt release, Petitioner asks the Court to determine in the first instance that Petitioner is not subject to mandatory detention and order his immediate release from immigration custody. Petitioner further asks that the Court order Respondents to immediately provide Petitioner his prescribed medications. Finally, he asks that the Court maintain its order that Respondents not deport him or transfer him outside of this District for the duration of these proceedings.

Date: September 12, 2025

Respectfully Submitted,

/s/ James M. Byrne

James M. Byrne
Attorney for Petitioner

[3] DHS misstates the BIA where it asserts that "[p]er *Dingus*, the party in the best position to have access to the relevant documents in the underlying post-conviction relief hearing" should provide as much documentation and information as possible. DHS MTT Opp. at 24, n.14. In fact, the BIA in *Dingus* stated that "**the party bearing the relevant burden of proof** should provide the Immigration Court with as much documentation and information as possible relating to the modification or amendment [of a conviction]." *Matter of Dingus*, 28 I. & N. Dec. 529, 536 (BIA 2022) (emphasis added). In *Dingus*, the noncitizen bore the burden of proof because she was an applicant for relief potentially barred by that conviction. Not so here, where Petitioner's vacated convictions are the basis for Respondents placing him in immigration proceedings and holding in immigration detention, and thus the government bears the relevant burden of proof.