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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

LEONARDO LOPEZ BOHORQUEZ

Petitioner,
vs.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Sergio ALBARRAN, Acting Director, San Francisco Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Christopher CHESTNUT, Warden, California City Detention Facility, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; IMMIGRATION AND CUSTOMS ENFORCEMENT; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents

Case No. 1:25-cv-1875 DJC

REPLY TO GOVERNMENT'S
MOTION TO DISMISS
APPLICATIONS AND
OPPOSITION TO TEMPORARY
RESTRAINING
ORDER/PRELIMINARY
INJUNCTION

1 On December 17, 2025, Respondents filed a one-page opposition to this Court's order to
2 show cause. Respondents simply state that Petitioner's prior release was a matter of agency
3 discretion and, therefore, that he may now be treated as an "applicant for admission" in
4 perpetuity. There is no acknowledgement of Petitioner's constitutional arguments. Respondents
5 do not engage with the facts surrounding the revocation of Petitioner's Order of Release on
6 Recognizance, do not address the absence of notice or process, and do not attempt to justify the
7 way Petitioner's liberty was revoked. Petitioner is entitled to procedural protections and does
8 have constitutional rights. Courts in this District and throughout the country have refused the
9 notion that individuals who entered without inspection are subject to perpetual "mandatory
10 detention" under 8 U.S.C. § 1225(b)(2) and have overwhelmingly held that noncitizens who enter
11 without inspection are not "arriving aliens," but instead fall under 8 U.S.C. § 1226. Regardless of
12 this statutory reasoning, Petitioner's arguments are focused on his liberty. He has requested
13 immediate release and return to the status quo, not a bond hearing.
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16 Petitioner has lived in the United States for a period of years. Since that time, he has lived
17 in the community, complied with all requirements imposed upon him, supported his family, and
18 given birth to a U.S. citizen child, among other significant equities. Without any notice or
19 justification, Petitioner was taken into custody. While Petitioner's initial release was to the
20 discretion of Respondents, they made an individualized determination in 2023 that he was not a
21 flight risk or a danger to the community and released him accordingly. Since that time, he has not
22 violated the terms of release. In fact, Respondents have made no argument that he has done
23 anything to cause his custodial status to be reevaluated. Petitioner has a clear liberty interest in
24 his continued freedom. See *Valencia Zapata v. Kaiser*, ___ F. Supp. 3d ___, 2025 WL 2741654,
25 at *8 (N.D. Cal. Sept. 26, 2025).
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I. RESPONDENTS FAIL TO COMPLY WITH THE COURT’S ORDER TO SHOW CAUSE

This Court ordered Respondents to show cause whether there are any factual or legal issues in this case that render it distinct from the Court’s prior orders in *Singh v. Andrews*, No. 1:25-cv-01543-DJC-SCR, at *___ (E.D. Cal. Nov. 19, 2025); *Mariagua v. Chestnut*, No. 1:25-cv-01744-DJC-CSK, at *___ (E.D. Cal. Dec. 11, 2025); *Ortega v. Noem*, No. 1:25-cv-01663-DJC-CKD, at *___ (E.D. Cal. Dec. 8, 2025); and *Souza v. Robbins*, No. 1:25-cv-01597-DJC-JDP, at *___ (E.D. Cal. Dec. 9, 2025), and that would justify denial of a preliminary injunction.

Respondents do not do so. They identify no factual distinction between this case and those matters. They do not allege that Petitioner violated any condition of release nor that Petitioner poses a flight risk or danger to the community. They do not assert that notice or a hearing was impracticable. They do not identify any changed circumstances that would justify re-detention. Instead, they simply reassert a statutory theory that this Court has already rejected in multiple materially indistinguishable cases. Respondents’ failure to comply with the Court’s order to show cause warrants entry of preliminary injunctive relief.

II. RESPONDENTS MISCHARACTERIZE PETITIONER’S CLAIM AND THE RELIEF SOUGHT

Respondents’ opposition rests on a fundamental mischaracterization of Petitioner’s claim. Petitioner is not litigating the abstract scope of “mandatory detention,” nor does he seek a statutory bond hearing. He challenges the unlawful deprivation of his liberty following the revocation of an Order of Release on Recognizance after years of compliant presence in the community.

1 When Respondents released Petitioner in 2023, they necessarily made an individualized
2 determination that he was neither a flight risk nor a danger to the community. That determination
3 has never been rescinded through any constitutionally adequate process. Since his release,
4 Petitioner has appeared for all immigration court hearings, complied with supervision, supported
5 his family, and lived openly in the community. Respondents do not dispute these facts.
6 Nonetheless, Petitioner was summoned to an in-person appointment in November 2025 and taken
7 into custody without advance notice, without explanation, and without any opportunity to contest
8 the revocation of his release. No hearing was provided. No violation was identified. No changed
9 circumstances were articulated. The government simply re-detained him. Petitioner's claim
10 therefore sounds squarely in the Due Process Clause. Once the government releases an individual
11 from custody, that individual acquires a protected liberty interest in remaining free, and the
12 government may not revoke that liberty arbitrarily.
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15 As this Court held in *Mariagua v. Chestnut*, No. 1:25-cv-01744-DJC-CSK, at *___ (E.D. Cal.
16 Dec. 11, 2025), "Petitioner has a liberty interest in her continued freedom," and "individuals
17 released from ICE custody have a protected interest in remaining out of custody." The Court
18 further explained that "[e]ven where the revocation of a person's freedom is authorized by statute,
19 that person may retain a protected liberty interest under the Due Process Clause," citing *Gagnon*
20 *v. Scarpelli*, 411 U.S. 778 (1973), and *Morrissey v. Brewer*, 408 U.S. 471 (1972). Similarly, in
21 *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025), the court explained that a
22 petitioner's release from ICE custody "reflected a determination by the government that she was
23 neither a flight risk nor a danger to the community." Respondents' opposition does not engage
24 with this authority.
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1 **III. STATUTORY AUTHORITY DOES NOT EXCUSE THE ABSENCE OF DUE**
2 **PROCESS**

