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

SANTO FERNANDO NUNEZ-BARON,

Case No.: 3:26-cv-03822-AGS-JLB

Petitioner

v.

Judge: Hon. Andrew G. Schopler

CHRISTOPHER LaROSE, et al.,

Respondents

**PETITIONER'S TRAVERSE
AND REQUEST FOR
IMMEDIATE RELEASE OR, IN
THE ALTERNATIVE, A
CONSTITUTIONALLY
ADEQUATE CUSTODY
HEARING**

I. INTRODUCTION

This case presents a straightforward constitutional question. After affirmatively releasing Petitioner from immigration custody and permitting him to reside openly in the community for nearly two years, may Respondents revoke that previously granted liberty without prior notice, without any meaningful opportunity to be heard, and without any individualized determination justifying detention? The Due Process Clause answers that question in the negative.

Respondents' Response does not meaningfully dispute that constitutional principle. Instead, Respondents preserve their position that Petitioner's detention is governed by 8 U.S.C. §

1 1225(b)(2), acknowledge that this Court and other courts within this District have repeatedly
2 rejected that position under materially similar circumstances, state that they "do not oppose the
3 Petition," and defer to the Court regarding the appropriate relief. Respondents further urge the
4 Court, if it grants relief on statutory grounds, to decline to reach Petitioner's independent Due
5 Process and Administrative Procedure Act claims.

6 Accordingly, the principal issue before the Court is Petitioner's independent
7 constitutional claim. The Petition alleges that, after releasing Petitioner into the community and
8 permitting him to reside at liberty for nearly two years, Respondents abruptly revoked that
9 liberty without prior notice, without any opportunity to be heard, and without any individualized
10 determination justifying detention. The Response identifies no changed circumstances
11 warranting revocation of Petitioner's liberty, does not contend that Petitioner became a danger to
12 the community or a risk of flight, and does not explain why the Due Process Clause permitted
13 Respondents to deprive Petitioner of his existing liberty interest without constitutionally
14 adequate pre-deprivation process.

15 Because Respondents do not oppose the Petition and do not defend the constitutional
16 revocation of Petitioner's previously granted liberty, the Court should grant the writ and restore
17 Petitioner to the liberty he enjoyed before his unlawful re-detention. Only if the Court declines to
18 order Petitioner's immediate release should it consider the alternative request for a
19 constitutionally adequate custody hearing.

20 **II. RESPONDENTS' NON-OPPOSITION DOES NOT RESOLVE THE**
21 **CONSTITUTIONAL VIOLATION**

22 Respondents do not oppose the Petition, but neither do they defend the constitutionality
23 of Petitioner's re-detention. Instead, Respondents urge the Court to resolve this case on statutory
24 grounds and decline to reach Petitioner's independent constitutional claims. In doing so,
25 Respondents leave unanswered the central question presented by the Petition: whether the Fifth
26 Amendment permitted the government to revoke Petitioner's previously granted liberty without
27 constitutionally adequate pre-deprivation process.

1 The Petition challenges more than Respondents' statutory detention authority. It
2 challenges Respondents' decision to revoke Petitioner's previously granted liberty without prior
3 notice, without any meaningful opportunity to be heard, and without any individualized
4 determination justifying the deprivation of that liberty.

5 The Response identifies no changed circumstances that justified revoking Petitioner's
6 liberty, does not contend that Petitioner became a danger to the community or a flight risk after
7 his release, and does not explain why the Due Process Clause permitted Respondents to deprive
8 Petitioner of his existing liberty interest without constitutionally adequate procedures. Instead,
9 Respondents focus almost exclusively on the statutory source of detention authority while
10 expressly declining to address Petitioner's independent constitutional claims unless the Court
11 determines that doing so is necessary.

12 Accordingly, Respondents' non-opposition does not resolve the constitutional question
13 presented by the Petition. That question remains whether the Fifth Amendment permitted
14 Respondents to revoke Petitioner's previously granted liberty without constitutionally adequate
15 pre-deprivation process. As demonstrated below, it did not.

16 **III. PETITIONER'S PREVIOUSLY GRANTED LIBERTY COULD NOT BE REVOKED**
17 **WITHOUT CONSTITUTIONALLY ADEQUATE PRE-DEPRIVATION PROCESS**

18 The Fifth Amendment protects all "persons" within the United States from the arbitrary
19 deprivation of liberty without due process of law. At the core of that protection is the principle
20 that, once the government has affirmatively granted an individual physical liberty, it may not
21 revoke that liberty without constitutionally adequate procedures.

22 This case therefore does not concern only the statutory authority governing Petitioner's
23 detention. Rather, it concerns Respondents' decision to revoke a liberty interest that the
24 government itself previously created. Shortly after Petitioner's entry into the United States, DHS
25 affirmatively released Petitioner from immigration custody pursuant to Form I-220A, permitted
26 him to reside openly in the community, and allowed him to remain at liberty for approximately
27 twenty-two months while his removal proceedings remained pending. During that period,

1 Petitioner complied with the conditions of his release, appeared as required by immigration
2 authorities, and remained continuously known to DHS.

