

Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

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

PRIMITIVO NICOLAS-JIMENEZ,

Petitioner

v.

CHRISTOPHER LaROSE, et al.,

Case No.: 3:26-cv-03720-BJC-VET

**PETITIONER'S TRAVERSE
TO RESPONDENTS'
RESPONSE TO ORDER TO
SHOW CAUSE**

I. Introduction

Petitioner challenges the constitutionality of his continued immigration detention following the government's decision to revoke the liberty it permitted him to enjoy for approximately fifteen years after agreeing to the administrative closure of his removal proceedings. The question presented is straightforward: whether the government may abruptly re-detain a noncitizen whom it has permitted to reside openly at liberty in the United States for approximately fifteen years without first providing constitutionally adequate process. It may not.

Respondents' Response does not meaningfully address that constitutional question. Instead, Respondents principally argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and renew their jurisdictional arguments under 8 U.S.C. §§ 1252(g) and 1252(b)(9). Those arguments do not answer the constitutional issue presented here. Regardless of

1 the statutory authority Respondents invoke or the jurisdictional objections they assert,
2 Respondents do not explain why the Fifth Amendment permits the government to revoke
3 Petitioner's longstanding liberty without constitutionally adequate process.

4 Most significantly, Respondents fail to identify any constitutionally adequate process
5 preceding Petitioner's re-detention. They do not contend that Petitioner received prior notice that
6 his liberty would be revoked. They do not contend that Petitioner received a hearing before a
7 neutral decisionmaker. Nor do they contend that Respondents made any individualized
8 determination that changed circumstances, danger to the community, or risk of flight justified
9 revoking Petitioner's liberty after approximately fifteen years of permitting him to remain at
10 liberty in the community.

11 Nor do Respondents identify any persuasive reason for this Court to depart from its
12 recent decision in *Agelvis-Cuberos v. Casey*, Case No. 3:26-cv-00710-BJC-DDL, in which this
13 Court granted habeas relief after Respondents advanced materially similar detention arguments.
14 Respondents likewise acknowledge that this Court and other courts in this District have
15 repeatedly rejected their statutory detention theory under materially similar facts.

16 Accordingly, because Respondents fail to rebut Petitioner's central constitutional claim,
17 identify no material factual or legal distinction warranting a different result, and present no
18 lawful basis for Petitioner's continued detention, the Petition should be granted and Petitioner
19 immediately released.

20 **II. Respondents Fail to Rebut Petitioner's Constitutional Claim**

21 Respondents' Response does not meaningfully rebut the constitutional claim presented in
22 the Petition. Rather than addressing whether Petitioner's re-detention complied with the
23 requirements of the Due Process Clause, Respondents instead argue that Petitioner is subject to
24 mandatory detention under 8 U.S.C. § 1225(b)(2) and renew their jurisdictional arguments under
25 8 U.S.C. §§ 1252(g) and 1252(b)(9). Those arguments do not answer the constitutional question
26 presented here.

1 The Petition does not challenge Respondents' authority to initiate or continue removal
2 proceedings, nor does it seek review of any discretionary immigration determination. Rather,
3 Petitioner challenges the constitutionality of the government's decision to revoke the liberty it
4 permitted him to enjoy for approximately fifteen years following the administrative closure of
5 his removal proceedings by abruptly returning him to physical detention without constitutionally
6 adequate process.

7 Accordingly, regardless of the statutory detention authority Respondents invoke or the
8 jurisdictional objections they assert, they do not answer the central constitutional question
9 presented by this case: whether the government may revoke Petitioner's longstanding liberty and
10 return him to immigration detention without first providing the procedural protections required
11 by the Fifth Amendment.

12 Most significantly, Respondents do not contend that Petitioner received prior notice that
13 his liberty would be revoked, a meaningful opportunity to be heard before a neutral
14 decisionmaker, or any individualized determination that changed circumstances, danger to the
15 community, or risk of flight justified his re-detention after approximately fifteen years of lawful
16 liberty. Nor do Respondents identify any constitutional principle authorizing the government to
17 dispense with those protections under the circumstances presented here.

