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11  
12 **UNITED STATES DISTRICT COURT**  
13  
14 **EASTERN DISTRICT OF CALIFORNIA**

15 Hilde HERNANDEZ BERNAL; Carlos  
16 HERRERA GARZON; Mohammad Haroon  
17 LATIFI; Nahomy ORE AQUJE; Nelson REY  
18 PUERTA; and Alejandro TORRES  
19 PALAFOX,

20 Petitioner-Plaintiffs,

21 v.

22 CHRISTOPHER CHESTNUT, Facility  
23 Administrator of California City Detention  
24 Facility; SERGIO ALBARRAN, Acting Field  
25 Office Director of the Immigration and  
26 Customs Enforcement, Enforcement and  
27 Removal Operations, San Francisco; TODD  
28 LYONS, Acting Director of Immigration and  
Customs Enforcement; KRISTI NOEM,  
Secretary of the Department of Homeland  
Security; and PAM BONDI, Attorney General  
of the United States,

Respondents-Defendants.

Case No.: 1:25-cv-01887-JLT-HBK (HC)

**OBJECTION TO MAGISTRATE'S  
RECOMMENDATION 1(B) AND  
RESPONSE TO RESPONDENTS'  
OBJECTIONS**

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1 **I. INTRODUCTION**

2 Through undersigned counsel, Petitioners-Plaintiffs do not object to the Magistrate  
3 Judge's Recommendations 1(a) and 2-4. *See* ECF 20 at 23-24. They request that the Court adopt  
4 these Recommendations immediately.<sup>1</sup>

5 Petitioners-Plaintiffs Nahomey Ore Aquije and Alejandro Torres Palafox respectfully  
6 object to Recommendation 1(b) and urge the Court to apply Recommendation 1(a) to them as  
7 well. As further explained below, Respondents violated their procedural due process rights when  
8 they redetained them without a pre-deprivation hearing, and by continuing their detention despite  
9 it serving a legitimate basis, Respondents are also violating Ms. Ore Aquije and Mr. Torres  
10 Palafox's substantive due process rights. Both violations independently compel immediate  
11 release. Should the Court disagree and instead find that a post-deprivation hearing is adequate to  
12 remedy Respondents' Fifth Amendment violations, due process requires that the hearing be  
13 conducted by a neutral decision-maker, which at this time cannot be an IJ and should instead be  
14 this Court.

15 **II. OBJECTION TO RECOMMENDATION 1(B)**

16 In her decision, the Magistrate Judge correctly found that all six Petitioners-Plaintiffs  
17 "demonstrated a likelihood of success on the merits of their claim that re-detention without a  
18 hearing was in violation of their procedural due process rights." ECF 20 at 20. Regarding Ms.  
19 Ore Aquije and Mr. Torres Palafox, she explained:

20 Notably, Respondents make no argument that Palafox or Aquije present a flight  
21 risk or danger, and Palafox and Aquije attest to attending regular check-ins as  
22

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23 <sup>1</sup> If the Court intends to adopt Recommendations 1(a) and 2-4 but requires additional time to consider the  
24 objection to Recommendation 1(b), Petitioners-Plaintiffs request that the Court do the former immediately—  
25 due to the ongoing, irreparable harm they are currently suffering absent relief—and issue a separate order  
26 regarding the Objection to 1(b) at a later time and as soon as practicable. *See* ECF 5 at 12-15, 29-30; ECF  
27 12 at 18-19 (detailing irreparable harm). *See also* Peleg, Oren, "The Cruel Conditions of ICE's Mojave  
28 Desert Detention Center" THE NEW YORKER (Jan. 28, 2026), <https://archive.is/hHhJA>; Henricks, Tyche, "Bay Area Congressman Ramps Up Push to Bring ICE Detention Conditions to Light," KQED (Jan. 28, 2026), <https://www.kqed.org/news/12071297/bay-area-congressman-ramps-up-push-to-bring-icedetention-conditions-to-light> ("I don't think people understand the inhumanity," said [Representative] Khanna, who visited [CCDF]. 'I didn't understand it myself until I went and saw it myself.'").

