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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISON

JOSE OSCAR ORDAZ GOMEZ,

Petitioner,

v.

SERGIO ALBARRAN, San Francisco Field Office Director, U.S. Immigration and Customs Enforcement; DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States, acting in their official capacities;

Respondents.

Case No: 5:26-cv-06614-EKL

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

Immigration Habeas Case

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I. INTRODUCTION

After six years of court-ordered liberty — granted by a federal judge after individualized review, and honored by ICE through six years of check-ins, ATD supervision, and de-escalation — ICE lured Petitioner to a routine check-in and arrested him with no notice, no hearing, and no neutral decisionmaker, based on ICE's own unilateral say-so that "circumstances" had changed. That is precisely the practice Judge Pitts stayed in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025), and precisely what the Due Process Clause forbids.

Six days before Respondents filed their Response, Judge Tigar granted habeas to a *Zepeda Rivas v. Jennings*, 445 F. Supp. 3d 36 (N.D. Cal. 2020) class member re-detained after the settlement expired, and enjoined respondents "from arresting, detaining, or removing Duong without notice and a hearing to determine whether a material change of circumstances justifies his re-detention." *Duong v. Kaiser*, No. 25-cv-07598-JST, 2026 WL 2124372, at *9 (N.D. Cal. July 23, 2026). Moreover, *A.F.A.M. v. Albarran*, No. 25-cv-10492-AMO, 2025 WL 3752190, at *5 (N.D. Cal. Dec. 22, 2025)— which the government itself cites (Resp. 8:11–17) — granted a preliminary injunction against re-detention without a pre-deprivation hearing before an immigration judge. This Court should do the same.

Finally, Respondents' three asserted "material changes"— *Zepeda Rivas* settlement expiration; the 2021 Mexican rearrest order; and ATD home visit misses—are not material changes at all, and besides the point because due process assigns that determination to a neutral decisionmaker at a hearing, not to the arresting agency after the fact.

II. LEGAL STANDARD

A preliminary injunction is warranted if the movant shows (1) they are "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary

relief," (3) "the balance of equities tips in [their] favor," and that (4) "an injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see also Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting the analysis for issuing a temporary restraining order and a preliminary injunction is substantially the same). Even if the movant raises only "serious questions" as to the merits of their claims, the court can grant relief if the balance of hardships tips "sharply" in their favor. *All. for the Wild Rockies*, 632 F.3d at 1135.

III. ARGUMENT

A. Re-detention Violated the *Garro Pinchi* Stay

Garro Pinchi provisionally certified a class and stayed, under 5 U.S.C. § 705, DHS's new policy of re-detaining previously released noncitizens without individualized material-change circumstances determinations. 813 F.Supp.3d 973. Here, Respondents concede Petitioner "would likely fit the plain language of the class definition." (Resp. 7:14-15). That should be the end of the matter—class definitions are applied as written, not as Respondents imagine the court "seem[ed]" to intend. (Resp. 7:15). Respondents cite no authority for reading an unwritten "except court-ordered releases" carve-out into the class. Furthermore, subclass membership is irrelevant here because the stay of the policy protects the class, and Respondents do not contend otherwise.

Respondents' fallback—that ICE really did determine a material change here—fails twice over. First, the three asserted changes are not material changes, *See* § III.B., below. Second, under the restored status quo and the Due Process Clause, ICE does not get to be the judge of its own re-arrest. *A.F.A.M.* and several other courts in this circuit have rejected exactly this move—ICE's unilateral, unreviewed "change in circumstances" determination announced to Petitioner

mid-arrest. *See A.F.A.M.*, 2025 WL 3752190, at *4 (quoting *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 WL 2959250, at *4 (E.D. Cal. Oct. 17, 2025)); *Vilela v. Robbins*, 813 F. Supp. 3d 1144, 1154 (E.D. Cal. 2025); *J.A.E.M. v. Wofford*, 812 F. Supp. 3d 1058, 1067-68 (E.D. Cal. 2025); *E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1322 (W.D. Wash. 2025); *Bernal v. Albarran*, 2025 WL 3281422, at *6 (N.D. Cal. Nov. 25, 2025).