3 Even assuming that Respondents' statutory theory was correct, it would not resolve this case.
4 The Due Process Clause applies to all persons within the United States, regardless of immigration
5 status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). The Constitution requires notice and a
6 meaningful opportunity to be heard before the government may revoke liberty previously
7 granted. In *Ortega v. Noem*, No. 1:25-cv-01663-DJC-CKD, at *___ (E.D. Cal. Dec. 8, 2025), this
8 Court rejected the government's position that release could be revoked summarily based on a
9 unilateral agency determination and held that due process requires an individualized assessment
10 and constitutionally adequate procedures before re-detention. Likewise, in *Souza v. Robbins*, No.
11 1:25-cv-01597-DJC-JDP, at *___ (E.D. Cal. Dec. 9, 2025), the Court enjoined ICE from re-
12 detaining the petitioner absent compliance with constitutional protections, including a pre-
13 deprivation hearing at which the government bears the burden of proving by clear and convincing
14 evidence that the petitioner poses a danger or flight risk. Respondents' opposition does not
15 address this constitutional framework at all.

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18 **IV. RESPONDENTS' REQUEST FOR DELAY OR ABEYANCE IS INCOMPATIBLE**
19 **WITH THE COURT'S PRELIMINARY INJUNCTION POSTURE AND THE**
20 **FACTS OF THIS CASE**

21 Respondents suggest that proceedings should be delayed because related statutory issues are
22 pending before the Ninth Circuit in *Rodriguez v. Bostock*. That suggestion is inconsistent with the
23 posture of this case and the Court's express order. The Court has already moved directly to the
24 preliminary injunction stage and ordered Respondents to show cause why a preliminary
25 injunction should not issue. Respondents have failed to meet that burden. More fundamentally,
26 delay is not appropriate on these facts. Petitioner challenges a completed and ongoing
27 constitutional violation. That violation began when Petitioner was taken into custody after years
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1 of compliant release in the community, and it continues each day he remains detained without
2 constitutionally required process.

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4 Petitioner's circumstances mirror those in *Singh*, *Mariagua*, *Ortega*, and *Souza*. In each of
5 those cases, this Court granted preliminary injunctive relief notwithstanding unresolved appellate
6 questions, recognizing that liberty interests may not be placed on hold while awaiting future
7 guidance where the government has already deprived an individual of freedom without due
8 process. *Rodriguez v. Bostock* cannot resolve the due process claim presented here. Regardless of
9 how the Ninth Circuit ultimately addresses statutory detention authority, it will not eliminate the
10 requirement that the government provide notice, an individualized determination, and a
11 meaningful opportunity to be heard before revoking liberty previously granted. Petitioner does
12 not ask this Court to resolve the ultimate statutory question. He asks the Court to halt an ongoing
13 constitutional violation.
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16 Even if Respondents ultimately prevail on a statutory theory of detention authority, they are
17 not foreclosed from lawfully detaining Petitioner. They have always retained the option to do so
18 in a constitutionally permissible manner by providing notice and a hearing before a neutral
19 decisionmaker and by making an individualized showing that Petitioner poses a danger to the
20 community or a risk of flight. What Respondents may not do, regardless of this case, is continue
21 to detain Petitioner without process, without justification, and without any finding that detention
22 is warranted. Due process does not permit the government to lock a human in custody indefinitely
23 while it awaits appellate guidance, particularly where the government has already determined that
24 the individual is neither dangerous nor a flight risk.
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**V. RESPONDENTS HAVE MADE NO SHOWING THAT CONTINUED
DETENTION IS JUSTIFIED**

Respondents do not contend that Petitioner is a flight risk. They do not contend that he is a danger to the community. They do not identify any violation of release conditions. They do not explain why notice and a hearing were not provided. They do not identify any harm that would result from restoring Petitioner to the status quo. Instead, they assert the authority to detain Petitioner indefinitely without process. That position is incompatible with due process and directly contrary to this Court's recent decisions.

VI. CONCLUSION

Respondents have failed to show cause why this case is distinct from the Court's prior orders. They have failed to address Petitioner's constitutional claim. They have failed to justify continued detention. And they have failed to demonstrate why a preliminary injunction should not issue.

Petitioner respectfully requests that the Court grant the writ of habeas corpus, order his immediate release, restore him to the status quo without GPS monitoring, and enjoin Respondents from re-detaining him absent a pre-deprivation hearing before a neutral decisionmaker at which the government bears the burden of proving, by clear and convincing evidence, that he is a flight risk or a danger to the community.

RESPECTFULLY SUBMITTED this 15th day of December 2025

/s/ Emily L. Robinson

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