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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Jorge RIVERA LARIOS,

Petitioner,

Case No. 3:25-cv-8799

v.

SERGIO ALBARRAN, in his official capacity,
San Francisco Field Office Director, U.S.
Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity,
Secretary of the U.S. Department of Homeland
Security; and

PAMELA BONDI, in her official capacity,
Attorney General of the United States,

Respondents.

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE TO
ORDER TO SHOW CAUSE AND
REPLY TO OPPOSITION TO
PRELIMINARY INJUNCTION**

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INTRODUCTION

Respondents' arguments in opposition to the motion for a temporary restraining order and motion for a preliminary injunction filed by Petitioner Jorge Rivera Larios (Mr. Rivera Larios) are without merit.¹ At the heart of why Respondents' arguments fail is their fundamental mischaracterization of the arrest that serves as the purported basis for the revocation of Mr. Rivera Larios's supervision. Because Respondents cannot justify their purported revocation in the circumstances of Mr. Rivera Larios's case, they are unable to defend against a violation of the statute, as well as the deprivation of due process in his case. For the reasons outlined below, the Court should find that there is no legal authority to re-detain Mr. Rivera Larios, order his release or alternatively, require a pre-deprivation hearing in accordance with due process guarantees.

SUPPLEMENTAL FACTUAL AND PROCEDURAL HISTORY

Petitioner Jorge Rivera Larios supplements the factual and procedural history in his case, given recent developments relating to his requests for emergency relief before the Court. Mr. Rivera Larios last entered the United States in 2017 fleeing  Declaration of Jorge Rivera Larios (Rivera Larios Decl.) ¶ 3. Cartel members beat him, threw him out of a moving vehicle on a highway, and left him for dead. *Id.* Mr. Rivera Larios therefore has a pending application for withholding of removal and deferral of removal under the Convention Against Torture (CAT) in immigration court. Declaration of Ilyce Shugall (Shugall Decl.) ¶¶ 11, 13, 16; Dkt. 14 at 3-4.

¹ Respondents also filed a return to Mr. Rivera Larios's habeas petition in conjunction with their reply to his motions for a temporary restraining order and a preliminary injunction. However, Mr. Rivera Larios will not file a traverse at present. Given recent factual developments outlined further below, Mr. Rivera Larios intends to file an amended habeas petition. For similar reasons, Mr. Rivera Larios asks that any pre-deprivation hearing be conducted by this Court rather than by the immigration court.

1 Mr. Rivera Larios met his wife, Phylis Rivera Larios in 2017 and they married in 2022.
2 *Id.* at ¶ 4. Mr. Rivera Larios struggled to cope with the traumatic experiences he endured in
3 Mexico and self-medicated with drugs and alcohol. *Id.* at ¶ 5; Shugall Decl. ¶ 11, Exhibit (Ex.)
4 D. His drug and alcohol use led to encounters with law enforcement in Lake County, California,
5 and he was arrested multiple times between 2019 and 2021. Rivera Larios Decl. ¶ 6. Mr. Rivera
6 Larios's only convictions are for a misdemeanor violation of California Vehicle Code §
7 14601.5(a), one felony violation of California Health and Safety Code § 11379(a), a probation
8 violation on the Section 11379(a) conviction, and a violation of Cal. Penal Code § 29800(a)(1).
9 *See* Dkt. 14-1, ¶ 5, Ex. 6; Dkt. 5-4 ¶ 5.

11 Mr. Rivera Larios married his United States citizen wife, Phylis, after his release from
12 detention. Rivera Larios Decl. ¶ 4. They had a child together in 2022. *Id.* Mr. Rivera Larios's
13 wife has been physically and emotionally abusive to him on and off since approximately
14 November 2020. *Id.* ¶ 7. She struggles with alcoholism and is abusive to Mr. Rivera Larios when
15 she drinks. *Id.*