1 required under the conditions of their parole, including the appointments where  
 2 they were arrested and re-detained. . . . [G]iven the absence of determination by a  
 3 neutral arbitrator as to whether Petitioners are currently a flight risk or danger to  
 4 the community, both the risk of erroneous deprivation of these Petitioners' interest,  
 5 and the probable value of additional safeguards, is high.

6 *Id.* at 19 (citation omitted). The Magistrate Judge went on to find that the appropriate remedy for  
 7 Ms. Ore Aquije and Mr. Torres Palafox was to remain detained pending a post-deprivation  
 8 hearing conducted by an IJ. *Id.* at 22.

9 **A. The Constitution requires that Ms. Ore Aquije and Mr. Torres Palafox be**  
 10 **immediately released.**

11 Nahomy Ore Aquije entered the U.S. in May 2023 to seek asylum. ECF 1-4 at 2. DHS  
 12 detained her for less than one week and then released her without an ankle monitor. ECF 1-4 at  
 13 2. She was never enrolled in ISAP nor required to participate in electronic monitoring. *Id.* at 2.  
 14 Instead, she was required to attend regularly-scheduled in person check-ins, all of which she  
 15 complied with. *Id.* At her fourth in-person check-in on September 12, 2025, Respondents re-  
 16 detained her. *Id.* They alleged her re-detention was because of a criminal arrest from January 20,  
 17 2025, even though the arrest<sup>2</sup> never resulted in any charges, let alone a conviction. *Id.* at 2-3. *See*  
 18 *also* ECF 1-7 at 36.

19 Alejandro Torres Palafox entered the U.S. in 2021 and immediately requested asylum.  
 20 ECF 1-6 at 2. Respondents detained him for a few days and released him under conditions that  
 21 required him to attend in-person check-ins and also to participate in frequent electronic "check-  
 22 ins." *Id.* He attended all of his in-person check-ins, and understood that he was always in  
 23 compliance with his electronic check-in requirements as he was never informed otherwise. *Id.* On  
 24 October 30, 2025, Respondents called him and ordered him to report to their office on the  
 25

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26 <sup>2</sup> It also appears that this incident is not legally considered an "arrest" under California state law. *See* Cal.  
 27 Penal Code § 849(c) ("A peace officer may release from custody, instead of taking the person before a  
 28 magistrate, a person arrested without a warrant in the following circumstance: (1) The Officer is satisfied  
 that there are insufficient grounds for making a criminal complaint against the person arrested"); *see also*  
 Cal. Penal Code § 849(c) ("The record of arrest of a person released pursuant to paragraph[] (1) . . . shall  
 include a record of release. Thereafter, the arrest shall not be deemed an arrest, but a detention only.")

1 following day—a Saturday. *Id.*; ECF 1-7 at 56. Respondents’ directive took place at a time when  
 2 their tactics of re-detaining noncitizens at ICE check-ins in Mr. Torres Palafox’s community was  
 3 widely reported.<sup>3</sup> Mr. Torres Palafox still complied, and was re-detained. *Id.* Respondents  
 4 informed Mr. Torres Palafox that he was being rearrested for failing to upload or uploading late  
 5 reports on his electronic telephone application. ECF 1-6. Respondent’s post-arrest record, which  
 6 Mr. Torres Palafox affirmatively submitted with his Motion for Preliminary Injunction, lists  
 7 alleged violations of Respondents’ electronic monitoring requirements dating back to 2023, and  
 8 no violations of any in-person check-in requirements. ECF 1-7 at 56.

9 *1. Procedural due process requires that all Petitioners-Plaintiffs—including Ms.*  
 10 *Ore Aquije and Mr. Torres Palafox—be immediately released and provided pre-*  
 11 *deprivation process.*

12 The Supreme Court has reasoned that a post-deprivation process can be an adequate  
 13 remedy only in a “special case,” where: (1) it is “the *only* remed[y] the State could be expected  
 14 to provide” because a pre-deprivation process would be “impossible”; and (2) “one of the  
 15 variables in the *Mathews* equation—the value of predeprivation safeguards—is negligible in  
 16 preventing the kind of deprivation at issue.” *See Zinermon v. Burch*, 494 U.S. 113, 128-29 (1990).