Therefore, Petitioner is likely to succeed on his claim that Respondents are enjoined by and in violation of the *Garro Pinchi* preliminary injunction.

B. No "Material Change" Justified Re-arrest and ICE Cannot Adjudicate That Question Unilaterally

1. Expiration of the Zepeda Rivas settlement is not a change in Petitioner's Circumstances

Respondents allege that "DHS never made an individualized determination that Petitioner was *not* a flight risk or danger," and thus, the *Zepeda Rivas* settlement expiring on June 9, 2025, created "a material change in circumstances in Petitioner's release from ICE custody." (Resp. 8:1-4). This argument must be rejected.

Respondents first fail to acknowledge that Petitioner was released in June 2020 by order of Judge Chhabria through the *Zepeda Rivas* bail process which constitutes a judicial, individualized determination that Petitioner is not a danger to the community or a flight risk. *See Zepeda Rivas*, 445 F. Supp. 3d at 40 (noting that in the bail process, "care will be taken both to avoid releasing detainees who are a danger to the community and to minimize the possibility that released detainees will fail to appear for their removal proceedings."). The Court granted Petitioner bail with full knowledge of Petitioner's record; by then the second Mexican warrant had been withdrawn. (Resp. 2:23-25 (conceding the IJ heard that evidence in April 2020)).

Second, the *Zepeda Rivas* settlement's expiration does not require a different result. Recently, Judge Tigar held that the settlement's expiration "le[aves the petitioner] with the rights

afforded him by the immigration statutes and the Due Process Clause…." *Duong*, 2026 WL 2124372, at *4. Judge Tigar further noted that the agreement cannot "reasonably be interpreted to waive or diminish" the petitioner's rights, *id.*, and the settlement itself preserved individual challenges. *See, e.g., Zepeda Rivas*, No. 20-cv-2731-CV, Dkt. No. 1205-1 at 21 ("Nothing in this Agreement shall have any preclusive effect on ... any claim by ... any Class Members concerning any individual challenges to the legal basis of their custody, now or in the future.").

Even Judge Chhabria, the judge in *Zepeda Rivas*, in granting a TRO rejected the argument that the petitioner's liberty interest was "conditional on the government's ability to re-detain [petitioner] after the settlement term's expiration." *Zelaya v. Albarran*, No. 25-cv-08774-VC, 2025 WL 2952507, at*1 (N.D. Cal. Oct. 15, 2025). In refusing to follow *Giorges v. Kaiser*, No. 5:25-cv-07683-NW, 2025 WL 2898967 (N.D. Cal. Oct. 10, 2025), Judge Chhabria held that "the *Zepeda Rivas* settlement reflected a voluntary decision by ICE not to re-detain Zelaya for three years and a determination that he was not a flight risk or a danger to his community." *Zelaya*, 2025 WL 2952507, at*1. Later, Judge Chhabria granted a PI in the same case expressly rejected Respondents' recycled arguments that Petitioner's release "was a product of exigent circumstances." *Doe v. Albarran*, No. 25-cv-08774-VC, 2025 WL 3141224, at *1 (N.D. Cal. Nov. 10, 2025).

Carballo v. Andrews, No. 1:25-cv-00978-KES-EPG (HC), 2025 WL 2381464, at *5 (E.D. Cal. Aug. 15, 2025), is particularly instructive. In rejecting similar arguments, the court held that "the government could have expedited petitioner's removal proceedings at any time during th[e] five years [from his release to the expiration of the settlement agreement]. Instead, it chose to allow petitioner's proceedings to continue for five years while he reintegrated into the community and now asks for petitioner's circumstances during those five years on release to be

disregarded." Respondents' request here is even less persuasive because Petitioner has been released for over six years and is in removal proceedings without a final order of removal.

As such, the *Zepeda Rivas* settlement's expiration does not constitute a changed circumstance authorizing Petitioner's re-detention.