18 Because Respondents fail to address the constitutional violation alleged in the Petition,
19 their Response provides no basis for denying habeas relief.

20 **III. Petitioner Possessed a Protected Liberty Interest in Remaining Free**
21 **From Re-Detention**

22 Respondents' own actions created Petitioner's protected liberty interest. After agreeing to
23 the administrative closure of Petitioner's removal proceedings, Respondents permitted Petitioner
24 to remain openly at liberty in the United States for approximately fifteen years without seeking
25 his detention, recalendaring his proceedings, or otherwise revoking that liberty.

1 The relevant facts are undisputed. Following the administrative closure of his removal
2 proceedings, Petitioner openly resided in the United States for approximately fifteen years,
3 established substantial family and community ties, remained continuously subject to the
4 government's authority, and was never alleged to have absconded, violated any immigration
5 reporting obligation, or otherwise engaged in conduct demonstrating that he posed a danger to
6 the community or a risk of flight. Respondents do not dispute those facts.

7 The protected liberty interest at issue does not arise merely from Petitioner's physical
8 presence in the United States. Rather, it arises from the government's own decision to permit
9 Petitioner to remain at liberty for approximately fifteen years after agreeing to the administrative
10 closure of his removal proceedings. By permitting that liberty to continue uninterrupted for
11 approximately fifteen years, Respondents necessarily determined that immediate physical
12 detention was unnecessary.

13 Having affirmatively permitted Petitioner to remain at liberty for approximately fifteen
14 years, Respondents could not abruptly revoke that liberty without complying with the
15 requirements of the Due Process Clause. The Constitution does not permit the government to
16 acquiesce in an individual's liberty for more than a decade and then abruptly return that
17 individual to physical custody without constitutionally adequate process.

18 Respondents' Response does not meaningfully address this protected liberty interest.
19 Instead, Respondents attempt to justify Petitioner's present detention under the Immigration and
20 Nationality Act without explaining why the Constitution permitted them to revoke Petitioner's
21 longstanding liberty in the manner that occurred here. Because Petitioner possessed a protected
22 liberty interest in remaining free from re-detention, Respondents were required to provide
23 constitutionally adequate procedural safeguards before depriving him of that liberty.

24 **IV. Re-Detention Without Constitutionally Adequate Process Violated the**
25 **Due Process Clause**

26 Here, following the administrative closure of Petitioner's removal proceedings,
27 Respondents permitted Petitioner to reside openly at liberty in the United States for
28

1 approximately fifteen years. Respondents thereafter abruptly re-detained Petitioner without prior
2 notice, without a meaningful opportunity to be heard, without a hearing before a neutral
3 decisionmaker, and without any individualized determination explaining why detention had
4 suddenly become necessary. Respondents do not contend that any such procedures were
5 provided.

6 The constitutional violation does not arise merely from Petitioner's present detention.
7 Rather, it arises from the manner in which Respondents revoked the longstanding liberty they
8 had permitted Petitioner to enjoy for approximately fifteen years. Once Respondents created that
9 protected liberty interest, the Fifth Amendment required constitutionally adequate procedures
10 before that liberty could be revoked.

11 Respondents identify no such procedures. They do not contend that Petitioner received
12 prior notice that his liberty would be revoked. They do not contend that Petitioner was afforded
13 an opportunity to challenge the basis for his re-detention before a neutral decisionmaker. Nor do
14 they contend that Respondents made any individualized determination that changed
15 circumstances, danger to the community, or risk of flight justified revoking Petitioner's liberty
16 after approximately fifteen years of permitting him to remain at liberty in the community.

17 Instead, Respondents rely upon their contention that Petitioner is subject to mandatory
18 detention under 8 U.S.C. § 1225(b)(2). That statutory characterization, however, does not answer
19 the constitutional question presented here. Regardless of the detention authority Respondents
20 invoke, the government may not revoke a protected liberty interest without providing the
21 procedural safeguards required by the Due Process Clause.