17 In Ms. Ore Aquije and Mr. Torres Palafox’s case, Respondents failed to point to *any*  
 18 “urgent concerns” that would justify a post-deprivation process. *See Guillermo M.R. v. Kaiser*,  
 19 791 F.Supp.3d 1021, 1036 (N.D. Cal. 2025) (“absent evidence of urgent concerns, a pre-  
 20 deprivation hearing is required to satisfy due process”). As the Magistrate Judge noted, they did  
 21 not even “provide any evidence or discussion that [Ms. Ore Aquije or Mr. Torres Palafox] violated  
 22 the terms of [their] release.” *See* ECF 20 at 22. Nor does the record suggest such inferences. Ms.  
 23 Ore Aquije’s arrest took place in January 2025, but Respondents waited until her regularly  
 24 scheduled check-in nine months later to redetain her. *See* ECF 3-4. Mr. Torres Palafox’s alleged  
 25

26  
 27 <sup>3</sup> *See* De La Cruz, Marciela, “Weekend ICE check-ins in Stockton raise concerns among immigration  
 28 advocates” KCRA (Oct. 26, 2025), <https://www.kcra.com/article/weekend-ice-check-ins-stockton-immigration-concerns/69157723>; Porras, Gabriel, “Surprise ICE check-ins spark weekend protests at Stockton facility,” ABC 10 (Oct. 25, 2025), <https://www.abc10.com/article/news/local/stockton/surprise-ice-check-in-weekend-protest/103-d0a3649d-27a3-4e57-a10c-db60d996ed65>.



1 electronic monitoring violations date back to 2023, but Respondents waited until October 2025  
2 to re-detain him, despite having opportunities to do so at prior in-person check-ins. ECF 1-7 at  
3 56. As further evidence of the lack of “urgent concerns” but rather pretext in Mr. Torres Palafox’s  
4 case, Respondents re-detained him while in the midst of a widespread campaign to redetain  
5 noncitizens in his community at abruptly-scheduled ICE check-ins. *Supra*, Note 3. *See also J.D.*  
6 *B.R. v. ICE*, No. 1:25-cv-02009-TLN-CKD, 2026 WL 234661, at \*1 (E.D. Cal. Jan. 29, 2026)  
7 (describing re-detention at the same ICE office where and seven days before Mr. Torres Palafox  
8 was re-detention, where the petitioner believed to be in compliance with requirements, was  
9 informed that they were being redetained for “not taking required photos on time,” and was given  
10 documentation alleging violations similar to Mr. Torres Palafox’s); *Singh v. Andrews*, –  
11 F.Supp.3d –, 2025 WL 1918679, at \*2 (E.D. Cal. July 11, 2025) (“The law requires a change in  
12 relevant facts, not just a change in [the government’s] attitude”) (internal quotations omitted)..  
13 “Indeed, it was [Ms. Ore Aquije and Mr. Torres Palafox’s] *compliance* with routine ICE check-  
14 ins — appearing for [their] [] check-in[s] — that led to [their] detention[s].” *Kaur v. United States*  
15 *Dep’t of Homeland Sec.*, No. 1:25-CV-01726-TLN-SCR, 2025 WL 3706724, \*5 (E.D. Cal. Dec.  
16 22, 2025).

17 This Court has at times found that a post-deprivation process (a bond hearing) instead of  
18 pre-deprivation process (immediate release) is an adequate remedy where Respondents’ re-  
19 detention of a noncitizen has violated procedural due process. *See, e.g., Martinez Hernandez v.*  
20 *Andrews*, No. 1:25-CV-01035 JLT HBK, 2025 WL 2495767 (E.D. Cal. Aug. 28, 2025). It has  
21 generally done so where Respondents allege that the petitioner violated their electronic  
22 monitoring requirements, reasoning that:

23 In similar circumstances, courts have refused to release the petitioners but have  
24 ordered timely bond hearings. *Carballo v. Andrews*, No. 1:25-CV-00978-KES-  
25 EPG (HC), 2025 WL 2381464, at \*8 (E.D. Cal. Aug. 15, 2025), citing *Perera v.*  
26 *Jennings, et. al*, No. 21-CV-04136-BLF, 2021 WL 2400981, at \*5 (N.D. Cal. June  
27 11, 2021); *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at \*6  
28 (N.D. Cal. Mar. 31, 2023).