2. The 2021 Mexican arrest order is five years old and proves the opposite of a "change"

Respondents also allege that "Mexico's issuance of a rearrest order for Petitioner in 2021 based on allegations [redacted] significant change in circumstances." (Resp. 8:5-9). This argument must also be rejected.

As an initial matter, Respondents and Judge Chhabria were on notice since before Petitioner was released from custody in June 2020 that a new arrest warrant would likely be issued because on February 4, 2020, four months before he was released from custody, the Board of Immigration Appeals ("BIA") noted in its decision denying Petitioner's motion to reopen that a new warrant would likely be issued and that "it does not appear that [Petitioner's] situation is substantially different as a result of the [vacated 2019 arrest] order." Exhibit ("Exh.") A, BIA Decision, 2/4/20. Despite this finding, Petitioner was released from custody. Thus, Respondents cannot now claim that the issuance of a foreseen rearrest order in 2021 constitutes a change in circumstances.

In any event, a June 2021 document cannot be the "significant material change" that justified Petitioner's June 2026 arrest. ICE monitored Petitioner for five years with that order in hand—through check-ins, home visits, and ATD de-escalations—without ever seeking re-detention. Respondents' position concedes ICE saw no detention-worthy change for half a decade.

Additionally, Petitioner has consistently denied that [redacted]

[redacted] and that is precisely what his removal proceedings is set to determine. *See* Dkt. No. 3-2, Exh. B (*Form I-589*) at 5; Exh. B (*9th Cir. Mot. To Remand*) at 2-4. Thus, it is quite dubious to suggest that this 2021 re-arrest order (based on a false accusation from 2006) makes him a flight risk in 2026.

Moreover, whether the warrant makes Petitioner a flight risk today is exactly the contested, fact-bound question that due process assigns to a neutral decisionmaker at a hearing with notice and an opportunity to respond — not to the arresting officers. *See Duong*, 2026 WL 2124372, at *9 (hearing required to determine "whether a material change of circumstances justifies his re-detention"); *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981) (material change of circumstances required before bond may be revoked).

Therefore, the five-year-old re-arrest warrant does not constitute a material change in circumstance justifying Petitioner's re-arrest in 2026.

3. Six missed home visits over four years are "technical violations," not evidence of flight risk

Respondents' argument that Petitioner's six alleged ATD home visit violations constitute material changes in circumstances demonstrating he is a flight risk must also be rejected. (Resp. 8:10-17). First, Respondents have already lost this argument in *A.F.A.M.*, a case they cite. In *A.F.A.M.*, the court noted how "[c]ourts have repeatedly rejected the argument that ICE can re-detain a noncitizen for technical violations 'without regard to whether that technical violation means that one is a flight risk or danger.'" 2025 WL 3752190, at *4 (quoting *J.C.L.A.*, 2025 WL 2959250, at *4). Accord *Vilela*, 813 F. Supp. 3d at 1152; *J.A.E.M.*, 812 F. Supp. 3d at 1068; *E.A. T.-B.*, 795 F. Supp. 3d at 1322; *Bernal*, 2025 WL 3281422, at *6 (missed check-in did not "come close to showing" danger or flight risk).

Here, Petitioner has six years of compliance: ICE supervised him on ATD from 2020 to 2026. The government's own account shows he appeared at his check-ins — including the June 30, 2026 check-in at which he was arrested. *See* Dkt. 11-4 at 6. The alleged violations are six missed home visits spread over four years (one in 2021, two in 2022, two in 2023, one in May 2024) — none in the two years preceding his re-arrest, and ICE never sought re-detention when they occurred. *See id.* Rather, ICE's contemporaneous response to the majority of the alleged missed home visits was that they were able to contact Petitioner. *See id.* Thus, these alleged violations are technical ones that say nothing about Petitioner's risk of flight, and do not constitute materially changed circumstances warranting his re-detention.

