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7 UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 ALEX RIVERA GIORGES and SOKHA KHAN,

10 Petitioners-Plaintiffs,

11 v.

12 SERGIO ALBARRAN, et al.,

13 Respondents-Defendants.

**PETITIONERS-PLAINTIFFS'  
MOTION FOR RECONSIDERATION**

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

Date: March 25, 2026

Time: 9:00 a.m.

Judge: Honorable Noël Wise

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MOTION FOR RECONSIDERATION

1 INTRODUCTION

2 Petitioners Alex Rivera Giorges and Sokha Khan respectfully move for reconsideration  
3 of the Court’s October 10, 2025, order denying their motion for a preliminary injunction barring  
4 ICE from re-detaining them without a pre-detention hearing. Dkt. 17 (“Order”). Petitioners are  
5 members of the *Zepeda Rivas v. Jennings*, No. 20-cv-02731 (N.D. Cal. filed April 20, 2020),  
6 settlement class, whose members were released from immigration detention under the exigent  
7 circumstances of the COVID-19 pandemic, after individualized findings that they posed neither  
8 a flight risk nor a danger to the community. *See* Order at 11. Even after the pandemic had abated,  
9 Petitioners remained free: from 2022 until mid-2025, their continued liberty was governed by the  
10 settlement agreement between the government and the *Zepeda Rivas* class. *See Zepeda Rivas v.*  
11 *Jennings*, No. 3:20-cv-02731-VC, Dkt. 1205, Ex. 1 (“Settlement”). Throughout the past five years,  
12 including during the nearly seven months since the Settlement’s expiration, Petitioners have  
13 complied with all conditions of release, including attendance at regular ICE check-ins and  
14 monitoring requirements. Pet. for Writ of Habeas Corpus (“Pet.”) ¶ 3.

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18 In concluding that Petitioners likely were not entitled under the Due Process Clause to a  
19 hearing before being re-detained by ICE, the Order found that Petitioners’ liberty interest was  
20 insufficiently “weighty” to trigger due process protections, because their release was “the product  
21 of exigent circumstances” created by the COVID-19 pandemic. Order at 13.

22  
23 Reconsideration is warranted under Civil Local Rule 7-9(b) because: (1) the Order rests  
24 on an apparent material factual misapprehension about the basis for Petitioners’ continuing  
25 liberty; and (2) intervening decisions in this District provide new persuasive authority, finding  
26 that the Fifth Amendment affords *Zepeda Rivas* class members against arbitrary re-detention  
27 through adequate procedures to determine whether re-detention is justified by flight or danger.  
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**ARGUMENT**

Petitioners respectfully bring to the Court’s attention: (1) a material factual misapprehension—the conflation of Petitioners’ 2020 emergency releases and their 2022-2025 settlement-governed liberty—that warrants the Court’s reconsideration; and (2) decisions from two other judges in this District, including an order by the same judge who approved the *Zepeda Rivas* settlement agreement, analyzing the settlement’s legal effect and granting a preliminary injunction to identically situated *Zepeda Rivas* class members.

**I. The Order Rests on a Material Factual Misapprehension.**

The Order’s recitation of the underlying factual background appears to conflate two distinct liberty-conferring events: Petitioners’ initial release in 2020 and their continued liberty beyond the pandemic from 2022 to 2025, with the government’s express agreement. For example, with respect to Petitioner Rivera, the Order states that the *Zepeda Rivas* court “reviewed Rivera’s application for relief, found he posed neither a flight risk nor a danger to the community, and released him *pursuant to the terms negotiated in the governing settlement agreement.*” Order at 11 (emphasis added). Similarly, the Order later states that “Petitioners were released on bond within the unique circumstances created by the COVID-19 crisis and the *Zepeda Rivas* settlement agreement.” Order at 13.

