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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEX RIVERA GIORGES and SOKHA KHAN,

Petitioners-Plaintiffs,

v.

SERGIO ALBARRAN, et al.,

Respondents-Defendants.

PETITIONERS' REPLY

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

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INTRODUCTION

Petitioners-Plaintiffs ("Petitioners") submit this Reply pursuant to the Court's order dated January 12, 2026. Dkt. 20. That order instructed that Respondents "shall respond to (1) the substance of Plaintiffs' October 18 response to the order to show cause, ECF No. 18; and (2) the forthcoming motion for reconsideration." Respondents' Opposition completely ignores the first half of the Court's instruction and thus fails to respond to Petitioners' eight-page argument.

That glaring omission waives any argument against the applicability here of *Nielsen v. Preap*, which expressly left open constitutional challenges to the application of 8 U.S.C. § 1226(c) to individuals who have long been at liberty. 586 U.S. 392, 420 (2019). Several decisions in this District have sustained such challenges, *See, e.g.*, *Pham v. Becerra*, No. 23-cv-1288-CRB, 2023 WL 2744397, at *1-2 (N.D. Cal. Mar. 31, 2023); *Perera v. Jennings*, No. 21-cv-4136-BLF, 2021 WL 2400981, at *1-2 (N.D. Cal. June 11, 2021). Notably, those cases involved people whose liberty interest arose merely from a period of freedom following release from criminal custody. By contrast, Petitioners here—who were released from ICE custody long ago upon a finding that they presented neither a flight risk nor a danger to the community and, subsequent to that, whom ICE voluntarily permitted to remain at liberty—present an even stronger due process claim. *See Carballo v. Andrews*, No. 1:25-cv-0978-KES 2025 WL 2381464, at *6 (E.D. Cal. Aug. 15, 2025) ("[T]he petitioners in *Perera* and *Pham* were found entitled to a post-deprivation bond hearing even though they had not previously been granted release . . . . This case presents a stronger due process concern because there has already been a court determination that petitioner did not present a flight risk or danger to the community."); *Duong v. Kaiser*, No. 25-cv-07598-JST, 2025 WL 2689266, at *8 (N.D. Cal. Sept. 19, 2025) (similar). Thus, even if the Court denies the motion for reconsideration, it should grant the petition for the unrebutted reasons presented by Petitioners.

Turning to the motion for reconsideration, Respondents argue that Petitioners have not presented "a permissible ground for reconsideration" because Petitioners purportedly (1) "identify no binding authority that warrants a different result" and (2) "do not identify a 'manifest failure of the Court to consider material fact.'" Opp. at 1-2.

Respondents are wrong on both counts. First, "binding authority" is not a prerequisite for this Court to reconsider its denial of Petitioners' motion for a preliminary injunction. Rather, the Court possesses the inherent power to reconsider its interlocutory orders. *See City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) ("As long as a district court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient." (cleaned up)).

Second, Petitioners absolutely have identified a "manifest failure of the Court to consider material fact": the Order conflated Petitioners' 2020 emergency release with their 2022-2025 Settlement-governed freedom. Petitioners respectfully submit that reconsideration is warranted on both grounds.

ARGUMENT

I. Notwithstanding Respondents' Assertions to the Contrary, This Court Has the Power to Reconsider a Prior Order Based on a Change in Persuasive Law.

Respondents argue that the decisions in *Doe v Albarran*, No. 25-cv-08774-VC, 2025 WL 3141224 (N.D. Cal. Nov. 10, 2025), and *Cux Jocop v. Albarran*, No. 25-cv-09059-JD, 2025 WL 3124081 (N.D. Cal. Nov. 7, 2025), do not provide an adequate legal basis for reconsideration because they are not binding precedent. Opp. at 2. This argument fails for two independent reasons.