17 Mr. Rivera Larios was the victim of two violent crimes in the United States, one in 2018
18 and another in 2020. *Id.* at ¶ 8. The 2018 attack formed the basis of his application for U
19 nonimmigrant status, which remains pending with the U.S. Citizenship and Immigration Services
20 (USCIS). Dkt. 5-4 ¶ 12; Shugall Decl. ¶ 10 Ex. C. USCIS received Mr. Rivera Larios's
21 application on July 31, 2023, while he was out of custody. Shugall Decl. ¶ 10 Ex. C. Mr. Rivera
22 Larios also pursued his application for withholding of removal and deferral of removal under
23 CAT while on the order of supervision. Shugall Decl. ¶¶ 11, 12. Through counsel, he prepared
24 for a scheduled hearing on the merits of his application in immigration court and timely filed all
25 supporting documents, including a psychological evaluation that was based on meetings with Mr.
26 Rivera Larios when he was in ICE custody and after he was released. *Id.* at ¶ 11 Ex. D.

1 On August 26, 2024, the immigration court sua sponte rescheduled Mr. Rivera Larios's
2 hearing from September 10, 2024 to February 17, 2026. Shugall Decl. ¶ 12. Mr. Rivera Larios,
3 through counsel, sought to advance the hearing, but the court denied the motion to advance. *Id.*
4 Thereafter, on January 2, 2025, the immigration court administratively closed Mr. Rivera
5 Larios's proceedings due to the pending application for a U visa. *Id.*

6 In addition to pursuing immigration benefits, while released on the order of supervision,
7 Mr. Rivera Larios attended all scheduled check ins with ICE and the Intensive Supervision and
8 Appearance Program (ISAP). Dkt. 5-4 ¶ 9. Mr. Rivera Larios also sought help for substance
9 abuse. Rivera Larios Dec. ¶ 6.

11 Mr. Rivera Larios eventually learned during an argument with his wife that she was
12 behind both attacks against him in the United States. Rivera Larios Decl. ¶ 9. Although Mr.
13 Rivera Larios had been advised by a neighbor that calling the police could lead to his arrest
14 rather than hers, Mr. Rivera Larios called the Lake County Sheriff's Office in August 2025 on an
15 occasion when his wife was behaving violently. *Id.* Although Mr. Rivera Larios was the one to
16 call for help and did not engage in any harm against his wife, officers detained him. *Id.* at ¶ 14.
17 He was released approximately one day later with a Detention Certificate from the Lake County
18 Sheriff's Office showing that he was detained, not arrested, and no charges were being filed.
19 Shugall Decl. ¶ 7. Ex. B. Mr. Rivera Larios now fully recognizes the need to separate from his
20 wife. Rivera Larios Decl. ¶ 24.

22 As always, since his release from custody, Mr. Rivera Larios appeared for his regularly
23 scheduled order of supervision check in on October 14, 2025. Rivera Larios Decl. ¶ 15; Shugall
24 Decl. ¶ 3. After waiting for hours, Mr. Rivera Larios and counsel were escorted to an office on
25 the fifth floor of the San Francisco ICE field office, where the ICE officer asked Mr. Rivera
26 Larios standard questions in connection with an order of supervision check in. Shugall Decl. ¶ 3.

1 The conversation lasted approximately five to ten minutes, during which the ICE officer never
2 advised that she was conducting an “informal interview” in accordance with 8 C.F.R. § 241.4(l).
3 *Id.* at ¶ 4. Instead, she left the office stating she was reviewing the case. *Id.* Neither Mr. Rivera
4 Larios nor counsel were served with any documents during the check in. Shugall Decl. ¶ 5.
5 When the ICE officer returned, she advised Mr. Rivera Larios that ICE was taking him into
6 custody because he violated the terms of his release when he was arrested in August 2025. *Id.* at
7 ¶ 5. While Mr. Rivera Larios explained that he was not arrested but rather detained and released,
8 the officer did not provide him an opportunity to explain what happened. *Id.* The ICE officer
9 subsequently served counsel Form I-200 DHS Warrant for Arrest. *Id.* Ex. A. The officer served
10 Mr. Rivera Larios the Notice of Revocation for Release outside of counsel’s presence once he
11 was in ICE’s custody. Rivera Larios Decl. ¶ 19; *see also* Dkt. 14-1 ¶ 24 Ex. 4.

