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11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 Henri Ba,)
14)
15 Petitioner,)
16)
17 v.)
18)
19 Todd Lyons, Acting Director)
20 Immigration and Customs)
21 Enforcement;)
22)
23 Patrick Divver, San Diego)
24 Field Office Director,)
25 Immigration and Customs)
26 Enforcement Removal)
27 Operations;)
28)
29 and)
30)
31 Christopher J. LaRose,)
32 Warden, Otay Mesa)
33 Detention Center,)
34)
35 Respondents.)

CASE NO: 3:25-cv-2871-CAB-BJW
PETITIONER'S REPLY TO
RESPONDENTS' NOTICE [DKT. 16] AND
ADDRESSING MOOTNESS

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1 Pursuant to the Court’s order, DKT. 18, Petitioner hereby replies to
2 Respondents’ Notice, DKT. 16, and addresses mootness. Petitioner’s habeas
3 petition is not moot because Petitioner is still in custody for the purposes of § 2241.
4 Respondents continue to violate Petitioner’s constitutional right to due process and
5 unlawfully restrict Petitioner’s liberty without a legally valid basis in violation of
6 the Fifth and Fourth Amendment and the Administrative Procedure Act.
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9 **Petitioner remains in the custody of Respondents due to his release pursuant to**
10 **a bond and the significant restrictions of his liberty.**

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12 Custody “encompasses[es] circumstances in which the state has imposed
13 ‘significant restraints on [a] petitioner’s liberty.’” *Munoz v. Smith*, 17 F.4th 1237,
14 1241 (9th Cir. 2021) (second alteration in original) (quoting *Jones v. Cunningham*,
15 371 U.S. 236, 242)). After Petitioner’s unlawful arrest, Petitioner was required to
16 post a \$5,000.00 bond and was placed under new significant and invasive
17 restrictions. Petitioner must wear a GPS monitoring ankle bracelet, attend frequent
18 in person office visits, submit to Respondents’ visits to his home, submit to medical
19 and psychiatric examinations upon Respondents’ request, not travel outside 75
20 miles without Respondents’ permission, not move or change employment without
21 prior notification to Respondents, and Respondents have seized and retained
22 Petitioner’s driver’s license and employment authorization document. *See* Resp’t
23 Notice Exhibit A, Bond Order, DKT. 16-1, p.1, and Resp’t Notice Exhibit B, ATD
24 Enrollment and Participation, DKT. 16-2, pp. 1-6; *see also* Pet’r Reply to Resp’t
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1 Notice, Exhibit A, Order of Supervision, and Exhibit B, Declaration of Hanayah
2 Altaf.

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4 Petitioner remains in “custody” of Respondents, the lawfulness of that
5 custody remains at issue, and Petitioner has not been provided the full relief he
6 seeks. See *Hogarth v. Santacruz*, No. 5:25-cv-09472-SPG-MAR, 2025 U.S. Dist.
7 LEXIS 228009, at *35–36 (C.D. Cal. Oct. 23, 2025) (determining conditions of
8 release that included electronic monitoring and “multiple check-ins with ICE every
9 month” were “sufficient to demonstrate that [the petitioner] is in custody”).
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12 **Petitioner’s custody is unlawful.**