First, "[a]s long as a district court has jurisdiction over the case, then it possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for

cause seen by it to be sufficient." *City of Los Angeles*, 254 F.3d at 885 (cleaned up). Because the power to reconsider interlocutory orders, such as an order denying a motion for a preliminary injunction, is "inherent," binding precedent is not required. Local Rule 7-9(b)(2) is consistent with this principle, permitting reconsideration based on "[t]he emergence of new material facts or a change of law occurring after the time of such order." The rule nowhere states that the change of law must constitute binding precedent. Indeed, when a court in the Central District of California rejected the same argument Respondents make here, it reasoned:

> The first question the Court must resolve is whether it can reconsider a previous order based on a recent change in merely persuasive, as opposed to binding, precedent. The Court would conclude that it does have this power. . . . A district court has the inherent power to reconsider and modify its interlocutory orders prior to the entry of judgment. Because the power of reconsideration of interlocutory orders is "inherent," binding precedent is not needed for the Court to modify a prior order. The Central District of California's Local Rule 7–18 supports this conclusion. Nowhere does the rule mention that "controlling" or "binding" law is needed for reconsideration; indeed, there need only be a "material difference in . . . law" or a "change of law" to warrant reconsideration.

Nat'l Credit Union Admin. Bd. v. Goldman Sachs & Co., No. CV 11-6521-GW(JEMX), 2013 WL 12306438, at *3 (C.D. Cal. July 11, 2013) (cleaned up); *see also Tongson v. Cnty. of Maui*, No. 5-683-BMK, 2007 WL 2377355, at *2 n.1 (D. Haw. Aug. 15, 2007) (noting that binding precedent is not needed to accept motion for reconsideration where local law does not mention "intervening controlling law" is necessary).

Accordingly, courts in this District and throughout the Ninth Circuit have exercised their discretion to reconsider prior orders based on persuasive authority. *E.g.*, *Barker v. Insight Glob., LLC*, No. 16-CV-07186-BLF, 2019 WL 176260, at *3 (N.D. Cal. Jan. 11, 2019) ("Thus, even if [a California Court of Appeal decision] is not controlling or new law

which is a necessary prerequisite for Plaintiff's Motion for Reconsideration, the Court retains the discretion to sua sponte reconsider its order and chooses to do so here.").

The emergence of reasoned decisions from two district judges—particularly Judge Chhabria, who presided over *Zepeda Rivas* and approved the Settlement—expressly disagreeing with this Court's analysis and identifying provisions the Order did not address provides ample justification for the Court to exercise its inherent discretion. Judge Chhabria expressly noted that the Order at issue here "did not explicitly grapple with ICE's agreement that its rearrest and re-detention practices after the three-year period 'will occur pursuant to generally applicable law and policy,' which should be understood to include the petitioner's due process rights." *Doe*, 2025 WL 3141224, at *1 (quoting the Settlement). Judge Donato reached the same conclusion. *Cux Jocop*, 2025 WL 3124081, at *1.

Second, Respondents' attempt to distinguish *Doe* and *Cux Jocop* based on the specific statutory detention provisions at issue, (assuming *arguendo* the accuracy of that claim) misses the point entirely. Those cases addressed the dispositive issue presented in this case: whether *Zepeda Rivas* Settlement class members who lived freely for years under the Settlement's terms possess a cognizable liberty interest requiring pre-arrest due process protections. Both courts held they do. The statutory basis for future detention—§ 1225, 1226(a), § 1226(c)—is irrelevant to that inquiry. As the Supreme Court has made clear, the liberty interest analysis focuses on whether a person has been conditionally released from confinement and, as a result, become "gainfully employed," been "free to be with family and friends," and formed the "enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). That inquiry turns on the nature and duration of the liberty enjoyed, not the specific statutory mechanism by which the government might later seek

1 to curtail it.

2 In conclusion, the Court retains inherent discretion to reconsider its interlocutory
3 orders, including its denial of Petitioners' preliminary-injunction request, based on changes
4 in persuasive law. And even if not under the auspices of granting the motion for
5 reconsideration, based on these developments in the law, the Court can and should grant
6 the habeas petition itself.
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8 **II. Notwithstanding Respondents' Assertions to the Contrary, Petitioners Have**
9 **Identified Material Facts That the Order Failed to Consider.**