13 After Mr. Rivera Larios was released from ICE custody on this Court’s order, a flurry of
14 activity ensued before the immigration court, where his withholding only proceedings had been
15 administratively closed for nine months. Shugall Decl. ¶¶ 12-18. Three days after Mr. Rivera
16 Larios was detained and one day after this Court’s temporary restraining order was issued, on
17 October 17, 2025, counsel for the Department of Homeland Security (DHS) filed a motion to
18 recalendar Mr. Rivera Larios’s withholding only proceedings with the immigration court. Shugall
19 Decl. ¶ 13 Ex. E. On October 20, 2025, Mr. Rivera Larios, through counsel, filed an opposition
20 to DHS’ motion. *Id.* Ex. F. Within approximately one hour of receiving Mr. Rivera Larios’s
21 opposition, on October 20, 2025, the immigration court granted DHS’ motion to recalendar,
22 finding “Good cause shown.” *Id.* Ex. G. On October 21, 2025, at approximately 5:00 p.m., the
23 same date Respondent’s opposition was due to this Court, counsel for DHS filed a motion to set a
24 pre-deprivation hearing with the immigration court. *Id.* at ¶ 15 Ex. H.

On October 22, 2025, the immigration court issued a hearing notice for an in-person master calendar (status) hearing on November 19, 2025. Shugall Dec. ¶ 16. On October 23, 2025, two days after counsel for DHS filed the motion for a pre-deprivation hearing, and despite the governing policy in the Immigration Court Practice Manual Chapter 3.1(c)(2)(E) that the deadline to file a response to a motion is ten days, the immigration court granted DHS' motion stating, "DHS requests that a Pre-Deprivation Hearing be set. Good cause shown." *Id.* at ¶ 17 Ex. I. The immigration court advanced Mr. Rivera Larios's master calendar hearing to November 5, 2025 at 1:30 p.m. and set the pre-deprivation hearing for the same time. *Id.* Exs. I, J. As counsel will be traveling for a conference on November 5, 2025, she filed a motion for continuance on October 23, 2025. Shugall Decl. ¶ 18. In similar cases where district courts granted temporary restraining orders, DHS moved to schedule pre-deprivation hearings in immigration court. *Id.* ¶ 19. In five out of six cases undersigned counsel became aware of, the immigration court ordered the noncitizen's re-detention. *Id.* In the case where the noncitizen remained released, the immigration court ordered a new bond be posted. *Id.*

ARGUMENT

I. Mr. Rivera Larios will likely succeed on the merits of his request of injunctive relief

Contrary to Respondents' assertion, Mr. Rivera Larios is likely to succeed on the merits of his claim for injunctive relief. Respondents do not meaningfully contest that Mr. Rivera Larios's re-detention pursuant to 8 U.S.C. § 1231(a)(6) violates the statute. Moreover, the only authority to re-detain Mr. Rivera Larios under the statutory and regulatory framework applicable by Respondents' own characterization here are 1) if he has violated the terms of his supervision, which he has not; or 2) if removal is reasonably foreseeable, which it is not. 8 C.F.R. § 241.4(l); *see also* 8 C.F.R. § 241.13. Respondents attempt to fabricate the conditions for which Mr. Rivera Larios's re-detention is justified, but they cannot, either as matter of fact or law. For these

1 reasons, Respondents arguments that the statute permits Mr. Rivera Larios's re-detention and
 2 that their regulatory procedure has provided sufficient process must fail. Also for these reasons,
 3 Respondents' arguments that Mr. Rivera Larios is not entitled to constitutional due process
 4 before any re-detention in the circumstances of his case likewise fail.

5 **a. Respondents cannot justify Mr. Rivera Larios's re-detention pursuant to 8**
 6 **U.S.C. § 1231(a)(6)**

7 Respondents suggest that Mr. Rivera Larios "simply ignores that Congress authorized
 8 DHS to promulgate regulations for the ongoing supervision of aliens who are not removed within
 9 90 days." Dkt. 14 at 7 (citing 8 U.S.C. § 1231(a)(3)). However, Mr. Rivera Larios acknowledged
 10 in his habeas petition that revocation of release on supervision under 8 U.S.C. § 1231(a)(6) may
 11 be possible in certain circumstances per DHS regulations. *See* 8 C.F.R. § 241.4(l); *see also* Dkt.
 12 1 at ¶¶ 27-30; Dkt. 5-3 at 6-7.

