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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Jorge RIVERA LARIOS,

Petitioner,

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.

Case No.: 3:25-cv-8799-AMO

PETITIONER'S NOTICE OF MOTION AND  
MOTION TO ENFORCE PRELIMINARY  
INJUNCTION; MEMORANDUM OF POINTS  
AND AUTHORITIES

Date: TBD

Time: TBD

Before: Honorable Judge Araceli Martinez  
Olguin

Immigration Habeas Case

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that, on a date and time ordered by this Court, before the Honorable Araceli Martinez Olguin, Petitioner will move the Court to enforce its October 31, 2025 Preliminary Injunction Order, and further, to order Respondents to immediately release Petitioner from immigration custody.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Ilyce Shugall with Accompanying Exhibits in Support of Petitioner's Motion to Enforce Preliminary Injunction. As set forth in the Points and Authorities in support of this Motion, Petitioner seeks that this Court enforce its Order because Respondents have no lawful basis to re-detain Petitioner after Respondents previously released him on an Order of Supervision. , Petitioner respectfully submits that he is entitled to immediate release.

WHEREFORE, Petitioner prays that this Court grant his Motion to Enforce the Preliminary Injunction issued by this Court on October 31, 2025, and order his immediate release from unlawful detention.

Dated: November 7, 2025

Respectfully submitted,

/s/Ilyce Shugall  
Ilyce Shugall

## INTRODUCTION

Petitioner Jorge Rivera Larios (Mr. Rivera Larios) moves the Court to enforce its October 31, 2025 Order Granting Preliminary Injunction. The Court enjoined Respondents from re-detaining Mr. Rivera Larios “without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether his re-detention is warranted based on flight risk or a danger to the community.” Dkt. 22 at 18. Respondents purported to provide Mr. Rivera Larios with a pre-deprivation hearing before the Immigration Judge (IJ), which took place on Monday, November 3, 2025. Following that hearing, Respondents unlawfully re-detained Mr. Rivera Larios, in violation of this Court’s preliminary injunction. First, the IJ found that Mr. Rivera Larios did not violate the terms of his order of supervision. Thus, the government had no statutory authority to re-detain Mr. Rivera Larios. Second, the IJ erroneously found Mr. Rivera Larios to be a danger to the community and a flight risk in the alternative based on information that was known to Immigration and Customs Enforcement (ICE) when it released him from custody in January of 2022. This finding by the IJ is erroneous and cannot separately justify Mr. Rivera Larios’s re-detention by ICE.

Moreover, the IJ specifically refrained from opining on whether or not ICE has the authority to re-detain Mr. Rivera Larios, stating she would “defer” to the agency. That the IJ declined to make a finding regarding Mr. Rivera Larios’s re-detention does not provide justification for Respondents to re-detain him. Further, the IJ’s deference to ICE as to whether it could detain Mr. Rivera Larios undermines the IJ’s role as the neutral arbiter in Mr. Rivera Larios’s pre-deprivation hearing.

Mr. Rivera Larios now moves this Court to enforce its preliminary injunction order. This Court can directly review the findings made by the IJ at the conclusion of his November 3, 2025 pre-deprivation hearing. As the Court has already noted in its decision issuing the injunction in his case, Mr. Rivera Larios has not violated the terms of his order of supervision, a finding which the IJ also made. On this basis alone, the Court should find that Respondents have no present justification for re-detaining Mr. Rivera Larios. Regarding the IJ’s finding that Mr. Rivera Larios is a danger to the community and a flight risk based on evidence pre-existing his release by ICE on supervision, the Court should review this erroneous conclusion, and likewise, find that Respondents cannot justify Mr. Rivera Larios’s detention on this basis. In either case, the Court should order that Respondents immediately release Mr. Rivera Larios and find that he cannot be re-

1 detained without a showing of a material change in circumstances establishing a violation of Mr. Rivera  
 2 Larios's order of supervision.

