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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Elian XOL VALLE,

Petitioner-Plaintiff,

v.

Christopher J. LAROSE, Senior Warden,
Otay Mesa Detention Center;

Sergio Albarran, Field Office Director of
San Francisco Office of Detention and
Removal, U.S. Immigrations and Customs
Enforcement; U.S. Department of Homeland
Security;

David J. VENTURELLA, Senior Official
Performing the Duties of the Director,
Immigration and Customs Enforcement,
U.S. Department of Homeland Security; and

Markwayne MULLIN, Secretary, U.S.
Department of Homeland Security,

Respondents-Defendants.

Case No: 3:26-cv-03437-
RBM-JAC

**REPLY IN SUPPORT OF
PETITION FOR HABEAS
CORPUS AND EX PARTE
MOTION FOR
TEMPORARY
RESTRAINING ORDER**

Challenge to Unlawful
Incarceration; Request for
Declaratory and Injunctive
Relief

INTRODUCTION

Respondents' Response to the Petition (ECF 6) does not oppose habeas relief. Respondents concede that this Court and courts throughout this District have repeatedly rejected the government's theory of mandatory detention under 8 U.S.C. § 1225(b)(2) on facts that are not materially distinguishable from those presented here, and that those decisions control. Petitioner welcomes that concession. The only question that remains is the remedy.

The appropriate remedy here is Petitioner's immediate release. Mr. Xol Valle was released on an Order of Release on Recognizance issued in January 2026. This Order demonstrates an affirmative, individualized agency determination that Petitioner posed no danger and no flight risk. Further, the Order was issued three months after the conviction Respondents now invoke. Respondents' own records identify no conduct postdating that release: the Form I-213 points only to an August 2025 arrest that predates the Order of Release on Recognizance by five months. Where the government re-detains an individual without any changed circumstance the remedy is release, not a belated hearing to justify a detention that should never have occurred.

Respondents' concession also resolves the only other question they raise. Having abandoned mandatory detention, Respondents are left with discretionary detention governed by the Due Process Clause, under which Mr. Xol Valle's

liberty interest is at its highest and the government bears the burden of justifying detention by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). Respondents do not engage in that analysis; they neither contest Mr. Xol Valle's liberty interest nor offer any justification for his detention, suggesting only that the burden somehow rests on him. It does not. The government has never attempted to justify this detention, and on this record it cannot.

ARGUMENT

I. IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY FOR PETITIONER'S UNLAWFUL RE-DETENTION.

A. The January 2026 Order of Release on Recognizance Indicated that Mr. Xol Valle Posed No Danger or Flight Risk.

On January 9, 2026, ICE issued Mr. Xol Valle an Order of Release on Recognizance. ECF 6-1 at 3–5 (“OREC”). An Order of Release on Recognizance is not a mere administrative default; it reflects an affirmative, individualized agency judgment that the noncitizen need not be detained because he is neither a danger to the community nor a flight risk. ICE made that judgment here with full knowledge of Mr. Xol Valle's criminal history. The OREC was issued nearly three months *after* his October 20, 2025 conviction. Rather than detain him, ICE released him on recognizance and fitted him with a GPS monitor.

The conditions ICE selected confirm the modest level of supervision it deemed sufficient. Mr. Xol Valle complied with the conditions of OREC,

1 continued wearing the GPS monitor, and attended ICE check-ins as scheduled. *See*
2 ECF 6-1 at 3–5. ICE purported to cancel his OREC on the ground of “failure to
3 comply,” yet its records identify no such failure. *Id.* at 3.
4

5 **B. ICE Identified No Changed Circumstance and Its Own Records**
6 **Confirm There Was None**