14 Respondents implicitly recognize that, unless an individual violates the terms of their
 15 supervision following release upon expiration of the 90-day removal period pursuant to 8 U.S.C.
 16 § 1231(a)(6) and 8 C.F.R. § 241.4(l), there is no statutory or regulatory basis for DHS to take
 17 someone back into custody. Dkt. 14 at 7. To justify a violation of the statute and regulations in
 18 Mr. Rivera Larios's case, however, Respondents mischaracterize his purported arrest by Lake
 19 County authorities in August 2025.² According to Respondents, because Mr. Rivera Larios was
 20 arrested for a felony domestic violence incident, which resulted in no criminal charges being
 21 filed, "DHS reasonably determined that Petitioner had violated his conditions of release."³ *Id.*

23
 24 ² Respondents also reference Mr. Rivera Larios's full arrest history, all of which is irrelevant to his re-
 25 detention, as the only contact he had with law enforcement since his release from ICE custody was in August
 2025. Dkt. 14 at 2-3.

26 ³ The regulations do not provide an evidentiary standard governing the revocation of release. It is unclear on
 27 what basis Respondents adopt a "reasonable" basis standard. At least once court has noted the standard to be
 28 a "material change in circumstances." *See Guillermo M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL
 1983677, at *1 (N.D. Cal. July 17, 2025). As Respondents note later, in the context of parole revocation
 hearings, courts apply a "preponderance of the evidence" standard. Dkt. 14 at 12.

1 Respondents make an extraordinary factual leap in alleging a violation of the terms of
2 Mr. Rivera Larios's supervision – which was specifically, that he not commit any crimes (Dkt.
3 14-1 ¶ 20, Ex. 2) based on a mere detention. To be clear, the term of Mr. Rivera Larios's
4 supervision was that he not commit crimes, not merely that he avoid arrest. *See e.g., Guillermo*
5 *M.R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *10 (N.D. Cal. July 17, 2025)
6 (granting preliminary injunction where DHS sought re-detention on the basis of an arrest that did
7 not lead to criminal charges). Even assuming that the “informal interview” that Deportation
8 Officer (DO) Jennifer Ramirez purported to conduct with Mr. Rivera Larios suffices as due
9 process, which is questionable as discussed *infra*, the information gleaned falls short of
10 establishing a “reasonable” basis, or any reliable basis, for DHS to conclude that Mr. Rivera
11 Larios committed a crime. The only “evidence” that DO Ramirez obtained was Mr. Rivera
12 Larios's statement, which cannot be viewed, even under the most generous of standards, as
13 substantiating a finding that he had committed a crime. *See Shugall Decl.* ¶ 5; *see also Guillermo*
14 *M.R. v. Kaiser*, 2025 WL 1983677 at *9 (noting ICE's ability to obtain police reports).
15

16
17 In circular logic, and misconstruing Mr. Rivera Larios's arguments, Respondents protest
18 that Congress could not have intended to deprive DHS of the authority to re-detain individuals
19 who violate the terms of their release. Dkt. 14 at 7. Respondents ignore that Mr. Rivera Larios
20 *agrees* that DHS has authority to revoke an individual's supervision. What Mr. Rivera Larios
21 takes issue with is Respondents' unsubstantiated allegation that he violated the terms of his
22 supervision because he committed a crime, which the factual record in no way supports.
23

24 In fact, had Respondents engaged in a fair inquiry regarding Mr. Rivera Larios's arrest,
25 they would have to contend with the facts. As Mr. Rivera Larios attests, he called the sheriff in
26 August of 2025, because his wife, who battles alcoholism and has engaged in physical and
27 emotional abuse towards him, had become violent. Rivera Larios Decl. ¶¶ 13-14. Mr. Rivera
28

1 Larios sought protection from authorities, but officers instead took him into custody. *Id.*
2 Subsequently, the Lake County Sheriff's Office issued a "Detention Certificate" to Mr. Rivera
3 Larios, corroborating that he was neither arrested nor prosecuted. Shugall Decl. ¶ 7, Ex. B.