### 3 RELEVANT STATEMENT OF FACTS AND PROCEDURAL HISTORY<sup>1</sup>

4 On October 16, 2025, this Court issued a Temporary Restraining Order, ordering Mr. Rivera Larios's  
 5 immediate release from ICE custody. Dkt. 7. Mr. Rivera Larios was released from ICE custody on October  
 6 16, 2025. Dkt. 9. On October 22, 2025, at the request of the Department of Homeland Security (DHS), the  
 7 immigration court scheduled a pre-deprivation hearing for Mr. Rivera Larios. Dkt. 15-1 ¶15, Ex. H; ¶ 17  
 8 Exh. I. Initially the immigration court scheduled Mr. Rivera Larios's hearing for November 5, 2025, and  
 9 subsequently advanced the hearing to November 3, 2025. *Id.*

10 On October 31, 2025, the Court issued a preliminary injunction, enjoining Respondents from re-  
 11 detaining Mr. Rivera Larios without notice and a pre-deprivation hearing before an Immigration Judge to  
 12 evaluate whether his detention was warranted based on flight risk and danger to the community. Dkt. 22 at  
 13 18.

14 Mr. Rivera Larios, through counsel, filed a motion to permit him and counsel to appear at his pre-  
 15 deprivation hearing via WebEx, as Mr. Rivera Larios lives approximately 120 miles from the immigration  
 16 court. Shugall Decl. ¶ 4. The immigration court issued an order allowing counsel to appear via WebEx, but  
 17 requiring Mr. Rivera Larios to appear in person. *Id.* On November 3, 2025, Mr. Rivera Larios appeared with  
 18 counsel in person at the immigration court for the pre-deprivation hearing. *Id.* at ¶ 7.<sup>2</sup> The immigration judge  
 19 appeared via WebEx, and counsel for DHS appeared in person. *Id.* The immigration judge asked the parties  
 20 about her statutory authority to conduct a bond hearing in Mr. Rivera Larios's case. *Id.* at ¶ 8. Counsel for  
 21 DHS stated that the authority stemmed from this Court's October 31, 2025 Preliminary Injunction order and  
 22 argued that the immigration court should conduct the hearing as governed by 8 U.S.C. § 1226(a). *Id.* Counsel  
 23 for Mr. Rivera Larios agreed that the immigration court had authority to conduct a pre-deprivation hearing  
 24

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25 <sup>1</sup> Mr. Rivera Larios has previously recounted the facts and procedural history relevant to his challenge to  
 26 Respondents' unjustified detention in his case and incorporates that history in his present motion. *See* Dkt. 1;  
 5-3; 15.

27 <sup>2</sup> After granting DHS's motion to recalendar Mr. Rivera Larios's previously administratively closed removal  
 28 proceedings over Mr. Rivera Larios's objection, the IJ separately scheduled a status hearing regarding Mr.  
 Rivera Larios's withholding-only proceedings for the same day. Dkt. 15-1 ¶ 16.

1 pursuant to this Court's preliminary injunction order. *Id.* at ¶ 9. Counsel for Mr. Rivera Larios also noted that  
2 this Court's preliminary injunction concluded that the evidence did not support a finding that Mr. Rivera  
3 Larios violated the terms of his order of supervision, and urged that the immigration court should find the  
4 same. *Id.* Counsel also argued that DHS should bear the burden of proof. *Id.*

5 The immigration judge conducted the hearing addressing factors under 8 U.S.C. § 1226(a). *Id.* at ¶  
6 10.

7 The immigration judge asked the parties' position on a bond amount. *Id.* at ¶ 13. Counsel for DHS  
8 asked that the immigration judge find Mr. Rivera Larios to be a danger and flight risk and find that he should  
9 be held without bond. *Id.* Counsel for Mr. Rivera Larios argued that the immigration judge should follow this  
10 Court's order finding that Mr. Rivera Larios did not violate the terms of his release and order that he remain  
11 at liberty. *Id.*

12 The immigration judge questioned Mr. Rivera Larios about the August 2025 incident in which he was  
13 detained by the Lake County Sheriff's Office. *Id.* at ¶ 14. Mr. Rivera Larios testified that he called 911  
14 because his wife was intoxicated and angry. *Id.* He also testified that he was caring for the couple's son while  
15 his wife was out drinking. *Id.* The immigration judge provided the parties the opportunity to present closing  
16 arguments. *Id.* at ¶ 15. Counsel for Mr. Rivera Larios argued he was not a flight risk and danger and stressed  
17 that his criminal and immigration history pre-dated his release from ICE custody and that he complied with  
18 all terms of release, including travel between Lakeport and San Francisco to meet obligations. *Id.*