7 The government may not revoke a noncitizen’s release and re-detain him
8 absent a showing of changed circumstances individual to that person. *See Matter*
9 *of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *see also Fanfan v. Noem*, No. 25-
10 cv-3291-DMS, 2025 WL 3563739 (S.D. Cal. Dec. 12, 2025). A shift in the
11 agency’s enforcement priorities is not a change in the individual’s circumstances.
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14 Respondents’ own records establish that no changed circumstance exists
15 here. The January 9, 2026 OREC was ICE’s most recent custody determination,
16 making it the baseline against which any subsequent re-detention must be
17 measured. The OREC was made with the knowledge of the August 2025 arrest.
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19 *See* ECF 6-1 at 4 (requesting criminal docs and police report for the next check-in
20 in February). The question, then, is whether anything changed between that
21 determination and the May 26 re-arrest. Respondents’ records show that nothing
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23 did.
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25 The Form I-213 prepared in connection with the May 26 arrest identifies no
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27 conduct postdating the OREC. It recites that Mr. Xol Valle was brought in for an
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1 interview regarding his most recent arrest, and that ERO personnel concluded to
2 take him into custody due to his crimes and violation of his OREC conditions. ECF
3 6-1 at 10. The arrest occurred in August 2025, several months before the OREC
4 was issued. *Id.* The I-213 does not allege that Mr. Xol Valle committed any new
5 offense, associated with any prohibited person, or breached any condition after
6 January 9, 2026. Its sole observation about the May 26 encounter is that Mr. Xol
7 Valle “had no court docs to confirm disposition” of that single, pre-existing matter,
8 which is not a condition of the OREC. *Id.*

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12 To the extent Respondents characterize his criminal conviction as a
13 “violation of his OREC conditions,” the characterization is chronologically
14 impossible. The OREC condition that Mr. Xol Valle “not commit any crimes *while*
15 *on this* Order of Release on Recognizance” is, by its terms, forward-looking from
16 January 9, 2026. Conduct occurring in August 2025 cannot violate a condition that
17 did not bind him until January 2026. Respondents have done no more than relabel
18 the same pre-existing criminal history that ICE already possessed when they chose
19 an alternative to detention. That is the opposite of a changed circumstance.

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23 Where, as here, the government cannot point to a materially changed
24 circumstance specific to the individual, re-detention cannot stand, and release is the
25 appropriate remedy.
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1 **C. ICE Re-Detained Mr. Xol Valle Without Any Process, Which Calls for**
2 **Release**

3 Mr. Xol Valle's re-detention was not only substantively unjustified, but
4 lacked any due process. ICE provided no notice of any basis for revoking his
5 release and afforded him no opportunity to respond before stripping him of his
6 liberty. The only reason given to Mr. Xol Valle was the officers' remark that they
7 "had seen it all." That an agency may not strip a person of a vested liberty interest
8 in conditional release in this manner reinforces that the proper remedy is to undo
9 the unlawful seizure and restore the status quo. *See Morrissey v. Brewer*, 408 U.S.
10 471, 482–84 (1972). Courts in this District have previously found that procedural
11 safeguards prior to re-arrest are a minimal burden to the government, but necessary
12 where the risk of erroneous deprivation is so high. *See, e.g., Alegria Palma v.*
13 *Larose*, No. 25-cv-1942-BJC, ECF No. 14, at 5–6 (S.D. Cal. Aug. 11, 2025);
14 *Machado v. Dir. of the Otay Mesa Det. Ctr.*, No. 25-cv-3277-JES, 2026 WL
15 125618 (S.D. Cal. Jan. 16, 2026).
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21 **II. ANY BOND HEARING MUST PLACE THE BURDEN ON THE**
22 **GOVERNMENT TO JUSTIFY DETENTION BY CLEAR AND**
23 **CONVINCING EVIDENCE.**