1 *See id.* at \*12. *See also* ECF 20 at 21 (citing the same passage in *M.R.R. v. Chestnut*, No. 1:25-  
2 CV-01517-JLT-SKO, 2025 WL 3265446 (E.D. Cal. Nov. 24, 2025), to support Recommendation  
3 1(b)).

4 However, as this Court has also noted, the case law on remedies for these procedural due  
5 process violations in the context of immigration re-detention is “rapidly developing.” *Martinez*  
6 *Hernandez*, No. 1:25-CV-01035 JLT HBK, 2025 WL 2495767 at \*11. Subsequent decisions  
7 throughout this district suggest that *Carballo v. Andrews* was decided incorrectly, *see infra*, pp.  
8 6-8 (collecting cases), or at the very least, was limited to the very specific facts of that case.

9 The petitioner in *Carballo* had previously been released pursuant to an injunction in  
10 *Zepeda Rivas v. Jennings*, a class action challenging the conditions of confinement of his  
11 detention center during the COVID-19 pandemic. *See* No. 1:25-cv-00978-KES-EPG (HC), 2025  
12 WL 2381464 at \*2. Moreover, Carballo was re-detained under 8 U.S.C. § 1226(c), a statute that  
13 authorizes detention “when a noncitizen is released” from criminal custody after serving a  
14 sentence for a certain type of offense. *Id.* To determine whether procedural due process was  
15 satisfied by a pre- or post-deprivation hearing, Judge Sherriff looked to *Perera*, 598 F. Supp. 3d  
16 736, and *Pham*, 717 F. Supp. 3d 877. In *Perera* and *Pham*, the petitioners were not *re*-detained  
17 by DHS after having previously been released from their custody; rather, they brought  
18 constitutional challenges to the application of 8 U.S.C. § 1226(c)’s mandatory detention provision  
19 to them specifically, because instead of being detained immediately “when . . . released” from  
20 criminal custody, they were detained years after they had been living out in the community. *See*  
21 *Carballo*, No. 1:25-cv-00978-KES-EPG (HC), 2025 WL 2381464 at \*6.<sup>4</sup> Judge Sheriff found  
22 that, like the *Pham* and *Becerra* petitioners, a post-deprivation process was adequate for Carballo.

23 Unlike the *Carballo*, *Perera*, and *Pham* petitioners, DHS has found that the Petitioners-  
24 Plaintiffs here, including Ms. Ore Aquije and Mr. Torres Palafox, pose neither a flight risk nor a  
25

26 <sup>4</sup> Up until the Supreme Court’s decision in *Nielsen v. Preap*, noncitizens throughout the Ninth Circuit  
27 detained under 8 U.S.C. § 1226(c) were automatically provided bond hearings in situations where DHS did  
28 not detain them immediately “when” they were released from criminal custody. 586 U.S. 392 (2019). The  
Supreme Court found that there is no automatic right to a bond hearing regardless of when the noncitizen  
is detained under 8 U.S.C. § 1226(c), but left open the possibility of as-applied constitutional challenges,  
like those brought by the *Pham* and *Perera* petitioners. *See id.* at 420.

1 danger and granted them a conditional release that—unlike those released under the *Zepeda Rivas*  
2 injunction—did not expire. Moreover, it is undisputed that Ms. Ore Aquije and Mr. Torres Palafox  
3 are *not* detained under 8 U.S.C. § 1226(c).

4 In several decisions since *Carballo*, Judge Sherriff has ordered a pre-deprivation hearing  
5 as a remedy where Respondents’ re-detention violated procedural due process, even when there  
6 have been intervening circumstances that DHS cites to justify their second detention. *See, e.g.,*  
7 *Guzman v. Andrews*, 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256, \*2 (E.D. Cal. Sept. 9,  
8 2025) (Judge Sherriff ordering release and pre-deprivation process where noncitizen acquired  
9 convictions for disturbing the peace and domestic battery after DHS’s initial release); *Ramazan*  
10 *M. v. Andrews*, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, \*6 (E.D. Cal. Nov. 10,  
11 2025) (Judge Sherriff ordering release and pre-deprivation process where noncitizen *inter alia*  
12 allegedly missed an *in-person* check-in after DHS’s initial release).