19 Counsel for DHS argued that Mr. Rivera Larios is a danger because of his criminal history and a  
20 flight risk because of his immigration history, including multiple deportations and returns to the United  
21 States. *Id.* at ¶ 16. She also asserted that ICE did not make a specific finding as to flight risk or danger when  
22 Mr. Rivera Larios was released in 2022, as he was released because of COVID. *Id.* She further argued that  
23 his detention by the Lake County Sheriff's Office constituted a violation of his order of supervision. *Id.*

24 In reaching her decision, the immigration judge made alternate findings. She first found that she did  
25 not have jurisdiction to conduct a custody redetermination. *Id.* at ¶ 17. In the alternative, she found that based  
26 on Mr. Rivera Larios's criminal history, relying primarily on arrests that did not result in convictions, all of  
27  
28



1 which pre-dated his release by ICE in January of 2022, he is a danger to the community.<sup>3</sup> *Id.* The IJ stated  
2 that she was not considering Mr. Rivera Larios's August 2025 detention by the Lake County police  
3 department in assessing whether he is a danger to the community.

4 Likewise, the immigration judge found Mr. Rivera Larios to be a flight risk, relying exclusively on  
5 his prior removal orders, known to ICE at the time it released him on supervision. The IJ did not  
6 acknowledge or credit Mr. Rivera Larios's diligent compliance with his order of supervision for over three  
7 years and nine months. *Id.* at ¶ 18. The immigration judge also indicated that regardless of who bore the  
8 burden of proof, the outcome would be the same. *Id.*

9 Crucially, the immigration judge found that the record did not support a finding that Mr. Rivera  
10 Larios violated the conditions of his release. *Id.* at ¶ 19. However, the immigration judge did not issue a  
11 finding as to whether DHS could re-detain Mr. Rivera Larios. When counsel for Mr. Rivera Larios asked for  
12 clarity on whether the immigration judge was ordering Mr. Rivera Larios's re-detention, the immigration  
13 judge responded, "that is up to DHS." *Id.* When counsel for Mr. Rivera Larios asked counsel for DHS  
14 whether DHS would detain him, counsel for DHS indicated that she could not comment on DHS' operations.  
15 *Id.*

16 After the hearing, Mr. Rivera Larios and counsel exited the building with three community observers.  
17 *Id.* at ¶ 22. While Mr. Rivera Larios, his counsel, and observers waited for the traffic light to change at a  
18 crosswalk, three plainclothes individuals surrounded Mr. Rivera Larios, grabbed his arms, and swiftly moved  
19 him to the side of a building near the street corner where they pushed him against the building and  
20 handcuffed him. *Id.* One of the three individuals eventually showed her ICE badge. *Id.* The officers quickly  
21 moved Mr. Rivera Larios across the street into an unmarked vehicle that sped away. *Id.*

22 The immigration court issued a notice of the January 9, 2026 merits hearing; however, it issued no  
23 orders regarding the outcome of the pre-deprivation hearing. *Id.* at ¶ 23. The hearing was recorded. *Id.* at ¶  
24 23.<sup>4</sup> On the afternoon of November 3, 2025, DHS filed a Form I-830 reflecting that it was holding Mr.

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25  
26 <sup>3</sup> This Court's Preliminary Injunction Order indicates that the dangerousness assessment should consider  
whether he is a present danger.

27 <sup>4</sup> The immigration court does not transcribe hearings unless an appeal is taken to the Board of Immigration  
28 Appeals. Mr. Rivera Larios, through counsel, is looking into the best way to obtain and file a transcript or  
recording of proceedings with this Court and will do so as soon as possible.



Rivera Larios in its custody at the Mesa Verde ICE Processing Center (Mesa Verde) in Bakersfield, California. *Id.* at ¶ 24, Ex. E. Counsel for Mr. Rivera Larios has since confirmed that Mr. Rivera Larios is at Mesa Verde. *Id.* at ¶ 24.