24 Should the Court disagree that release is the appropriate remedy, the due
25 process issues alleged must inform the burden of any bond hearing. Respondents'
26 only theory of detention is that it is mandatory under 8 U.S.C. § 1225(b)(2). They
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1 concede that this Court and courts throughout this District have rejected that
2 theory, and they do not defend it here. ECF 6 at 2–3. That concession means that
3 Mr. Xol Valle’s detention is discretionary and therefore governed by the Due
4 Process Clause.
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6 What due process requires is determined by the balancing test set out in
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8 *Mathews v. Eldridge*: the private interest at stake, the risk of erroneous deprivation,
9 and the government’s interest. 424 U.S. 319, 335 (1976). Here every factor favors
10 Mr. Xol Valle, and Respondents have offered no argument to the contrary. His
11 private interest is paramount: “freedom from imprisonment...lies at the heart of the
12 liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678,
13 690 (2001). That interest is heightened, not diminished, by the fact that ICE itself
14 determined only months ago that he could remain at liberty on recognizance. The
15 risk of erroneous deprivation is acute because ICE made no individualized
16 determination of danger or flight risk before re-detaining him. Further, the
17 government’s interest is minimal where, as its own records show, it possessed the
18 same information in January 2026 and concluded that release was appropriate.
19 Courts in this Circuit have ordered release on materially indistinguishable facts,
20 where ICE re-detained a person it had previously released without identifying any
21 change in circumstances. *See, e.g., Mendoza v. Warden*, No. 1:25-cv-2030, 2026
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1 WL 310116 (E.D. Cal. Feb. 5, 2026); *Altin v. Chestnut*, No. 1:26-cv-00792, 2026
2 WL 309563 (E.D. Cal. Feb. 5, 2026).

3 The burden of proof at a custody hearing is the product of that balancing.
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5 Because the private interest in freedom from physical restraint is so weighty, the
6 Ninth Circuit has held that due process requires the government to carry the
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8 burden, and to carry it by clear and convincing evidence. *Singh v. Holder*, 638 F.3d
9 1196, 1203–04 (9th Cir. 2011). The clear-and-convincing standard follows directly
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11 from the weight of the liberty interest that Respondents have left uncontested.

12 Respondents invoke *Rodriguez Diaz v. Garland* to claim the burden must be
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14 placed on Petitioner. ECF 6 at 3 n.1; 53 F.4th 1189 (9th Cir. 2022). That reliance is
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16 misplaced. *Rodriguez Diaz* did not displace *Singh*; it expressly declined to abrogate
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18 it. 53 F.4th at 1202 n.4. And it addressed a different posture entirely: whether a
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20 noncitizen who had already received an initial bond hearing was entitled to a
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22 further hearing because his detention had become prolonged. Its discussion of the
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24 detainee’s burden described that initial hearing, not the standard governing a
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26 custody determination ordered as a constitutional remedy. *Singh*’s allocation of the
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28 burden, by contrast, is a constitutional holding that turns on the weight of the
liberty interest at stake, not on the particular statute authorizing detention.

Respondents offer no argument that Mr. Xol Valle’s liberty interest is anything less
than substantial, nor that his detention serves any legitimate interest.

1 Should the Court disagree that release is the appropriate remedy, a bond
2 hearing must be constitutionally adequate. The government must bear the burden
3 by clear and convincing evidence that Petitioner is a flight risk or danger, and the
4 adjudicator must consider alternatives to detention and Mr. Xol Valle's ability to
5 pay.
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7 **CONCLUSION**

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9 For the foregoing reasons, and in light of Respondents' non-opposition,
10 Petitioner respectfully requests that the Court grant the Petition, and order his
11 immediate release on appropriate conditions of supervision. In the alternative,
12 Petitioner requests that the Court order a bond hearing within seven days, before a
13 neutral adjudicator, at which the government bears the burden of justifying
14 continued detention by clear and convincing evidence and at which the adjudicator
15 considers alternatives to detention and Mr. Xol Valle's ability to pay. Petitioner
16 further requests that the Court enjoin his transfer outside the State of California
17 pending that relief.
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24 Dated: June 18, 2026

Respectfully submitted,

25 /s/ Emily Abraham

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