C. Petitioner's Detention Is Governed by § 1226(a), Not § 1225(b)(2)(A) Pursuant to Binding Ninth Circuit Precedent

Respondents concede that "[e]very court in this district to have considered these questions" have rejected their argument that Petitioner is detained under 8 U.S.C. § 1225(b)(2)(A), instead of 8 U.S.C. § 1226(a). (Resp. 9:1-3). Regardless, they continue to make that argument here. (Resp. 8:18-10:6). Whatever little persuasive value Respondents' arguments had when their response was filed, they must now be rejected based on the Ninth Circuit's June 30, 2026, precedential decision holding that noncitizens "present without admission who are apprehended in the interior of the United States are subject to the detention regime of § 1226(a), not § 1225(b)(2)(A)." *Rodriguez Vazquez v. Bostock*, -- F.4th --, 2026 WL 2196424, at *3 (9th Cir. June 30, 2026).

D. Petitioner has a Protected Liberty Interest; The "Entry Fiction" Argument Fails

Relying on *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), Respondents argue that the due process to which Petitioner is entitled is only that provided by statute. (Resp. 12:7-13:21). This argument must be rejected. "[O]nce an alien enters the country," the Due

Process Clause applies "to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). *Thuraissigiam* itself is explicit that it addressed a noncitizen apprehended "25 yards" into the country hours after crossing and "treated as an 'applicant for admission'"; the Court also distinguished "aliens who have established connections in this country." 591 U.S. at 107, 139-40. Here, Petitioner has 20 years of continuous residence in the United States, owns his own business, and he resides with his family, including two U.S. citizen daughters. *See* Dkt. 3-2, Moreno Decl. ¶4, Exh. I-J. Thus, *Thuraissigiam* does not apply in this case.

Instead, Petitioner's six years of court-ordered liberty creates a weighty liberty interest. *See* Dkt. 3-1 at 17:18-19:6); Dkt. 4 at 4. The Supreme Court has affirmed, and this Court has recognized, that "after [an] individual is released from custody [ ]he has a protected liberty interest in remaining out of custody." *Henriquez Garcia v. Albarran*, No. 26-cv-04839-EKL, 2026 WL 1879641, at *4 (N.D. Cal. June 30, 2026) (citing *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025)). In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." Id. at 482. The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen as within the protection of the [Fifth] Amendment." *Id.*

For over six years preceding his re-detention on June 30, 2026, Petitioner exercised that

freedom after his court-ordered release from custody. *See* Dkt. 3-2 Moreno Decl. at ¶4, Exh. F-J. Just as in *Morrissey*, Petitioner's release "[enabled] him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime. *Morrissey*, 408 U.S. at 482. Between 2020 and 2026, Petitioner maintained his own business to support his family, is heavily involved in day-to-day activities with his U.S. citizen daughters and held close relationships with friends. *See* Dkt. 3-2 Moreno Decl. at ¶4, Exh. F-J. Once released from custody, he retained a weighty liberty interest under the Due Process Clause in avoiding re-detention. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483; *Guillermo M.R. v. Kaiser*, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. June 30, 2025) (recognizing that "the liberty interest that arises upon release [from immigration detention] is inherent in the Due Process Clause"). As such, his re-detention without adequate process violates his due process rights.

E. Due Process Requires Notice and a Pre-Deprivation Hearing Before a Neutral Decision Maker

Where a protected liberty interest exists, a court must determine what process is necessary to ensure Petitioner is not unconstitutionally deprived of his liberty. *Haygood v. Younger*, 769 F.2d 1350, 1357 (9th Cir. 1985) (*en banc*). The Court should apply the test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), as all courts in this district, including this one, has done. *See Duong*, 2026 WL 2124372, at *6 n.2; *see also Henriquez Garcia*, 2026 WL 1879641, at *4.