13 In fact, it does not appear that—relevant to Ms. Ore Aquije—*any* court in this district,  
14 including this one, have found a post- and not pre-deprivation process adequate where the only  
15 intervening circumstance to which Respondents cite is a criminal arrest. For example, in *M.R.R.*,  
16 this Court favorably cited Judge Sherriff’s decision *Arzate v. Andrews*, noting that there, “the  
17 court ordered immediate release of an immigration detainee who had been in compliance with his  
18 conditions of release, even though he had incurred a misdemeanor arrest while on parole, in part  
19 because no charges were ever filed.” *See* No. 1:25-CV-01517-JLT-SKO, 2025 WL 3265446 at  
20 \*11 (citing *Arzate*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, \*7 (E.D. Cal. Aug.  
21 4, 2025), *converted to preliminary injunction sub nom*, 2025 WL 2411010, at \*1 (E.D. Cal. Aug.  
22 20, 2025)). The *Arzate* court described an arrest without more as an “apparent lack of  
23 justification” for re-detention, and noted that it served as “a strong indication that the risk of  
24 erroneous deprivation is high” such that a *pre*-deprivation hearing was warranted. 2025 WL  
25 2230521 at \*5 (citing *Guillermo M.R.*, 791 F. Supp. 3d at 1033-36. *See also Garcia v. Andrews*,  
26 No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 (E.D. Cal. July 14, 2025) (ordering pre-  
27 deprivation hearing where Petitioner incurred a criminal *charge* before re-detention); *Cajina v.*  
28 *Wofford*, No. 1:25-CV-01566-DAD-AC (HC), 2025 WL 3251083, at \*1 (E.D. Cal. Nov. 21,

2025) (same); *Moises V.A. v. Wofford*, No. 1:25-cv-01419-SKO (HC), 2026 WL 252237 (E.D. Cal. Jan. 30, 2026) (same); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256 (same, but where Petitioner incurred a criminal *conviction* before re-detention); *Selis Tinoco v. Noem*, No. 1:25-cv-01762-DC-JDP (HC), 2025 WL 3567862, \*11 (E.D. Cal. Dec. 14, 2025) (same); *Yurani Hortua v. Chestnut*, No. 1:25-cv-01670-TLN-JDP, 2025 WL 3525916 (E.D. Cal. Dec. 9, 2025) (same, but where theft arrest was dismissed after community service). *See also* *Roa v. Albarran*, No. 25-CV-07802-RS, 2025 WL 2732923, \*1 (N.D. Cal. Sept. 25, 2025) (ordering pre-deprivation hearing where one Petitioner incurred a criminal arrest without charge and another incurred a criminal conviction).

Relevant to Mr. Torres Palafox—other courts in this district have typically found a pre- and not post-deprivation process necessary to remedy a procedural due process violation where Respondents cite only the noncitizen’s failure to comply with electronic monitoring requirements. *See, e.g., Gomez Vilela v. Robbins*, No. 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *J.C.L.A. v. Wofford*, 1:25-cv-01310-KES-EPG, 2025 WL 2959250 (E.D. Cal. Oct. 17, 2025); *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025); *Selis Tinoco*, 1:25-cv-01762-DC-JDP (HC), 2025 WL 3567862, at \* 6; *Chavarria v. Chestnut*, No. 1:25-cv-01755-DAD-AC, 2025 WL 3533606 (E.D. Cal. Dec. 9, 2025); *J.D. B.R.*, No. 1:25-cv-02009-TLN-CKD, 2026 WL 234661. *See also J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23, 2025) (ordering release where Respondents told petitioner he was being re-detained because he had violated an “order” but explained nothing further about what order he was being accused of violating); *Ramazan M.*, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, at \*6 (ordering pre-deprivation hearing where petitioner *inter alia* allegedly missed an *in-person* check-in, because “[w]hile respondents argue that petitioner is a flight risk, the purpose of a bond hearing is for a neutral decisionmaker to consider and evaluate such an argument to determine whether it is consistent with the facts and to ensure that noncitizens like petitioner are not deprived of their liberty without justification.”); *Kaur*, No. 1:25-CV-01726-TLN-SCR, 2025 WL 3706724 at \*5 (“Even if Petitioner missed some ICE check-ins to raise questions about the likelihood of success,