4 Mr. Rivera Larios does not question DHS's authority to detain an individual during the
5 removal period, 8 U.S.C. § 1231(a)(3). But once an individual is released on supervision in
6 accordance with 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.4(l)(1), re-detention is authorized in
7 circumstances not met here. Moreover, as discussed more fully below, it implicates a weighty
8 liberty interest. Mr. Rivera Larios's evidence more than establishes that he did not commit a
9 crime while on an order of supervision. And Respondents have offered no concrete evidence to
10 the contrary. As such, Mr. Rivera Larios has not violated the terms of his supervision and
11 Respondents' revocation is without lawful basis. Respondents' re-detention of Mr. Rivera Larios
12 thus contravenes the statute and the regulations. The Court should find that Respondents have no
13 basis in law or fact to revoke Mr. Rivera Larios's supervision nor consequently, to re-detain him.
14

15
16 **b. Respondents have failed to demonstrate that the regulations adequately**
17 **provide due process in safeguarding Mr. Rivera Larios against unjustified**
18 **detention**

19 Because Mr. Rivera Larios has not violated the terms of his supervision, Respondents do
20 not have statutory authority to re-detain him. However, in the alternative, should the Court find
21 any merit in Respondents' claim that they can re-detain Mr. Rivera Larios, Mr. Rivera Larios
22 may avail himself of due process protections before he is deprived of his freedom.

23 As an initial matter, Respondents mischaracterize Mr. Rivera Larios's argument to be that
24 he warrants a bond hearing under the statute. Dkt. 14 at 7. This is not Mr. Rivera Larios's
25 contention, and he recognizes that the Supreme Court opined that 8 U.S.C. § 1231 cannot be read
26 to allow for consideration of bond for detained individuals in withholding-only proceedings.

27 *Johnson v. Guzman Chavez*, 594 U.S. 523, 526 (2021). Nor does Mr. Rivera Larios dispute the
28

1 government's general authority to detain individuals during the pendency of removal
2 proceedings – albeit subject to limitations, including, as Respondents note, detention that
3 becomes prolonged. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

4 But Mr. Rivera Larios does not raise a challenge to prolonged detention or that removal is
5 not foreseeable for obvious reasons: he is not detained. Respondents released Mr. Rivera Larios
6 over three years ago, and now purport to deprive him of that liberty without any process. This is
7 altogether a different posture, which Respondents do not meaningfully address.

8
9 **i. Respondents' contention that Mr. Rivera Larios's "history and status
reduce his liberty" is unsupported by law**

10 While Respondents question the application of *Matthews* to Mr. Rivera Larios's
11 circumstances, courts have repeatedly applied the *Matthews* three-prong test to assess the
12 propriety of ordering a hearing before a neutral arbiter before an individual is deprived of his
13 liberty. *See Pinchi v. Noem*, --- F.Supp.3d ----2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025)
14 (applying *Matthews*); *Guillermo M.R. v. Kaiser*, 2025 WL 1983677, at *4 (same); *Rodriguez*
15 *Rodriguez v. Kaiser*, 1:25-cv-1111-KES-SAB, 2025 WL 2545359, at *4 (E.D. Cal. Sept. 4,
16 2025) (same). As Mr. Rivera Larios argued in his memorandum, the Court must apply *Matthews*
17 here. Dkt. 5-3 at 13.

18 Respondents describe Mr. Rivera Larios's liberty interest as "...reduced by the fact that
19 he is a noncitizen subject to a final order of removal who violated the conditions of his release,"
20 (citing *Uc Encarnacion v. Kaiser*, No. 22-cv-04369-CRB, 2022 WL 9496434, at *3 (N.D. Cal.
21 Oct. 14, 2022); *Rodriguez Diaz v. Garland*, 53 F.4th 1189 at 1206-08 (9th Cir. 2022)).