#### LEGAL STANDARD

A court has “inherent power to enforce its judgments[.]” *California Dep’t of Soc. Servs. v. Leavitt*, 523 F.3d 1025, 1033 (9th Cir. 2008). “[H]abeas courts are empowered to make an assessment concerning compliance with their mandates.” *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126 (S.D. Cal. 2008). This includes continuing jurisdiction to enforce an injunction. *United States v. Bryan*, No. CIV. 2:04-2363 WBS, 2010 WL 4312866, at \*1 (E.D. Cal. Oct. 25, 2010) (quoting *Hangerter v. Paul Revere Life Ins. Co.*, 289 F. Supp. 2d 1105, 1107 (N.D. Cal. 2003)).

District courts in the Ninth Circuit and across the country regularly grant detained noncitizen habeas petitioners release under adequate conditions of supervision when the government fails to provide them with a hearing consistent with prior orders of the court. *See, e.g., Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1119 (S.D. Cal. 2008) (ordering petitioner’s release when “the evidence before the IJ failed, as a matter of law, to prove flight risk or danger pursuant to the Court’s order”); *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, at \*7 (N.D. Cal. Sept. 20, 2017) (ordering petitioner’s release under appropriate conditions of supervision when IJ failed to correctly apply clear and convincing standard in violation of court order); *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1038 (N.D. Cal. 2018), *vacated and remanded sub nom. Ramos v. Garland*, No. 18-15884, 2024 WL 933654 (9th Cir. Mar. 1, 2024) (granting motion to enforce and ordering release under appropriate conditions of supervision when government failed to meet clear and convincing burden).

Federal courts have jurisdiction to review an immigration court’s “dangerousness” determination. *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024). This same rationale applies to “flight risk” determinations. *Id.* The immigration court abuses its discretion when it acts “arbitrarily, irrationally, or contrary to the law” and when it “fails to provide a reasoned explanation for its actions.” *Tadevosyan v. Holder*, 743 F.3d 1250, 1252–53 (9th Cir. 2014). The agency also abuses its discretion where it fails to consider probative evidence. *Franco-Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006). A “standard of

review which asks only whether the IJ announced the correct legal standard is insufficient.” *Ramos*, 293 F. Supp. 3d at 1030; *see Nat’l Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016) (“An agency acts contrary to the law when it gives mere lip service or verbal commendation of a standard but then fails to abide the standard in its reasoning and decision.”).

## ARGUMENT

### **I. Respondents Violated the Preliminary Injunction When They Detained Him Despite the Fact that the IJ Found He Did Not Violate the Terms of His Release**

In this Court’s preliminary injunction order, Respondents were enjoined and restrained from re-detaining Mr. Rivera Larios without a pre-deprivation hearing before an IJ to evaluate whether his re-detention was warranted. *See* Dkt. 22 at 18. Like this Court, during the pre-deprivation hearing, the IJ found that Mr. Rivera Larios did not violate the terms of release under the statute and regulation. *See* Shugall Decl. ¶ 19; Dkt. 22 at 9 (finding that “Rivera Larios has not violated the terms of his supervision, and Respondents lack legal or factual support to re-detain him . . . . Thus, Respondents’ actions contravene Title 8 U.S.C. § 1236(a)(6) and 8 C.F.R. § 241.4(l)”). Thus, ICE had no authority to re-detain him. The IJ did not order or otherwise opine as to whether ICE could detain Mr. Rivera Larios despite her finding that Mr. Rivera Larios did not violate the terms of his supervision.

Yet, subsequently, after Mr. Rivera Larios left the building, ICE officers detained Mr. Rivera Larios on a public street in San Francisco. *Id.* at ¶ 22. Thus, Respondents have violated this Court’s injunction by re-detaining Mr. Rivera Larios without lawful basis, in the absence of an order by a court that he can be re-detained. Dkt. 22 at 18 (ordering that Respondents refrain from re-detaining Mr. Rivera Larios absent a hearing “to evaluate whether his re-detention is warranted”).

On this basis alone, Respondents have violated the Court’s preliminary injunction.