Although Petitioners were initially released in 2020 under the exigent circumstances of the pandemic, the basis for their continuing liberty changed in 2022, when the *Zepeda Rivas* settlement became effective. *See Zepeda Rivas v. Jennings*, No. 20-cv-02731-LB, 2024 WL 5412487, at \*2 (N.D. Cal. Feb. 12, 2024) (“The trial court granted final approval to that settlement under Federal Rule of Civil Procedure 23 in June 2022.”). The Settlement provided:

For three years following the Effective Date, and subject to Sections III.B.-D, ICE will make best efforts to not re-detain under the immigration laws any Non-

1 Detained Class Member unless they pose a threat to public safety or national  
2 security, and/or risk of flight pursuant to the criteria in Subsection III.B.

3 Settlement at 10.

4 These terms of the Settlement restricted ICE’s authority to re-detain Petitioners  
5 from June 2022 through June 2025—independent of any pandemic. Put differently, the  
6 settlement did not merely memorialize temporary, pandemic-related detention forbearance.  
7 It established agreed-upon restrictions on ICE’s detention authority on a non-emergency  
8 basis that lasted well beyond when the public health crisis abated.  
9

10 Thus, the Order is mistaken in attributing Petitioners’ present liberty interest to the  
11 “unique circumstances created by the COVID-19 crisis.” Order at 13. This factual  
12 misapprehension served as the basis for the Order’s analogy to *Uc Encarnacion v. Kaiser*,  
13 No. 22-cv-04369-CRB, 2022 WL 9496434 (N.D. Cal. Oct. 14, 2022). *See* Order at 12-13.  
14 But, unlike that case, where release on bond was “always subject” to “the BIA’s routine  
15 and foreseeable appellate review” to reverse and correct a release that DHS itself contested,  
16 2022 WL 9496434, at \*3, Petitioners have been free because DHS voluntarily entered into  
17 a settlement agreement providing them with conditional freedom long after the pandemic  
18 had abated—by which point they had become “gainfully employed,” been “free to be with  
19 family and friends,” and formed the “enduring attachments of normal life.” *Morrissey v.*  
20 *Brewer*, 408 U.S. 471, 482 (1972).  
21

22 Moreover, the *Zepeda Rivas* settlement provided that “ICE’s re-arrest and re-  
23 detention practices for Class Members w[ould] occur pursuant to generally applicable law  
24 and policy.” Settlement at 13. And as discussed below, courts in this District have  
25 determined that the “generally applicable law and policy” governing ICE re-detention  
26 practices of *Zepeda Rivas* class require a pre-detention hearing. *See, e.g., Zelaya Alas v.*  
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1 *Albarran*, No. 25-cv-8774-VC, 2025 WL 2952507, at \*2 (N.D. Cal. Oct. 15, 2025)  
2 (distinguishing *Uc Encarnacion* and holding that a case involving a *Zepeda Rivas* class  
3 member was “more analogous to a case where the agency originally decides to release a  
4 noncitizen on the ground that they’re not a danger or a flight risk, only to turn around years  
5 later and arrest them without any showing of changed circumstances”).<sup>1</sup>  
6

7 **II. Intervening Persuasive Authority Warrants Reconsideration Under Local Rule**  
8 **7-9(b)(2).**

9 After the issuance of this Court’s October 10 order, Judges Chhabria and Donato  
10 granted the very injunctive relief that Petitioners here request to identically situated *Zepeda*  
11 *Rivas* class members. *See Doe v Albarran*, No. 25-cv-08774-VC, 2025 WL 3141224 (N.D.  
12 Cal. Nov. 10, 2025); *Cux Jocop v. Albarran*, No. 25-cv-09059-JD, 2025 WL 3124081 (N.D.  
13 Cal. Nov. 7, 2025). Although these decisions are not binding, they directly address the  
14 factual and legal questions presented here and were not available for the Court’s  
15 consideration at the time it ruled.  
16