3 By releasing Petitioner into the community, Respondents necessarily determined that
4 continued physical detention was not required at that time. Petitioner thereafter organized his life
5 in reliance upon that governmental decision while remaining fully subject to the jurisdiction of
6 the immigration authorities. The liberty that Petitioner enjoyed was therefore not merely an
7 expectation of future freedom; it was an existing liberty interest created and recognized by the
8 government's own affirmative actions.

9 The Supreme Court has repeatedly recognized that "[f]reedom from imprisonment—from
10 government custody, detention, or other forms of physical restraint—lies at the heart of the
11 liberty" protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
12 Once Respondents granted Petitioner that liberty, the Constitution prohibited its arbitrary
13 revocation.

14 Nevertheless, Respondents abruptly re-detained Petitioner without prior notice, without
15 any meaningful opportunity to be heard, and without any individualized determination that
16 revocation of Petitioner's liberty was warranted. Respondents have identified no intervening facts
17 demonstrating that Petitioner became a danger to the community or a risk of flight, nor have they
18 identified any changed circumstances justifying the abrupt deprivation of the liberty they
19 previously granted.

20 Accordingly, the constitutional question before this Court is straightforward: whether
21 Respondents could revoke Petitioner's previously granted liberty without first providing
22 constitutionally adequate process. The answer to that question is governed by the Due Process
23 Clause and the balancing framework established in *Mathews v. Eldridge*, discussed below.

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**IV. UNDER *MATHEWS*, RESPONDENTS WERE REQUIRED TO PROVIDE
CONSTITUTIONALLY ADEQUATE PROCEDURES BEFORE REVOKING
PETITIONER'S LIBERTY**

The Due Process Clause requires the government to provide constitutionally adequate procedures before depriving an individual of a protected liberty interest. In determining what process is constitutionally required, courts apply the balancing framework established in *Mathews v. Eldridge*, 424 U.S. 319 (1976). That framework considers: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation under the procedures employed, and the probable value of additional procedural safeguards; and (3) the government's interest, including the fiscal and administrative burdens that additional procedures would entail. *Id.* at 335. Each of those factors weighs decisively in Petitioner's favor.

A. Petitioner's Liberty Interest Is Substantial

Petitioner's interest in remaining free from physical detention is among the most fundamental liberty interests protected by the Constitution. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadydas v. Davis*, 533 U.S. 678, 690 (2001).

That liberty interest is especially significant here because it is not merely an expectation of future release. DHS affirmatively released Petitioner from custody, permitted him to reside openly in the community for nearly two years, and never revoked that release or otherwise indicated that his continued liberty was no longer appropriate until his abrupt re-detention. During that period, Petitioner complied with the conditions imposed by immigration authorities and remained continuously available to DHS.

Accordingly, the governmental action challenged here did not deny Petitioner an opportunity to obtain liberty; it revoked a liberty that already existed.

B. The Risk of Erroneous Deprivation Is High

The procedures employed by Respondents created a substantial risk of erroneous deprivation because Petitioner's liberty was revoked without any meaningful procedural

1 safeguards. Respondents provided no advance notice that Petitioner's previously granted liberty
2 would be revoked, no opportunity to respond before his detention, and no individualized
3 determination that re-detention was necessary. Instead, Petitioner's liberty was extinguished
4 immediately upon his arrest.

5 That absence of process significantly increased the risk of error. Without notice or an
6 opportunity to be heard, Petitioner had no ability to contest the factual or legal basis for
7 Respondents' decision, explain why continued liberty remained appropriate, or challenge whether
8 any changed circumstances justified revocation of his release. Nor was there any neutral
9 decisionmaker to determine whether Respondents possessed an adequate factual basis for
10 depriving Petitioner of his liberty.

11 Additional procedural safeguards would have substantially reduced that risk. Providing
12 notice, an opportunity to respond, and an individualized determination before revoking
13 Petitioner's liberty would have ensured that Respondents' decision rested upon identified facts
14 rather than the summary revocation of a liberty previously granted by the government itself.
15 Under *Mathews*, the probable value of those safeguards weighs heavily in favor of requiring
16 constitutionally adequate pre-deprivation process.

17 **C. Respondents' Interest Does Not Justify Dispensing With Pre-Deprivation Process**

18 Respondents have identified no governmental interest sufficient to justify dispensing with
19 constitutionally adequate procedures before revoking Petitioner's liberty.

20 This case does not involve an individual whose identity or whereabouts were unknown,
21 nor one who had recently entered the United States and remained in initial inspection-stage
22 custody. Respondents knew Petitioner's identity, residence, and immigration status. They
23 previously released him into the community, remained aware of his whereabouts throughout his
24 removal proceedings, and permitted him to remain at liberty for nearly two years without
25 alleging that he posed a danger to the community or a risk of flight.

26 Nor do Respondents identify any exigent circumstance requiring Petitioner's immediate
27 re-detention without prior process. The Response identifies no changed circumstances, no
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1 violation of Petitioner's release conditions, and no individualized facts demonstrating that he
2 suddenly became a danger to the community or a flight risk. Instead, Respondents rely
3 principally upon their statutory position regarding the source of detention authority while
4 recognizing that this Court has repeatedly rejected that statutory position.