### **II. Respondents Violated the Preliminary Injunction Because Mr. Rivera Larios is Neither a Danger to the Community or a Flight Risk**

#### **A. The Immigration Judge Failed to Consider the Record in Finding Mr. Rivera Larios a Danger to the Community**

In *Matter of Guerra*, the BIA established several factors the IJ should consider when assessing an individual’s risk of flight and dangerousness, including:

(1) whether the immigrant has a fixed address in the United States; (2) the immigrant's length of residence in the United States; (3) the immigrant's family ties in the United States, (4) the immigrant's employment history, (5) the immigrant's record of appearance in court, (6) the immigrant's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses, (7) the immigrant's history of immigration violations; (8) any attempts by the immigrant to flee prosecution or otherwise escape from authorities; and (9) the immigrant's manner of entry to the United States.

24 I. & N. Dec. 37, 40 (BIA 2006). The decision was made in the context of discretionary release under 8 U.S.C. § 1226(a) and establishes the floor for factors to consider in immigration custody determinations.

More specifically regarding a dangerousness determination, even where an individual has been convicted of a criminal offense, criminal history "alone will not always be sufficient to justify denial of bond on the basis of dangerousness." *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (abrogated on other grounds by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022)). The "extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses" are also contemplated. *Matter of Guerra*, 24 I. & N. Dec. at 40. Courts must also consider the "remoteness" of the criminal activity as well as "intervening events that might undermine a finding of dangerousness." *Obregon v. Sessions*, No. 17-cv-01463, 2017 WL 1407889, \*7 (N.D. Cal. April 20, 2017).

Federal courts have jurisdiction to review whether the agency properly assessed dangerousness. *Martinez*, 124 F.4th at 783-85 (asserting jurisdiction over whether the Board of Immigration Appeals erred in finding dangerousness)). The Court in *Martinez* further noted that where the agency decision raises "red flags," it need not take the agency "at its word" that it applied the correct standard. *Id.* at 785. A "red flag" indicates that something is "amiss," such as where the agency misstates the record, fails to mention probative and potentially dispositive evidence, or fails to mention or apply relevant case law in its decision. *Id.* (citing *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011)). Where, "there is any indication that the agency did not consider all the evidence before it, a catchall phrase does not suffice, and the decision cannot stand." *See Cole*, 659 F.3d at 771-72.

This Court ordered that Respondents were enjoined and restrained from re-detaining Mr. Rivera Larios without notice and a pre-deprivation hearing where an IJ was to evaluate whether his re-detention was warranted based on flight risk or danger to the community. Dkt. 22 at 18. In conducting Mr. Rivera Larios's



1 pre-deprivation hearing, the IJ relied exclusively on facts that were known to ICE prior to his release on an  
2 order of supervision in January 2022. In fact, the IJ was clear that her dangerousness finding did not take into  
3 account Mr. Rivera Larios's detention by the Lake County Sheriff's Office in August 2025. Rather, the IJ  
4 recited Mr. Rivera Larios's arrest and charge history, all of which pre-dated his release from ICE custody,  
5 without regard to the fact that most of the charges did not result in convictions. Moreover, the IJ failed to  
6 engage in any forward-looking analysis, instead focusing exclusively on Mr. Rivera Larios's arrest history.

7 Danger must be assessed on a current basis before the agency may order someone's continued  
8 detention. *See Singh*, 638 F.3d at 1206 (“[A] conviction could have occurred years ago, and the [noncitizen]  
9 could well have led an entirely law-abiding life since then. In such cases, denial of bond on the basis of  
10 criminal history alone may not be warranted.”); *see also Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) (“Due  
11 process is not satisfied...by rubberstamp denials based on temporally distant offenses. The process due even  
12 to excludable [noncitizens] requires an opportunity for an evaluation of the individual's current threat to the  
13 community and his risk of flight.”). Due process also requires the agency to consider the “remoteness” of any  
14 criminal history, as well as “whether the immigrant's circumstances have changed such that criminal conduct  
15 is now less likely.” *Ramos*, 293 F. Supp. 3d at 1029-30. This principle is also enshrined in agency case law.  
16 *See Matter of Guerra*, 24 I. & N. at 40 (requiring IJs to consider the “recency” of any criminal activity).

