

1 LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
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8 UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 ALEX RIVERA GIORGES and SOKHA KHAN,

11 Petitioners-Plaintiffs,

12 v.

13 SERGIO ALBARRAN, et al.,

14 Respondents-Defendants.

**MOTION FOR ISSUANCE OF ORDER  
TO SHOW CAUSE AND FOR LEAVE  
TO FILE MOTION FOR  
RECONSIDERATION**

Case No. 5:25-cv-7683-NW

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MOTION FOR ISSUANCE OF ORDER TO SHOW CAUSE AND FOR LEAVE TO FILE  
MOTION FOR RECONSIDERATION

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**INTRODUCTION**

Pursuant to Civil Local Rule 7-10 and 28 U.S.C. § 2243, Petitioners hereby move for issuance of an order to show cause why the petition in this case should not be granted. And pursuant to Civil Local Rule 7-9, Petitioners request leave to file a motion to reconsider the Court's order dated October 10, 2025.

On October 10, 2025, the Court issued an order to show cause why it should not dismiss as moot the habeas petition in this case involving two non-citizens who face a threat of detention by Immigration and Customs Enforcement without any hearing whatsoever. Dkt. No. 17 at 15. Petitioners, members of the *Zepeda Rivas v. Jennings* settlement class who continue to live productive, law-abiding lives, filed their response on October 24, 2025, and that matter remains pending. Dkt. 18. Should the Court determine that dismissal is not warranted, 28 U.S.C. § 2243 directs the Court either to award the writ or issue an order directing the government to show cause why the writ should not be granted. Petitioners do not request that the Court award the writ at this juncture; they ask only that, should the Court decline to dismiss the petition, the Court apply the plain text of § 2243 by requiring the government to show cause why the petition should not be granted.

Additionally, Petitioners request leave to file a motion for reconsideration so that the Court may consider (1) intervening judicial decisions in this District granting preliminary injunctive relief to other members of the *Zepeda Rivas* class and (2) the Court's possible misapprehension of certain facts upon which its legal analysis in the preliminary injunction proceedings rested.

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**ARGUMENT**

**I. The Court Should Issue an Order to Show Cause Why the Petition Should Not Be Granted.**

If a district court does not dismiss a petition, the court “shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted.” 28 U.S.C. § 2243. Thus, if the Court should conclude—after reviewing Petitioners’ response to the Court’s prior order to show cause—that dismissal is unwarranted, § 2243 directs the Court either to award the writ summarily or order the government to show cause why the writ should not be granted. *See Harris v. Nelson*, 394 U.S. 286, 298-99 (1969) (quoting 28 U.S.C. § 2243) (“Congress has provided that once a petition for a writ of habeas corpus is filed, unless the court is of the opinion that the petitioner is not entitled to an order to show cause, the writ must be awarded ‘forthwith,’ or an order to show cause must be issued.”). As stated above, Petitioners do not ask the Court to summarily award the writ. They simply request that, should the Court decline to dismiss the petition, the Court order the government to show cause and afford Petitioners the opportunity to file a traverse. *See* 28 U.S.C. § 2248 (in habeas corpus cases, instructing that allegations in an answer to an order to show cause may be accepted “if not traversed”).

**II. The Court Should Grant Leave to File a Motion for Reconsideration.**

In addition to their request for the issuance of an OSC, Petitioners respectfully request leave to file a motion for reconsideration. Because the October 10, 2025, order denying a preliminary injunction (“the Order”) is interlocutory, it may be “revise[d] at any time before the entry of judgment.” Fed. R. Civ. P. 54(b). Civil Local Rule 7-9(b) permits reconsideration of interlocutory orders based on any of the following: (1) “a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order”; (2)

1 “[t]he emergence of new material facts or a change of law occurring after the time of such  
2 order”; or (3) “[a] manifest failure by the Court to consider material facts or dispositive legal  
3 arguments.” Petitioners respectfully submit that grounds two and three are implicated.  
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5 **a. The Order Manifestly Fails to Properly Consider Material Facts  
6 Concerning Petitioners’ Release.**

7 The Order states that Petitioners’ present liberty is based on the “exigent circumstances  
8 caused by the pandemic.” Dkt. No. 17 at 13. This appears to reflect a factual misapprehension.  
9 Although Petitioners were initially released in 2020 after individualized judicial findings that  
10 they posed neither a flight risk nor a danger to the community, the 2022 *Zepeda Rivas*  
11 settlement then extended Petitioners’ liberty for three additional years—long after the  
12 emergency conditions that prompted their initial release had passed. *See Zepeda Rivas v.*  
13 *Jennings*, No. 3:20-cv-02731-VC, Dkt. 1205, Ex. 1 (“the Settlement Agreement”). Simply put,  
14 the last three years of Petitioners’ liberty did not arise from the “unique circumstances created  
15 by the COVID-19 crisis.” Dkt. No. 17 at 13. Rather, Petitioners’ present liberty arises from an  
16 agreement by the government—years after the public health crisis of the COVID-19 pandemic  
17 had abated—not to detain class members “unless they pose a threat to public safety or national  
18 security, and/or risk of flight.” *Zepeda Rivas*, Dkt. 1205, Ex. 1 (the Settlement Agreement) at  
19 10. *Cf. Doe v Albarran*, No. 25-cv-08774-VC, 2025 WL 3141224, at \*1 (N.D. Cal. Nov. 10,  
20 2025) (“*Giorges* did not address the fact that the government voluntarily entered into the  
21 settlement agreement and was not forced into allowing class members who were released on  
22 bond to remain free after the crisis abated.”). Reconsideration is therefore appropriate under  
23 Local Rule 7-9(b)(3) because the Order rested on a factual premise—that the exigent  
24 circumstances of the COVID-19 pandemic were the proximate cause of Petitioners’ present  
25 liberty—that does not reflect the actual record.  
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1 Respectfully submitted,

2 Dated: December 22, 2025

/s/ Jordan Wells

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*Counsel for Petitioners*