13 First, Respondents arrested Petitioner pursuant to an invalid arrest warrant.
14 See Pet’r Response to Resp’t Return & Opp. to TRO, DKT. 13, pp. 2-4.
15 Respondents provided Deportation Officer Nunez’s declaration stating, “Petitioner
16 was remanded back to ICE custody pursuant to an Arrest Warrant, Form I-200
17 pending completion of removal proceedings.” Resp’t Return & Opp to TRO,
18 Exhibit A, Declaration of Rogelio Nunez (“Nunez Decl.”), DKT. 10-1, p. 5. The
19 Arrest Warrant contained factual errors and a false statement of probable cause.
20 The Arrest Warrant dated August 19, 2025 stated arrest was pursuant to “execution
21 of a charging document to initiate removal proceedings”. Resp’t Return & TRO
22 Opp., Exhibit B, Warrant for Arrest of Alien, DKT 10-1, p. 8. But it is undisputed
23 that Respondents initiated removal proceedings twenty-one years ago in 2004, not
24 2025, and proceedings have been pending since that time.
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1 Second, there was no material change in circumstance authorizing
2 Respondents to re-detain Petitioner. Although Officer Nunez declares under
3 penalty of perjury that Petitioner was arrested pursuant to the August 19, 2025
4 Arrest Warrant based on initiation of removal proceedings, Officer Nunez also
5 declares under penalty of perjury that Petitioner was re-detained after “ERO San
6 Diego” reviewed Petitioner’s case and determined that he should be re-detained
7 based on “two final orders of removal since his release from ICE custody and ...
8 the seriousness of the national security inadmissibility findings” and a
9 determination that “a material change in circumstances occurred.” Resp’t Return &
10 Opp to TRO Exhibit A, Nunez Decl., DKT. 10-1, p. 5. Only newly developed
11 “material” changes in circumstances that impact dangerousness or the risk of flight
12 can justify re-detention. *See Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
13 2018) (citing *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981)).
14 Significantly, Petitioner did not receive two final orders of removal and the Ninth
15 Circuit Court of Appeals reversed Petitioner’s single final order of removal denying
16 asylum. *See Pet’r TRO Exhibit B, Ninth Circuit Memorandum, DKT 2-2, pp. 7-11.*
17 Further Respondents do not explain how a denial of adjustment of status for
18 “national security inadmissibility findings” occurring over twelve years ago
19 constitutes a newly developed material change of circumstance going to flight risk.
20 Especially considering Petitioner’s demonstrated track record of twenty-one years
21 of compliance with his immigration obligations and U.S. laws.
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1 Petitioner’s re-detention while complying with an ICE check-in based on a
2 false arrest warrant and without a change in material circumstance increasing any
3 risk of flight was an outrageous violation of due process that resulted in over ninety
4 days of detention. After his unlawful arrest, Petitioner had to post a \$5,000.00 bond
5 and Respondents placed significant restrictions on his liberty that are unlawful and
6 constitute a continuing constitutional violation of Petitioner’s liberty interests.
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8 Petitioner seeks to a return to the terms and conditions of his previous order of
9 recognizance before his unlawful arrest.
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12 **Petitioner’s bond hearing was legally deficient and did not provide relief.**

13 Petitioner’s bond hearing that resulted from his illegal arrest and re-detention
14 did not provide the relief Petitioner seeks or remedy the constitutional violation.
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16 Had Petitioner been provided a pre-detention hearing- as required by the Fifth
17 Amendment given his substantial liberty interests that developed over twenty-one
18 years- it is highly unlikely he would have been remanded to Respondents’ custody
19 based on any new evidence that he posed a heightened risk of flight. That is
20 because no such evidence exists.
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22 In his bond hearing, Petitioner was already in Respondents’ custody and the
23 immigration judge (“IJ”) maintained he could not release Petitioner without a bond.
24
25 *See* 8 U.S.C. § 1226(a). Further, the IJ’s bond determination was erroneous and
26 unlawful. The IJ’s determination rested on three factors: (1) the 2009 denial of
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28 Petitioner’s asylum application (that was reversed by the Ninth Circuit Court of

1 Appeals); (2) the 2013 denial of Petitioner’s adjustment of status application; and
2 (3) Petitioner’s failure to maintain his J-1 visa status in 2004 that “indicat[ed] a
3 willingness to violate immigration laws.” Pet’r Reply to Resp’t Return & Opp to
4 TRO, Exh. M, DKT. 13-1, pp. 96-97.¹ Not one of those past events are material
5 changes in circumstances that indicate an increased risk of flight in November 2025
6 as Petitioner was routinely complying with his ICE check-in obligations since 2004.
7
8 *See Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (citing *Matter of*
9 *Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981)); *see also United States v. Cisneros*,
10 2021WL 5908407, at *4 (N.D. Cal. Dec. 14, 2021) (“The government rightly points
11 out being arrested for a gang-related assault is a change of circumstances showing
12 danger to the community.”); *Bermudez Paiz v. Decker*, 2018 WL 6928794, at *16
13 (S.D.N.Y. Dec. 27, 2018) (noting that a conviction for violation of the state penal
14 law would constitute a changed circumstance). The denial of Petitioner’s asylum
15 application in 2009 does not constitute “denial of relief” under *Sugay* because the
16 denial was subsequently reversed by the Ninth Circuit and his application for
17 asylum is, and was, still pending at the time of the unlawful bond hearing. *Matter*
18 *of Sugay*, 17 I. & N. Dec. at 640; Pet’r TRO Exhibit B, Ninth Circuit
19 Memorandum, DKT 2-2, pp. 7-11.
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26 ¹ During the bond hearing, the IJ did not state for the record what specific
27 circumstances the IJ found to constitute a change in circumstances warranting a
28 \$5,000 bond. It was not until the IJ provided a post-hoc amended bond order that
the IJ provided any explanation as to the IJ’s findings.