22 Respondents also rely on Mr. Rivera Larios's immigration history and that he is subject to an
23 administrative order of removal for their claim that Mr. Rivera Larios has a reduced expectation
24 in his freedom. In mischaracterizing the liberty interest at stake here, Respondents argument on
25 this point fails.
26
27
28

Courts have repeatedly recognized the strong liberty interest implicated in Mr. Rivera Larios's case, where Respondents previously released him on supervision and there has been no change in circumstances. *Guillermo M.R. v. Kaiser*, 2025 WL 1983677, at *4; *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025); *J.O.L.R. v. Wofford*, 1:25-cv-1241, 2025 WL 2718631 (E.D. Cal. Sept. 23, 2025); *Rodriguez Rodriguez v. Kaiser*, 1:25-cv-1111-KES-SAB, 2025 WL 2545359, at *4 (E.D. Cal. Sept. 4, 2025); *Maklad v. Murray*, 1:25-cv-946, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025); *Doe v. Becerra*, --- F. Supp. 3d ---, 2025 WL 691664, at *4–5 (E.D. Cal. Mar. 3, 2025). In releasing Mr. Rivera Larios, Respondents necessarily determined that he was not a danger to the community or a flight risk, and that removal was not foreseeable. Respondents were aware of Mr. Rivera Larios's immigration history at the time they released him over three years ago. Moreover, Respondents fail to contend with the basis for Mr. Rivera Larios's last two attempts to enter the United States: fleeing forced work and extreme violence at the hands of the Sinaloa Cartel, seeking protection in the United States. Rivera Larios Dec. ¶ 3. The cartel repeatedly tortured Mr. Rivera Larios, leaving him for dead in approximately 2016. *Id.* The physical violence that Mr. Rivera Larios endured by the cartel has left him with extensive injuries into the present. Shugall Decl. ¶ 11 Ex. D. Given the harrowing persecution and torture to which the cartel subjected Mr. Rivera Larios, he has been diligently pursuing a claim under the Convention Against Torture (CAT). *Id.* at ¶¶ 11-12.⁴

That Mr. Rivera Larios is a noncitizen does not reduce or qualify his liberty interest or distinguish his circumstances from the petitioner in *Morrissey*, contrary to Respondents' argument. *Guillermo M.R. v. Kaiser*, 2025 WL 1983677. Respondents repeatedly distinguish

⁴ Under the CAT, "the United States has agreed not to 'expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.'" *Encarnacion v. Bondi*, No. 22-1601, 2025 WL 2775775, at *12 (9th Cir. Sept. 30, 2025) (quoting Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, Div. G, Title XXII, § 2242, 112 Stat. 2681-761, 2681-822 (codified as note to 8 U.S.C. § 1231)).

Mr. Rivera Larios’s liberty interest based on his arrest for a “violent felony,” a characterization that they pull from thin air without any evidence.⁵ Confusingly, Respondents do not clarify whether they view Mr. Rivera Larios’s violation of supervision as an “arrest” or the actual commission of a crime – substantially two different circumstances, the latter of which he does not dispute could result in revocation of his supervision. Respondents’ inability to grapple with this fundamental factual distinction undermines their arguments on this point. Moreover, the cases on which Respondents rely to justify that a mere arrest can result in re-detention are inapposite to this case. *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021); *United States v. Cisneros*, No. 19-cr-00280-RS-5, 2021 WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021).

ii. The risk of erroneous deprivation is not minimal

Respondents attempt to downplay the risk of erroneous deprivation because Mr. Rivera Larios, subject to a final administrative order of removal, is properly subject to detention under 8 U.S.C. § 1231. As such, according to Respondents, the procedures under 8 C.F.R. § 241.4(l)(1) attach and are sufficient process in determining whether revocation of suspension is warranted. Dkt. 14 at 11. Mr. Rivera Larios does not agree that the latter is correct under the circumstances of his case, nor that Justice Sotomayor’s “statement” in *Abrego Garcia v. Noem* referencing § 241.4(l) renders these procedures constitutionally sufficient. Dkt. 14 at 11, citing *Abrego Garcia v. Noem*, 145 S. Ct. 1017, 1019 (2025).