22 This Court has already recognized in materially similar circumstances that a noncitizen
23 who has previously been permitted to remain at liberty possesses a protected liberty interest that
24 cannot be revoked without constitutionally adequate process. Respondents identify no material
25 factual or legal distinction that would warrant a different result here.

1 Accordingly, because Respondents deprived Petitioner of his protected liberty interest
2 without constitutionally adequate process, Petitioner's continued detention violates the Fifth
3 Amendment. Habeas relief is therefore warranted.

4 **V. Respondents' Response Effectively Concedes That the**
5 **Petition Should Be Granted**

6 Rather than rebutting Petitioner's constitutional claim, Respondents' Response effectively
7 concedes that the Petition should be granted. Respondents expressly acknowledge that this
8 Court's prior decisions "will control the result here if the Court adheres to its prior decisions"
9 because "the facts are not materially distinguishable." Respondents further state that they "do not
10 oppose the petition" and "defer to the Court on the appropriate relief." Respondents identify no
11 material factual or legal distinction warranting a different result here.

12 Although Respondents preserve their statutory detention and jurisdictional arguments,
13 those arguments do not answer the constitutional question presented by the Petition. Respondents
14 do not meaningfully address Petitioner's due process claim. Nor do they contend that Petitioner
15 received prior notice that his longstanding liberty would be revoked, a meaningful opportunity to
16 be heard before a neutral decisionmaker, or any individualized determination that changed
17 circumstances, danger to the community, or risk of flight justified his re-detention after
18 approximately fifteen years of liberty following the administrative closure of his removal
19 proceedings. Instead, Respondents rely principally upon statutory detention and jurisdictional
20 arguments that do not answer the constitutional question presented by the Petition.

21 Equally significant, Respondents offer no persuasive reason for this Court to depart from
22 its prior decisions granting habeas relief in materially similar re-detention cases. To the contrary,
23 Respondents expressly acknowledge that this Court's prior decisions control the outcome if the
24 Court adheres to them because the facts presented here are not materially distinguishable.
25 Respondents present no new constitutional analysis, no intervening authority, and no material
26 factual distinction that would justify a different outcome.

1 Accordingly, Respondents' own Response confirms that the Petition should be granted.
2 Having acknowledged that the facts are not materially distinguishable from this Court's prior
3 decisions, that they do not oppose the Petition, and that they defer to the Court on the appropriate
4 relief, Respondents provide no basis for denying habeas relief.

5 **VI. Immediate Release Is the Appropriate Remedy**

6 Where detention violates the Constitution, the traditional function of habeas corpus is to
7 secure release from unlawful custody. Immediate release is therefore the appropriate remedy.

8 Indeed, this Court has previously recognized that immediate release is the appropriate
9 remedy in materially similar re-detention cases. See, e.g., *Agelvis-Cuberos v. Casey*, No. 3:26-
10 cv-00710-BJC-DDL (S.D. Cal. Feb. 26, 2026). Respondents' concession reinforces that
11 immediate release is the appropriate remedy. They acknowledge that this Court's prior decisions
12 "will control the result here if the Court adheres to its prior decisions," that "the facts are not
13 materially distinguishable," that they "do not oppose the petition," and that they "defer to the
14 Court on the appropriate relief.

15 Similarly, other courts throughout the Southern District of California have consistently
16 granted habeas relief where the government revoked a previously established liberty interest
17 without constitutionally adequate process. See *Tido-Ngoumtsop v. Warden*, No. 3:26-cv-02913-
18 LL-VET (S.D. Cal. May 21, 2026); *Jimenez Quevedo v. LaRose*, No. 3:26-cv-03211-JES-MSB
19 (S.D. Cal. May 29, 2026); *Revelorio-Osorio v. Casey*, No. 3:26-cv-03440-JAO-GC (S.D. Cal.
20 June 16, 2026); *Hidalgo Gonzalez v. LaRose*, No. 3:26-cv-03561-GPC-GC (S.D. Cal. June 24,
21 2026). In each of those cases, the constitutional injury arose not merely from the existence of
22 detention, but from the government's decision to revoke a previously established liberty interest
23 without constitutionally adequate procedures. Once that constitutional violation occurred,
24 continued detention could not be justified by generalized detention authority or post hoc
25 explanations.