Here, where detention is incident to civil proceedings rather than criminal, the principle that a person free from physical confinement, even if that freedom is lawfully revokable, has a liberty interest entitling him to constitutional due process before he is re-incarcerated applies with even greater force. *See Guillermo M. R.*, 2025 WL 1983677, at *4. Petitioner retains a truly

weighty liberty interest even though he was under conditional release prior to his re-arrest. He was out of custody for over six years prior to his re-detention, during these years, he spent time with his wife, two U.S. citizen daughters, maintained a business, and developed strong ties to his friends. Moreno Decl. at ¶4, Exh. F-J. What is at stake for Petitioner is one of the most profound private interests recognized by our legal system: whether ICE may unilaterally nullify a prior release from custody and take away his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). This profound private interest must be weighed heavily when determining what process is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

The government's interest in keeping Petitioner in detention without a hearing is low, and the burden of providing such a hearing would be minimal, as immigration courts carry out bond hearings regularly. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. Here, Petitioner never failed to attend any in-person check-ins with ICE, including the June 30, 2026 check-in that led to his re-detention. *See* Dkt. 11-4 at 6. And as explained in section III.B.3, above, his six technical violations over 5 years are insufficient to show he is a flight risk. Petitioner has also sought multiple forms of relief from removal, appeared at his immigration court hearings, and his absolute dedication to working to support his wife, U.S. citizen daughters, and himself further confirms that he is likely to present himself at any future hearings or ICE appearances as he did multiple times prior to being detained. *See generally*, Dkt. 3-2 Moreno Decl. This demonstrates that Petitioner poses no risk of flight. As to danger, Petitioner does not have any criminal history for over 10 years, much

less since being released in 2020. *See id.*; Dkt. 11-4 at 6. Thus, ICE cannot credibly claim that he poses any danger to the community.

As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole … the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483. Restricting re-detention until a neutral adjudicator has determined that DHS has justified Petitioner's re-detention by clear and convincing evidence is far *less* costly and burdensome for the government than keeping him detained. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Any burden on Respondent of such process does not outweigh Petitioner's substantial liberty interest.

Forbidding Respondents from re-detaining Petitioner until he is provided a pre-deprivation hearing before a neutral adjudicator at which the government must show by clear and convincing evidence that sufficiently changed circumstances establish that Petitioner is a danger to the community or a flight risk would decrease the risk of him being erroneously deprived of his liberty. *See, e.g.*, *Pinchi*, 792 F.Supp.3d at 1033 (finding that "the three *Mathews* factors supports… [the] constitutional right to a hearing before a neutral decisionmaker prior to any future detention" for a petitioner released on their own recognizance).

Accordingly, Petitioner is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral adjudicator *prior to any* re-incarceration by ICE. At the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a preliminary injunction. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

F. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

Petitioner will suffer irreparable harm were he to be re-deprived of his liberty and subjected to continued incarceration by immigration authorities without first being provided the constitutionally adequate process that this motion for a preliminary injunction seeks.

The Ninth Circuit has recognized "irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995; *Aguilar Garcia v. Bondi*, No. 3:25-cv-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025) (order granting TRO found irreparable harm from continued ICE detention); *see also Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016) (recognizing that detainees in ICE custody are held in "prison-like conditions.").

Here, Petitioner has been out of ICE custody for over six years. Dkt. 3-2 Moreno Decl. ¶4, 6. During that time he has lived in California with his wife and two U.S. citizen daughters. *See id.* Further, Petitioner's prior detention was very hard on his daughters, and his wife fears they would likely suffer again due to his detention. Dkt. 3-2 Moreno Decl. ¶4, Exh. I-J.

Finally, as detailed above, Petitioner contends that his re-arrest absent a hearing before a neutral adjudicator violated his due process rights. As the Court put it in *Doe*, the "violation of Petitioner's due process rights is sufficient to satisfy the irreparable harm requirement." *Doe v. Becerra*, 787 F.Supp.3d 1083, 1095 (E.D. Cal. 2025). The violation of a statutory right causes "immediate and irreparable injury." *See Guerrero Lepe v. Andrews*, 801 F.Supp.3d 1104, 1119 (E.D. Cal. 2025) (internal citation omitted). Thus, a preliminary injunction is necessary to prevent additional irreparable harm by unlawful re-detention of Petitioner by Respondents.