17 Both *Doe* and *Cux Jocop* ruled that ICE could not re-detain *Zepeda Rivas* Settlement class  
18 members without pre-detention hearings. *See Doe*, 2025 WL 3141224, at \*3; *Cux Jocop*, 2025  
19 WL 3124081, at \*1; *see also Qazi v. Albarran*, No. 2:25-cv-02791-TLN-CSK, 2025 WL 3033713  
20 (E.D. Cal. Oct. 10, 2025) (granting similar relief to Settlement class member); *Duong v. Kaiser*,  
21 800 F. Supp. 3d 1030 (N.D. Cal. 2025) (same); *Benavides Carballo v. Andrews*, No. 1:25-cv-  
22 00978-KES-EPG, 2025 WL 2381464 (E.D. Cal. Aug. 15, 2025) (requiring a bond hearing within  
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27 <sup>1</sup> One other factual clarification bears noting, as it can inform the Court’s reconsideration of the  
28 preliminary injunction: the Order states that it did “not appear there are any procedural hurdles  
on the horizon that would make it unlikely or impossible for the Government to successfully  
coordinate Rivera’s removal to El Salvador.” Order at 12. In Petitioners’ response to the Court’s  
Order to Show Cause, Petitioners clarified that neither faces imminent removal. *See* Dkt. 18 at 5.

1 14 days after Settlement class member was re-detained). In *Doe*, Judge Chhabria—who presided  
2 over *Zepeda Rivas* and approved the Settlement—expressly disagreed with the reasoning adopted  
3 in this Court’s Order. He commented that “*Giorges* did not explicitly grapple with ICE’s  
4 agreement that its rearrest and re-detention practices after the three-year period ‘will occur  
5 pursuant to generally applicable law and policy,’ which should be understood to include the  
6 petitioner’s due process rights.” *Doe*, 2025 WL 3141224, at \*1 (quoting *Zepeda Rivas* Settlement).  
7 Indeed, the Court’s Order does not discuss this provision.  
8

9 Judge Chhabria further addressed this Court’s Order in noting that “*Giorges* did not  
10 address the fact that the government voluntarily entered into the settlement agreement and was  
11 not forced into allowing class members who were released on bond to remain free after the crisis  
12 abated.” *Id.* This is the apparent factual misapprehension identified above.  
13

14 Finally, Judge Chhabria disagreed with the characterization of the Settlement as a mere  
15 COVID-19 emergency measure:  
16

17 The government argues that the petitioner in this case has no such liberty interest  
18 because his release under *Zepeda Rivas* was a product of exigent circumstances.  
19 That’s not quite right. . . . [I]t was the government’s choice to allow him to remain  
20 released all these years. The government voluntarily entered into an agreement that  
21 allowed the petitioner to remain released long after the crisis subsided.

22 *Id.*

23 Judge Donato concluded the same in *Cux Jocop*, holding that the Settlement “did not  
24 waive due process” and that “[t]he statutory provisions respondents seek to rely upon to detain  
25 *Cux Jocop* do not trump or otherwise displace the due process commands of the Fifth  
26 Amendment.” 2025 WL 3124081, at \*1.

27 These decisions—issued after the Order and involving identically situated petitioners—  
28 provide persuasive authority that warrants reconsideration and, upon reconsideration, granting  
Petitioners’ motion for a preliminary injunction. The consistency of their reasoning is significant:

1 both cite the same Settlement provision, and both reject the “exigent circumstances”  
2 characterization of Petitioners’ present liberty interest. Read together, they support the conclusion  
3 that ICE cannot, consistent with due process, re-detain Petitioners without first providing a  
4 hearing to determine whether such re-detention would be justified by flight risk or danger.  
5

6 **CONCLUSION**

7 For the foregoing reasons, Petitioners respectfully request that the Court grant this  
8 motion for reconsideration and, upon reconsideration, grant Petitioners’ motion for preliminary  
9 injunction.  
10

11 Respectfully submitted,

12 Dated: January 23, 2025

13 /s/ Jordan Wells

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