balancing the *Winters* factors together, the scales still tip sharply in favor of Petitioner.”). In fact, courts throughout this circuit have ordered release and a pre-deprivation process where Respondents cited violations of electronic monitoring requirements to justify re-detention. *See, e.g., Alegria Palma v. LaRose*, 25-cv-1942-BJC-MMP, ECF No. 14 (S.D. Cal. Aug. 11, 2025) (ordering immediate release and pre-deprivation process where petitioner was released at the border and Respondents alleged seven violations); *Hernandez Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 WL 3281422, \*5-6 (N.D. Cal. Jan. 23, 2026) (ordering release and pre-deprivation process where Respondents alleged three violations of electronic monitoring conditions, because they were “minor, technical violations”).

Indeed, alleged technical violations of an electronic application notorious for its difficulty in use, errors, and onerous requirements<sup>5</sup> can hardly comprise a material change in circumstances from DHS’s initial flight risk assessment sufficient to warrant a post- instead of pre-deprivation process. This is particularly so here, where DHS’s initial flight risk finding occurred well *before* Mr. Torres Palafox amassed evidence further demonstrating his low risk of flight, such as a fixed address, deep family ties, and a stable employment history. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (listing as factors tending to determine risk of flight: “a fixed address in the United States,” “family ties in the United States,” “employment history,” “record of appearance in court”). *See also E.A. T.B. v. Wamsley*, 795 F.Supp.3d 1316, 1323 (W.D. Wash. 2025) (ordering pre-deprivation hearing and noting that “the Government’s [justification for re-detention] fails to

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<sup>5</sup> *See* Bhuiyan, Johana, “Poor tech, opaque rules, exhausted staff: inside the private company surveilling US immigrants” *The Guardian* (Mar. 7, 2022), <https://www.theguardian.com/us-news/2022/mar/07/us-immigration-surveillance-ice-bi-isap> (reporting that “case managers often don’t have enough time to offer tailored support and some are even discouraged by managers from doing so,” that the “app frequently malfunctions, causing immigrants to miss required check-ins[,]” and that “[m]any of the former employees were struck by the enormous power they wielded over people’s lives, and how few protocols there were governing crucial decisions in the program”)); Hussain, Saira and Will Greenburg, Study of Electronic Monitoring Smartphone Apps Confirms Advocates’ Concerns of Privacy Harms, Electronic Frontier Foundation (Sept. 23, 2022), <https://www.eff.org/deeplinks/2022/09/study-electronic-monitoring-smartphone-apps-confirms-advocates-concerns-privacy> (“Many users report being unable to successfully check-in with the app, sometimes due to buggy GPS/facial recognition, and other times due to not receiving notifications for a check-in.”); Meet SmartLINK, the App Tracking Nearly a Quarter Million Immigrants, *The Markup* (June 27, 2022), <https://themarkup.org/the-breakdown/2022/06/27/meet-smartlink-the-app-tracking-nearly-a-quarter-million-immigrants> (a “former BI [SmartLINK] employee . . . said glitches were not uncommon. ‘The technology was not good,’ the former employee said. ‘Sometimes it would send a photo, but then the location wouldn’t come on . . . even if they had location services on.’”).

1 appreciate distinctions between Petitioner's situation upon entry to the United States and his  
 2 situation when he was re-detained"). Further, Mr. Torres Palafox not only complied with all of  
 3 his *in-person* check in requirements, but he even attended a Saturday check-in that Respondents  
 4 scheduled just the day before, at a time when DHS's tactics of re-detaining noncitizens at ICE  
 5 check-ins was already known throughout his community.<sup>6</sup> *See, e.g., Ramazan M.*, No. 2025 WL  
 6 3145562, at \*7 (ordering pre-deprivation remedy where "petitioner has appeared for in-person  
 7 check-ins after each of his asserted violations") (cleaned up)).