1 Moreover, Petitioner did not violate any immigration laws when his J-1 visa
2 status ended. Petitioner converted his J-1 visa to F-1 visa status and while in F-1
3 status applied for asylum in compliance with immigration laws. See Resp't Return
4 & Opp. To TRO, DKT 10, pp. 3–4 (noting Petitioner was in valid F-1 status when
5 he affirmatively applied for asylum on or about March 9, 2001). Petitioner
6 ultimately fell out of F-1 status after applying for asylum, but before receiving a
7 decision on his asylum application, and he was therefore lawfully permitted to
8 remain in the U.S. during the adjudication of his asylum application by the asylum
9 office and then during proceedings before the immigration court. See *Id.*, Resp't
10 Return & Opp. to TRO, DKT 10, pp. 3–7.
11

12 Such an erroneous bond hearing does not satisfy the due process protections
13 required under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here Petitioner's
14 interest in liberty is significant and "the procedures used" have not sufficiently
15 addressed the unlawfulness of Petitioner's re-detention in the first place. *Mathews*,
16 424 U.S. at 335. Furthermore, Petitioner's "erroneous deprivation" of liberty
17 continues in the imposition of a \$5,000.00 bond, ankle monitor, and other
18 significant and invasive restrictions including home visits, restrictions on local
19 travel, submission to medical and psychiatric examinations, and the confiscation of
20 his driver's license and employment authorization document. *Shinault v. Hawks*,
21 782 F.3d 1053, 1057 (9th Cir. 2015) (citing *Mathews*, 424 U.S. at 335); Resp't
22 Notice Exhibit A, Bond Order, DKT. 16-1, p.1, and Resp't Notice Exhibit B, ATD
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1 Enrollment and Participation, DKT. 16-2, pp. 1-6; *see* also Pet'r Reply to Resp't
2 Notice, Exhibit A, Order of Supervision, and Exhibit B, Declaration of Haniyah
3 Altaf).
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5 Simply put, there is no lawful basis for Petitioner's re-arrest, re-detention,
6 and new restrictions on his liberty. Respondents continue to violate the law while
7 Petitioner remains in their custody and the petition for a writ of habeas is not moot.
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9 **Petitioner's release with new restrictions does not moot his habeas petition.**

10 In *Rodriguez Diaz v. Garland*, the Ninth Circuit affirmed that the case was
11 not moot where the government held a bond hearing ordered by the district court.
12 53 F.4th 1189, 1195 n.2 (9th Cir. 2022) ("The government's compliance with the
13 district court's order does not moot its appeal." (citing *United States v. Golden*
14 *Valley Elec. Ass'n*, 689 F.3d 1108, 1112-13 (9th Cir. 2012)).) Thus, "[t]he law is
15 clear that release does not necessarily moot a petition, and because Petitioner could
16 foreseeably be re-detained and later face the same [detention] practices that [he]
17 contest[s] today, [he] continue[s] to have a legally cognizable interest in the
18 outcome of th[e] suit." *Moran v. U.S. Dep't of Homeland Sec.*, 2020 WL 6083445,
19 at *7 (C.D. Cal. Aug. 21, 2020).
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24 Here, Respondents have not complied with any order and relief has not been
25 granted. There has been no resolution or ruling on Respondents' unlawful conduct.
26 At no point have Respondents disavowed their actions in re-detaining Petitioner or
27 provided evidence of a valid arrest. Petitioner still seeks release from custody and a
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1 return to the *status quo* before his unlawful arrest and the consequent new and
2 unlawful restrictions placed upon his liberty.
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4 For the foregoing reasons, Petitioner respectfully requests that the Court
5 order Petitioner released from custody including removal of the new significant
6 restrictions on his liberty, or allow Petitioner to proceed in his seeking relief
7 through the petition for writ of habeas corpus.
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9 Dated: December 4, 2025

Respectfully submitted,

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s/ Jean Reisz
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