⁵ Respondents’ contention that “a criminal arrest can so qualify and therefore support revoking a release—even if charges were never filed,” is unsupported by the cases on which they purport to rely. Dkt. 14 at 10 (citing *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021); *United States v. Cisneros*, No. 19-cr-00280-RS-5, 2021 WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021) (parenthetical omitted)). Panyosan in turn cites to *Picrin-Peron v. Risin*, 930 F.2d 773, 776 (9th Cir. 1991), which addressed the doctrine of voluntary cessation and in passing incorporated the statement Respondents cite, as a representation by the government in that case for why Panyosan’s habeas was moot. It did not at all purport to address a legal standard. *Cisneros* involved a Fourth Amendment challenge to the legality of the petitioner’s re-arrest pursuant to an administrative warrant on various procedural grounds and in which the underlying evidence of criminal conduct was much more substantive than what Respondents have been able to muster here. *United States v. Cisneros*, 2021 WL 5908407 at *1 (describing investigation preceding arrest).

1 Respondents mischaracterize the revocation of supervision as "...a resumption of post-
2 removal-period detention under § 1231(a), which is constitutionally permitted without a pre-
3 detention hearing." Dkt. 14 at 11. Had Mr. Rivera Larios indeed committed a crime, his ability to
4 challenge the process afforded by the regulations may have been reduced. But he did not. The
5 "process" as it played out in Mr. Rivera Larios's case reflect why the protections under §
6 241.4(l)(1) are insufficient here. *See e.g., Diouf v. Napolitano*, 634 F.3d 1081 at 1091 (9th Cir.
7 2011), *abrogated on other grounds by Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827 (2022);
8 *Casas-Castrillon v. DHS*, 535 F.3d 942, 951–52 (9th Cir. 2008), *abrogated on other grounds in*
9 *part by Jennings v. Rodriguez*, 583 U.S. 281 (2018). Moreover, given the events that transpired
10 since the revocation of Mr. Rivera Larios's supervision, not only are the regulatory procedures
11 governing release on supervision insufficient, but Mr. Rivera Larios also urges that any pre-
12 deprivation query must be conducted by this Court to comport with due process. *See Shugall*
13 *Decl ¶¶ 13-17.*

14
15 Here, Respondents' argument that courts have repeatedly sanctioned re-detention based
16 on a mere arrest has no merit. Respondents' description of parole revocation procedures
17 highlights why the revocation process under § 241.4(l) is insufficient as applied to Mr. Rivera
18 Larios. As Respondents describe, in revocation hearings in the criminal context, decisions are
19 made based on a weighing of the evidence, involve application of the preponderance of the
20 evidence standard and, allow for review, albeit under an abuse of discretion standard. Dkt. 14 at
21 12-13. Similar protections were not provided in Mr. Rivera Larios's "informal interview."

22
23 Further, that Mr. Rivera Larios has an administratively final removal order does not mean
24 he can be re-detained on a pretext, which is what Respondents have done in his case.
25 Additionally, not only did Mr. Rivera Larios not commit a crime, but since this Court's issuance
26 of a TRO, Respondents have acted behind the scenes to accelerate his removal, and seemingly
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1 bolster their argument that his detention pending removal under 8 U.S.C. § 1231 should give the
2 Court no pause. In the past week, DHS counsel moved to re-calendar Mr. Rivera Larios's
3 removal proceedings, which had been administratively closed pending processing of his U visa
4 application. Shugall Decl. ¶ 13, Ex. E. Without providing any evidence to Mr. Rivera Larios or
5 his counsel, DHS claims that USCIS issued a negative bona fide determination on the U visa.
6 Dkt. 6-1, Ex. B. The immigration court swiftly granted DHS's motion over counsel's objection,
7 scheduled Mr. Rivera Larios for a status hearing on November 19, 2025, only to further advance
8 it to November 5, 2025. Shugall Decl. ¶ 13, Exs. F, G.

9
10 Subsequent to seeking to re-calendar Mr. Rivera Larios's removal proceedings, on
11 October 21, 2025, DHS filed motion for a pre-deprivation hearing before the immigration court.
12 *Id.* at ¶ 15, Ex. H. The court acted swiftly to calendar that hearing on November 5, the same date
13 for Mr. Rivera Larios's advanced status hearing. *Id.* at ¶ 17, Exs. I, J.