G. The Balance of the Equities and the Public Interest Favor Granting the Preliminary Injunction

The balance of equities and public interest, which merge when the government is the opposing party, strongly favors Petitioner. *See Aguilar Garcia*, 2025 WL 1676855, at *3 (citations omitted).

Federal courts have recognized a strong public interest "in upholding procedural protections against unlawful detention and … that the costs to the public of immigration detention are staggering." *Id.* Moreover, the government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."); *see also Doe*, 787 F.Supp.3d at 1095. "[I]t would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014); *see also Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) (allowing continued violations of federal law would serve "neither equity nor the public interest").

If a preliminary injunction is not entered, the government would effectively be granted permission to ignore the requirements of Due Process. *See Guillermo M.R.*, 2025 WL 1983677 at * 7 (noting the danger for arbitrary and erroneous deprivation of liberty if ICE is allowed to re-detain released individuals released with no additional process). In this context, the public interest overwhelmingly favors granting a preliminary injunction.

H. The Relief Sought is Well Within the Court's Habeas and Equitable Powers

Respondents' contention that the Court can only order release is incorrect. (Resp. 11:18-26). Petitioner sought release and got it; the injunction against re-detention without process is

what makes the release meaningful rather than a revolving door. Courts in this district have entered precisely this relief, repeatedly and recently. *See Duong*, 2026 WL 2124372, at *9; *Henriquez Garca*, 2026 WL 1879641, at *8; *A.F.A.M.*, 2025 WL 3752190, at *5; *Doe*, 2025 WL 3141224, at *3; *Zelaya*, 2025 WL 2952507, at *2. The court should continue to do so here.

Similarly, Respondents' "Immediate custodian" argument confuses who must be named with what may be ordered. (Resp. 11:18-12:6). The immediate-custodian rule governs the proper respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004). Respondents here include supervisory ICE and DHS officials with unquestioned power to notice a hearing before an IJ and to refrain from re-arrest. Every one of the orders collected above bound the same lineup of respondents — including Sergio Albarran, the lead respondent in this case, in *A.F.A.M.*, *Zelaya*, *Bernal*, and *Henriquez Garcia*.

Respondents' alternative request for this court to order a bond hearing after Petitioner's detention—aside from being internally inconsistent with their argument that this Court can only order release—is inadequate. The constitutional violation is detention without pre-deprivation process; the remedy must be a pre-deprivation hearing with the burden on the government by clear and convincing evidence. *See*, *e.g.*, *Duong*, 2026 WL 2124372, at *9; *Henriquez Garcia*, 2026 WL 1879641, at *8. Petitioner is at liberty under the TRO — the government's proposal would re-detain him first and ask questions later, inverting the right.

Finally, Respondents' contention that this Court cannot prohibit removal must be rejected. (Resp. 14:5-16:9). First, Petitioner does not have a final order of removal, and he is in removal proceedings. *See* Dkt. 3-2, Moreno Decl. ¶5. Second, every case Respondents cite involved a final, executable removal order, and do not address an order maintaining the status quo where removal is not legally possible for years. Thus, 8 U.S.C. §1252(g), (b)(9), and (a)(5)

do not bar relief here. This court should follow *Duong* where Judge Tigar granted final judgment with the same relief requested here. *See Duong*, 2026 WL 2124372, at *9.

IV. CONCLUSION

For the foregoing reasons, and those in his TRO motion, Petitioner respectfully requests the Court grant a preliminary injunction that (1) maintains Petitioner's release from Respondents' custody; (2) enjoins Respondents from re-detaining him unless they demonstrate at a pre-deprivation hearing before a neutral adjudicator, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community such that his physical custody is required; and (3) prohibits the government from transferring him out of this District and/or removing him from the country until these habeas proceedings have concluded.

Dated: August 4, 2026

Respectfully submitted,

s/Heliodoro Moreno, Jr.
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