10 Respondents contend that Petitioners have failed to identify a "manifest failure of the
11 Court to consider material fact." Opp. at 2. Respondents are mistaken. Petitioners have identified
12 the material factual distinction that underlies their reconsideration motion: the Order's conflation
13 of Petitioners' 2020 emergency releases with their 2022-2025 Settlement-governed liberty. This
14 misapprehension falls squarely within Local Rule 7-9(b)(3), which permits reconsideration where
15 there was "[a] manifest failure by the Court to consider material facts."
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17 The Order states that "Petitioners were released on bond within the unique circumstances
18 created by the COVID-19 crisis and the Zepeda Rivas settlement agreement," and reasons that
19 "[p]resumably, had the exigent circumstances caused by the pandemic not occurred, both Rivera
20 and Khan would have remained in detention." Dkt. 17 at 13.
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22 This characterization conflates Petitioners' 2020 releases with their continued liberty from
23 2022 to 2025, which rested on distinct legal grounds. The conflation formed the basis for the
24 Order's conclusion that Petitioners' liberty interest was insufficiently weighty to trigger due
25 process protections.
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27 Respondents argue that "it is impossible to extract the COVID-19 pandemic from the
28 Zepeda Rivas case" because the Settlement was reached in June 2022 while the federal public

health emergency extended until May 2023. Opp. at 2-3. But Respondents' own timeline refutes their characterization of the Settlement as a temporary pandemic measure. The Settlement remained in effect until June 2025—more than two years after the public health emergency had ended, in May 2023. If the Settlement were truly just emergency pandemic relief, as both the Order and Respondents suggest, it would not have remained in effect for years after the government-recognized end of the pandemic. Indeed, the Settlement governed Petitioners' liberty for more than twice as long after the pandemic ended (24 months) as it did during the pandemic's final stages (11 months from June 2022 to May 2023). Notably, only weeks after the settlement went into effect, the CDC dramatically scaled back and even dropped recommendations such as quarantine and social distancing that were basic measures during the pandemic. *See CDC Relaxes COVID-19 Guidelines, Drops Quarantine And Social Distancing Recommendations*, PBS News (Aug. 11, 2022), https://www.pbs.org/newshour/health/cdc-relaxes-covid-19-guidelines-drops-quarantine-and-social-distancing-recommendations. This timeline demonstrates that the Settlement was not a temporary emergency measure but rather a forward-looking agreement that restricted ICE's detention authority independent of pandemic conditions. As Judge Chhabria explained in rejecting Respondents' identical "exigent circumstances" argument in *Doe*:

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

2025 WL 3141224, at *1.

Respondents appear to further argue that because the Settlement was "temporary," Petitioners' liberty interest was insufficiently weighty to trigger due process protections. *See* Opp. at 2-3. But, many constitutionally protected liberty interests have defined endpoints—parole

supervision, pretrial release conditions, probation terms—yet all require hearings before revocation. What matters in assessing "the nature of the interest of the parolee in his continued liberty" is whether that person has formed the "enduring attachments of normal life" during their conditional freedom, *Morrissey*, 408 U.S. at 482, not whether the legal instrument that initially governed that freedom has an expiration date.

Moreover, Respondents fail entirely to address the Settlement provision that both Judge Chhabria and Petitioners emphasize: "ICE's re-arrest and re-detention practices for Class Members w[ould] occur pursuant to generally applicable law and policy." Settlement at 13. As Judge Chhabria noted, the Order "did not explicitly grapple with" this language, "which should be understood to include the petitioner's due process rights." *Doe*, 2025 WL 3141224, at *1. Respondents' opposition similarly does not address this language. By ignoring it, Respondents avoid confronting the central flaw in their position: the government voluntarily agreed that its re-detention practices would comply with "generally applicable law and policy"—which, as Judge Chhabria recognized, includes due process protections.

The factual record is clear: Petitioners were released in 2020 under exigent pandemic circumstances, but their continuing liberty from 2022 through 2025 was governed by a voluntary settlement agreement that the government entered into as the pandemic began to recede and that extended restrictions on ICE's detention authority through June 2025. During those years, Petitioners formed precisely the kind of liberty interest that *Morrissey* and its progeny protect. The Order's characterization of this liberty interest as merely "a product of exigent circumstances" does not account for the material distinction between Petitioners' 2020 emergency release and their 2022-2025 Settlement-governed liberty, and thus warrants reconsideration.

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CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant this motion for reconsideration and, upon reconsideration, grant Petitioners' motion for preliminary injunction. But even if the Court denies that request, Petitioners respectfully request that the Court grant their petition and order the relief requested therein.

Respectfully submitted,

Dated: February 20, 2026

/s/ Jordan Wells

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