17 Here, in her dangerousness analysis, the IJ relied solely on Mr. Rivera Larios's prior criminal history,  
18 and failed to consider Mr. Rivera Larios's three years and nine months outside of ICE custody, wherein he  
19 did not violate the order of supervision and did not commit any crimes. The IJ therefore erred in relying  
20 exclusively on arrests and charges from prior to Mr. Rivera Larios's release, without regard for his conduct  
21 subsequent to his release. As such, pursuant to *Martinez*, this Court can review the IJ's dangerousness  
22 finding and find that it is erroneous.

23 **B. The Immigration Judge Failed to Consider the Record in Finding Mr. Rivera Larios to  
24 be a Flight Risk**

25 Since his release from ICE custody in January of 2022, over three years and nine months ago, Mr.  
26 Rivera Larios has complied with all the terms of his release, including appearances at both Intensive  
27 Supervision and Reporting Program (ISAP) and ICE in San Francisco, California a distance of approximately  
28 120 miles from his home in Lakeport, California. Mr. Rivera Larios has never failed to appear. In fact, his

current detention stems from his attendance at what he believed to be a routine, annual appointment with ICE. Yet, the IJ, relying exclusively on Mr. Rivera Larios' prior immigration history, all of which was known to ICE when he was released on an order of supervision, found him to be a flight risk. The IJ failed to consider or mention Mr. Rivera Larios's dutiful compliance with the order of supervision, his appearances at ICE and ISAP, and his appearance at the pre-deprivation hearing in making such a finding. This is legal error and an abuse of discretion. *Cole*, 659 F.3d at 771-72. Mr. Rivera Larios's compliance with the terms of his release is probative and material to the question of flight risk. The IJ's failure to consider this evidence – material and probative to the issue of flight risk is reversible error.

As with the IJ's dangerousness finding, the Court can review the finding on flight risk in considering whether Respondents violated the preliminary injunction.

### **III. Mr. Rivera Larios's Pre-Deprivation Hearing Failed to Comport with Due Process**

This Court's Preliminary Injunction order was clear that Respondents needed to conduct a pre-deprivation hearing before a "neutral arbiter." Dkt. 22 at 10, 12, 16. However, the IJ's deference to DHS to make its own decision as to whether Mr. Rivera Larios could be re-detained, reflects the immigration court's lack of neutrality in administering this hearing.

It is a fundamental component of due process that immigration judges be neutral and impartial adjudicators. *See Reyes-Melendez v. INS*, 342 F.3d 1001, 1006-09 (9th Cir. 2003) (holding that "[a] neutral judge is one of the most basic due process protections" and the IJ erred by failing to act as a neutral fact finder); *Elias v. Gonzales*, 490 F.3d 444, 451 (6th Cir. 2007) ("An immigration judge has a responsibility to function as a neutral, impartial arbiter and must refrain from taking on the role of advocate for either party"); *Islam v. Gonzales*, 469 F.3d 53, 55 (2d Cir. 2006) (noting the IJ's job is to be neutral and not be an advocate for either party); *see also* 8 C.F.R. § 1003.10(b) ("In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.").<sup>5</sup>

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<sup>5</sup> The neutrality of the immigration courts, an agency within the Department of Justice, has been called into question. *See* Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025); *See* Karen Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65 B.C. L. Rev. 2743, 2755 (2024). Appellate judges "have suggested that the immigration courts are fundamentally incompetent, biased, or both." Adam B. Cox, *Deference, Delegation, and Immigration Law*, 74 U. Chi. L. Rev. 1671, 1682 (2007); *see, e.g., Benslimane v Gonzales*, 430 F.3d 828, 830 (7th Cir 2005)



1 In Mr. Rivera Larios's case, Respondents' actions subsequent to this Court's TRO, including the  
2 immigration court granting recalendaring over Mr. Rivera Larios's objection, granting DHS' motion to set a  
3 pre-deprivation hearing without affording Mr. Rivera Larios time to respond, twice advancing the date of the  
4 hearing, and denying Mr. Rivera Larios's request to appear via WebEx, in conjunction with the IJ's ultimate  
5 statement of deference to DHS, reflects the IJ's lack of neutrality in this case. As Mr. Rivera Larios was not  
6 afforded a pre-deprivation hearing before a neutral arbiter, Respondents violated the preliminary injunction,  
7 and this Court should order Mr. Rivera Larios's immediate release. Alternatively, this Court should conduct  
8 the pre-deprivation hearing.