14 For these reasons, Mr. Rivera Larios urges that any pre-deprivation hearing be conducted
15 by this Court, rather than the immigration court. After inquiring with colleagues, Mr. Rivera
16 Larios's counsel learned that in approximately six recent instances in which DHS moved to
17 schedule a pre-deprivation hearing, five resulted in a decision to detain the noncitizen. *Id.* at ¶ 19.
18 Respondents have made clear their intention to re-detain Mr. Rivera Larios, notwithstanding a
19 lack of justification.
20

21 **iii. The balance of interests weighs in Mr. Rivera Larios's favor**

22 Respondents have argued nothing to disturb Mr. Rivera Larios's contention that the
23 balance of interests weigh in his favor. Respondents rely on the governmental interests in
24 safeguarding the community and effectuating removal. Dkt. 14 at 14. In characterizing Mr.
25 Rivera Larios as a danger to the community, Respondents simply refuse to grapple with the true
26 facts of this case – that they released Mr. Rivera Larios on an order of supervision with full
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1 knowledge of his criminal history and Mr. Rivera Larios has been free from Respondents'
2 custody for over three years without incident. Again, Respondents' attempts to cast his August
3 2025 arrest as the "commission of a crime" for purposes of revoking release are simply
4 unsupported.

5 Moreover, removal in Mr. Rivera Larios's case is not "imminent." He has a pending
6 meritorious defense to his deportation under the CAT based on the brutal torture that he endured
7 by  in Mexico. Separately, Mr. Rivera Larios was the victim of another brutal
8 beating – an extension of the physical abuse that he has endured by his wife-- and qualifies for a
9 U visa as the victim of a crime in the United States. Even if the immigration agencies steamroll
10 his proceedings, Mr. Rivera Larios may still pursue review before the Ninth Circuit Court of
11 Appeals, which can take years to conclude.

12
13 Last, Respondents' protests that requiring a hearing before a neutral arbiter, "...would
14 impose administrative and resource burdens on the government that would frustrate its ability to
15 take congressionally authorized detention and removal actions," Dkt. 14 at 14, is belied by the
16 fact that DHS has moved to schedule a pre-deprivation hearing before the immigration court and
17 the court has scheduled that hearing with quick speed.

18
19 **II. Mr. Rivera Larios will suffer irreparable harm absent an order from this Court**

20 Mr. Rivera Larios faces irreparable harm and Respondents' attempts to recharacterize or
21 diminish the harms he faces are without merit. If the Court does not intervene, Mr. Rivera Larios
22 faces the loss of freedom, the zenith of a constitutional liberty interest. This harm is exacerbated
23 by the fact that Respondents have no basis in fact or law to re-detain Mr. Rivera Larios and have
24 acted instead to thwart his continued freedom.

25
26 Respondents claim that any harm that Mr. Larios faces if detained is "tenuous." But
27 courts have recognized that the loss of health and access to family are sufficient irreparable harm
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for individuals facing immigration detention. Further, because of deficient immigration detention conditions, Mr. Rivera Larios was previously released, in part, on class litigation that implicated the adequacy of immigration detention conditions during the pandemic. Dkt. 5-4 ¶ 8. Respondents attempt to assuage the undeniable harm that Mr. Rivera Larios faces in the absence of a pre-deprivation hearing by arguing that Mr. Rivera Larios will be able to seek release if detained long enough under the very faulty procedures that have led him to seek emergency relief before this Court in the first instance.

III. The Balance of Equities Mitigates in Mr. Rivera Larios's favor

For similar reasons as outlined supra, § I.b.iii Respondents' claim that the equities favor the government because of its interest in the "speedy removal" of a noncitizen is without merit. Further, the public interest cannot be served when the government actively engages to thwart constitutional rights as Respondents have done here.

CONCLUSION

For the above-outlined reasons, Mr. Rivera Larios requests that this Court grant his motion for a preliminary injunction.

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