8 The re-detentions of Ms. Ore Aquije and Mr. Torres Palafox, and the ongoing, irreparable  
 9 harm they and their families have consequently experienced, demonstrate that "the value of  
 10 predeprivation safeguards" is far from "negligible in preventing the kind of deprivation at issue"  
 11 such that Respondents *must* be required to provide—as countless courts have also found—a pre-  
 12 deprivation process. *See Zinermon*, 494 U.S. at 128-29. Procedural due process warrants their  
 13 immediate release.

14 ***2. Separately, Petitioners-Plaintiffs warrant immediate release because their***  
 15 ***ongoing detention violates their substantive due process rights.***

16 Ms. Ore Aquije and Mr. Torres Palafox argued, but the Magistrate Judge did not address,  
 17 that they separately warrant immediate release because their ongoing detention violates their  
 18 substantive due process rights. *See* ECF 5 at 28-29; ECF 12 at 17-18.

19 Another court in this district in an analogous case recently granted a Temporary  
 20 Restraining Order on this claim. *See G.M. v. Chestnut*, No. 1:26-cv-00369-TLN-CSK, 2026 WL  
 21 127613, \*2 (E.D. Cal. Jan. 17, 2026). In *G.M.*, the petitioner was re-detained despite having  
 22 already been found to pose neither a danger nor flight risk—as evidenced by "Respondents  
 23 previously releasing him from custody." *Id.* The court found that because he had "made a good-  
 24 faith effort to comply with all terms of his release," he had raised "at the very minimum" serious  
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 27 <sup>6</sup> *See* De La Cruz, Marciela, "Weekend ICE check-ins in Stockton raise concerns among immigration  
 28 advocates" KCRA (Oct. 26, 2025), <https://www.kcra.com/article/weekend-ice-check-ins-stockton-immigration-concerns/69157723>; Porras, Gabriel, "Surprise ICE check-ins spark weekend protests at Stockton facility," ABC 10 (Oct. 25, 2025), <https://www.abc10.com/article/news/local/stockton/surprise-ice-check-in-weekend-protest/103-d0a3649d-27a3-4e57-a10c-db60d996ed65>.

1 questions going to the merits of his claim that Respondents' re-detention violated his substantive  
2 due process rights as it did not appear serve one of the only two authorized purposes for  
3 immigration detention—preventing danger and preventing flight. *Id.*

4 Here, Respondents have made no attempt—despite repeated invitations, *see* ECF 8, 14—to  
5 argue that Ms. Ore Aquije or Mr. Torres Palafox are either a flight risk or a danger to the  
6 community such that their re-detentions serve any legitimate purpose. *See generally* ECF 11, 19,  
7 21. Both have certainly “made good-faith effort[s]” to comply with all terms of their release, and  
8 neither have incurred any material changes to suggest that they are now a danger or flight risk  
9 such that their re-detentions are authorized. They raise “at the very minimum” serious questions  
10 to their claim that their ongoing detention violates the Fifth Amendment, and an injunction that  
11 preserves the status quo by ordering immediate release pending further court action is warranted.  
12 *See also* ECF 5 at 28-29; ECF 12 at 17-18.

13 **B. Should the Court order a post-deprivation hearing for Ms. Ore Aquije and Mr.**  
14 **Torres Palafox, the Constitution requires a neutral adjudicator, which would**  
15 **prevent an IJ from conducting the hearing anytime in the near future.**

16 If the Court does find that a post- and not pre-deprivation hearing is warranted for Ms.  
17 Ore Aquije and Mr. Torres Palafox, the Court—and not the IJ—must conduct the hearing itself.<sup>7</sup>  
18 This Court has repeatedly emphasized that “allowing a neutral arbiter to review the facts would  
19 significantly reduce the risk of erroneous deprivation.” *See Martinez Hernandez*, No. 1:25-CV-  
20 01035 JLT HBK, 2025 WL 2495767 at \*12; *M.R.R.*, 1:25-CV-01517-JLT-SKO, 2025 WL  
21 3265446 at \*12. However, as extensively evidenced, no IJ at this time can serve as a neutral  
22 adjudicator. *See* ECF 5 at 24-27. The Magistrate Judge did not address Petitioners-Plaintiffs'  
23 briefing on this topic, and for the reasons already stated therein, they request that if the Court  
24 orders a post-deprivation hearing for Ms. Ore Aquije and/or Mr. Torres Palafox, it conduct the  
25 hearing in the first instance as due process requires. *Id.*

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28 <sup>7</sup> Petitioners-Plaintiffs have no objection to Recommendation 1(c) should a post-deprivation process be ordered.