26 The constitutional violation in this case was complete when Respondents abruptly
27 revoked the liberty they had permitted Petitioner to enjoy for approximately fifteen years
28

1 following the administrative closure of his removal proceedings and returned him to physical
2 custody without the process required by the Due Process Clause. Respondents do not contend
3 that Petitioner received prior notice that his liberty would be revoked. They do not contend that
4 Petitioner received a hearing before a neutral decisionmaker. They do not contend that any
5 individualized determination preceded Petitioner's re-detention. Thus, Petitioner's present
6 detention cannot be sustained.

7 Nor have Respondents established that continued detention is necessary. Respondents
8 identify no individualized finding that Petitioner poses a danger to the community, no
9 individualized finding that Petitioner presents an unacceptable risk of flight, and no
10 determination concluding that less restrictive alternatives would be insufficient. Instead,
11 Respondents rely upon generalized statutory detention authority while failing to establish why
12 continued physical detention is constitutionally necessary under Petitioner's particular
13 circumstances.

14 Immediate release is especially appropriate because Respondents themselves permitted
15 Petitioner to remain openly at liberty in the United States for approximately fifteen years after
16 agreeing to the administrative closure of his removal proceedings. Having allowed Petitioner to
17 remain at liberty for such an extended period without seeking his detention, Respondents cannot
18 now revoke that liberty without first providing the procedural protections required by the Fifth
19 Amendment.

20 Accordingly, because Respondents revoked Petitioner's longstanding liberty without
21 constitutionally adequate process, because Respondents have failed to establish any lawful basis
22 for Petitioner's continued detention, and because immediate release is the remedy consistently
23 ordered by this Court and other courts confronting materially similar constitutional violations,
24 the Court should grant the Petition and order Petitioner's immediate release.

25 In the alternative, should the Court decline to order immediate release, Petitioner
26 respectfully requests that the Court order a prompt constitutionally adequate custody hearing
27 before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear
28

1 and convincing evidence, that continued detention is necessary to prevent flight or danger to the
2 community.

3 **VII. Conclusion**

4 Respondents have failed to rebut Petitioner's central constitutional claim. They do not
5 establish that Petitioner received constitutionally adequate process before Respondents revoked
6 the liberty they permitted him to enjoy for approximately fifteen years following the
7 administrative closure of his removal proceedings. Nor do they identify any constitutional
8 principle authorizing the government to dispense with the procedural protections required by the
9 Fifth Amendment before returning Petitioner to physical detention.

10 The Constitution does not permit the government to revoke such longstanding liberty
11 through abrupt re-detention without prior notice, a meaningful opportunity to be heard, and an
12 individualized determination justifying the deprivation of liberty. Because Respondents failed to
13 provide those basic procedural safeguards, Petitioner's continued detention violates the Due
14 Process Clause.

15 Accordingly, Petitioner respectfully requests that the Court grant the Petition for Writ of
16 Habeas Corpus and order Petitioner's immediate release.

17 In the alternative, should the Court decline to order immediate release, Petitioner
18 respectfully requests that the Court order a prompt constitutionally adequate custody hearing
19 before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear
20 and convincing evidence, that continued detention is necessary to prevent flight or danger to the
21 community.

22 Respectfully submitted,
23
24
25
26
27
28

/s/ Alejandro J. Monsalve, Esq. CA SBN 324958

Alex Monsalve Law Firm, PC

240 Woodlawn Ave, Suite 9

Chula Vista, CA 91910

Phone: (619) 777-6796

Counsel for Petitioner

Dated: July 7, 2026