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10 **IV. The Court Should Order Petitioner's Immediate Release from Custody Because He Remains**  
11 **Unlawfully Detained.**

12 Respondents have re-detained Mr. Rivera Larios in contravention of this Court's order. They re-  
13 arrested Mr. Rivera Larios despite the IJ's finding that Mr. Rivera Larios has not violated the terms of his  
14 supervision by ICE and the IJ's refusal to order Mr. Rivera Larios re-detained. Further, the pre-deprivation  
15 hearing failed to comport with well-established legal precedent and due process.

16 As a result, Mr. Rivera Larios continues to be held in violation of the statute, regulation, and the  
17 Constitution, and should therefore be released. This Court has already determined that Mr. Rivera Larios has  
18 not violated the terms of his supervision, a finding echoed by the IJ at Mr. Rivera Larios's pre-deprivation  
19 hearing, and thus, ICE has no statutory or regulatory authority to re-detain Mr. Rivera Larios. Dkt. 22 at 9.  
20 The IJ did not otherwise order Mr. Rivera Larios's re-detention under any separate authority. Under both this  
21 Court's and the IJ's analysis, ICE is holding Mr. Rivera Larios without legal authority, and thus, Mr. Rivera  
22 Larios should be released immediately. In the alternative, Mr. Rivera Larios asks this Court to find that the  
23 IJ's separate analysis as to whether Mr. Rivera Larios is a danger to the community or a flight risk is legally  
24 erroneous and that Respondents' re-detention of Mr. Rivera Larios on this basis also violates this Court's  
25 preliminary injunction order.

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 ("[T]he adjudication of [immigration] cases at the administrative level has fallen below the minimum  
28 standards of legal justice.").

Where an IJ has failed to hold a hearing that comported with due process following a district court order, courts have ordered release. For example, in *Mau*, the court initially ordered the government to provide the petitioner with a bond hearing. After the IJ committed “an error of law” by improperly “rel[ying] on two misdemeanor DUI convictions and one felony DUI conviction to deny bond,” the court ordered the petitioner released. *Mau*, 562 F. Supp. 2d at 1118-19. The court in *Judulang* ordered the petitioner released after finding that “the government did not meet [the] burden imposed” by the court’s prior order requiring a hearing. *Judulang*, 562 F. Supp. 2d at 1126-27. *See Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) (“Once a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”).

In fact, district courts in the Ninth Circuit and across the country regularly grant detained noncitizen habeas petitioners release under adequate conditions of supervision when the government fails to provide them with a hearing consistent with orders of the court. *See, e.g., Sales*, No. 16-CV-01745-EDL, 2017 WL 6855827, at \*7 (ordering petitioner’s release under appropriate conditions of supervision when IJ failed to correctly apply clear and convincing standard in violation of court order); *Ramos*, 293 F. Supp. 3d at 1038 (granting motion to enforce and ordering release under appropriate conditions of supervision when government failed to meet clear and convincing burden); *Y.S.G. v. Andrews*, 2:25-cv-1884-SCR, 2025 WL 2979309, \*11 (Oct. 22, 2025) (granting the petitioner’s motion to enforce the preliminary injunction, returning the petitioner to the position he was in after the preliminary injunction order).

Respondents have had multiple opportunities to follow the law and afford Mr. Rivera Larios the due process to which he is entitled. They have failed to do so at every turn. For that reason, Mr. Rivera Larios seeks this Court’s intervention again. This Court should not permit Respondents to violate Mr. Rivera Larios’s statutory and due process rights and, in so doing, violate this Court’s order. The Court should instead enforce its preliminary injunction order and put an end to Mr. Rivera Larios’s unlawful incarceration by ordering his immediate release.

### CONCLUSION

For all the above reasons, the Court should order Petitioner’s immediate release from custody and enjoin Respondents from detaining him during the pendency of these proceedings. Alternatively, this Court

1 should hold a pre-deprivation hearing.

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3 Dated: November 7, 2025

Respectfully submitted,

4 /s/Ilyce Shugall  
5 Attorney for Petitioner  
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