### 1 **III. RESPONSE TO GOVERNMENT'S OBJECTIONS**

2 In their Objection, Respondents cite to “the reasons set forth in their previous pleadings.”  
3 ECF 21. Respondents’ pleadings merely reiterate their position that the statute authorizes  
4 Petitioners-Plaintiffs’ mandatory detention and as such, their re-detention of each is lawful  
5 regardless of their prior danger and flight risk findings. ECF 11. As the Magistrate Judge noted,  
6 Respondents’ pleadings did not “meaningfully address” the actual claim Petitioners-Plaintiffs  
7 brought: “that their re-detention without a hearing violates their due process rights.” ECF 20 at  
8 13. *See also Cajina v. Wofford*, No. 1:25-cv-01566-DAD-AC (HC), 2025 WL 3251083, \*3 (E.D.  
9 Cal. Nov. 21, 2025) (“The court therefore need not determine whether § 1225 or § 1226 applies  
10 in this case because petitioner has a liberty interest in his continued release regardless of the  
11 applicable detention scheme.”). Their objection on this ground does not warrant any  
12 consideration.

13 Through their Objection Respondents also propose—for the first time in this case—that the  
14 “Court should require individual filings of habeas petitions” from each Petitioner-Plaintiff. ECF  
15 21. This Objection also does not warrant any consideration. As an initial matter, it is procedurally  
16 improper. *See Rivera Georges v. Kaiser*, No. 25-CV-07683-NW, 2025 WL 2898967, \*1 (N.D.  
17 Cal. Oct. 10, 2025) (rejecting similar argument from Respondents, finding “[t]he government did  
18 not file a motion to sever so the issue is not before the Court.”); *Pablo Sequen v. Albarran*, --  
19 F.Supp.3d -- 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025). Even if the issue were properly raised,  
20 joinder is proper here and more than warranted. “[I]t is not unprecedented for a district court to  
21 issue injunctive relief to multiple immigration detainees joined into one habeas Petition,” and  
22 doing so may be proper where—as here—“the allegations in [a] habeas case involve a ‘systemic  
23 pattern of events’ that is common to all Petitioners.” *See Espinoza v. Kaiser*, No. 1:25-CV-01101  
24 JLT SKO, 2025 WL 2581185, \*9 (E.D. Cal. Sept. 5, 2025). Moreover, “this case has efficiently  
25 brought the [re-detention] claims of six Petitioners before the Court.” *Id.* Such efficiency is  
26 particularly warranted given—as Respondents unabashedly note—“this time of a very high volume  
27 of cases.” *See* ECF 21.  
28



1 **IV. CONCLUSION**

2 Based on the foregoing, Ms. Ore Aquije and Mr. Torres Palafox respectfully object to the  
3 Magistrate's Recommendation 1(b), and request that the Court apply Recommendation 1(a) to  
4 them as well. In the alternative, should the Court order a post-deprivation hearing, they request  
5 that it be conducted before this Court, given the Department of Justice's current inability to  
6 provide neutral adjudication.

7 Finally, if the Court is inclined to adopt Recommendations 1(a) and 2-4 but requires  
8 additional time to consider the Objection to Recommendation 1(b), Petitioners-Plaintiffs request  
9 that the Court do the former immediately—in light of the ongoing, irreparable harm they are  
10 currently suffering absent relief—and issue a separate order regarding Ms. Ore Aquije and Mr.  
11 Torres Palafox's Objection to 1(b) as soon as practicable. *See supra*, Note 1.

12 Respectfully submitted,

13 Dated: February 2, 2026

/s/ Priya Arvind Patel

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14 Mariel Villarreal

15 California Collaborative for Immigrant Justice

16 *Pro Bono* Counsel for Petitioners-Plaintiffs  
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