5 Under these circumstances, Respondents' generalized interest in enforcing the
6 immigration laws cannot justify dispensing entirely with constitutionally adequate pre-
7 deprivation procedures. Where the government seeks to revoke an existing liberty interest that it
8 previously granted, the Due Process Clause requires more than the summary deprivation of
9 liberty that occurred here. Accordingly, the third *Mathews* factor also weighs decisively in
10 Petitioner's favor.

11 Accordingly, application of the *Mathews* balancing framework confirms that
12 Respondents were constitutionally required to provide constitutionally adequate pre-deprivation
13 procedures before revoking Petitioner's previously granted liberty. Respondents instead revoked
14 that liberty without prior notice, without any meaningful opportunity to be heard, and without
15 any individualized determination justifying Petitioner's re-detention. The Due Process Clause
16 required more.

17 **V. POST-DEPRIVATION CUSTODY HEARING CANNOT REMEDY THE**
18 **COMPLETED CONSTITUTIONAL VIOLATION**

19 The constitutional violation alleged in this case was complete when Respondents revoked
20 Petitioner's previously granted liberty without providing the constitutionally required pre-
21 deprivation procedures. The Due Process Clause protects individuals against the arbitrary
22 deprivation of liberty before that deprivation occurs. Once Petitioner's liberty was revoked
23 without constitutionally adequate process, the constitutional injury had already been inflicted.

24 For that reason, a later custody hearing cannot fully remedy the constitutional violation.
25 Although a post-deprivation hearing may determine whether continued detention is presently
26 justified, it cannot retroactively provide the notice, opportunity to be heard, and individualized
27 determination that the Constitution required before Respondents deprived Petitioner of his
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1 liberty. Constitutional process cannot be supplied after the very deprivation it was intended to
2 prevent has already occurred.

3 Respondents' Response does not meaningfully address this distinction. Rather than
4 explain why pre-deprivation process was unnecessary, Respondents instead request that, if the
5 Court concludes Petitioner is entitled to custody review, they be afforded additional time to
6 conduct a custody hearing. That request assumes that a future administrative proceeding can cure
7 the completed constitutional deprivation alleged in the Petition. It cannot.

8 The Supreme Court has long recognized that due process ordinarily requires notice and
9 an opportunity to be heard before the government deprives an individual of a protected liberty
10 interest. Here, Respondents provided neither. Having already deprived Petitioner of his liberty
11 without constitutionally adequate procedures, Respondents cannot retroactively satisfy the
12 requirements of due process through a later custody determination.

13 Accordingly, although a constitutionally adequate custody hearing remains an appropriate
14 alternative remedy if this Court declines to order Petitioner's immediate release, such a hearing
15 cannot fully remedy the constitutional violation already suffered.

16 **VI. IMMEDIATE RELEASE IS THE APPROPRIATE REMEDY**

17 The traditional function of the writ of habeas corpus is to secure release from unlawful
18 custody. Where a petitioner demonstrates that his present detention violates the Constitution,
19 federal courts possess broad equitable authority to fashion relief that restores the petitioner to the
20 position he occupied before the unlawful deprivation occurred.

21 Here, Respondents revoked Petitioner's previously granted liberty without providing the
22 constitutionally adequate pre-deprivation procedures required by the Fifth Amendment. As
23 demonstrated above, that constitutional violation was complete when Respondents deprived
24 Petitioner of his liberty without prior notice, without any meaningful opportunity to be heard,
25 and without any individualized determination justifying his re-detention. Because the
26 constitutional injury has already occurred, immediate restoration of Petitioner's liberty is the
27 remedy that most fully vindicates the Due Process Clause.

1 This conclusion is further reinforced by the consistent exercise of equitable habeas
2 authority throughout the Southern District of California. Faced with materially similar re-
3 detention cases involving noncitizens who had previously been released into the community,
4 judges throughout this District have repeatedly concluded that immediate restoration of the
5 petitioner's liberty—not merely additional administrative proceedings—is the appropriate
6 remedy for the unconstitutional revocation of a previously granted liberty interest.

7 That consistent body of decisions now spans the Chief Judge of this District and
8 numerous other district judges, multiple forms of prior governmental release—including parole,
9 Form I-220A, Orders of Release on Recognizance, ORR release, and long-term liberty following
10 administrative closure—and reflects a substantial body of persuasive authority recognizing that
11 where DHS revokes a previously granted liberty interest without constitutionally adequate
12 process, immediate restoration of that liberty is an appropriate exercise of the Court's equitable
13 habeas authority. See, e.g., *Guifarro-Guerrero v. LaRose*, No. 26-cv-02107-BAS-DEB (Chief
14 Judge Bashant); *Point Dujour v. LaRose*, No. 3:26-cv-02207-JES-MSB (Judge Sabraw); *Tido-*
15 *Ngoumtso v. Warden*, No. 26-cv-02913-LL-VET (Judge Lopez); *Hidalgo Gonzalez v. LaRose*,
16 No. 26-cv-03561-GPC-GC (Judge Curiel); *Diego Gonzalez v. Casey*, No. 26-cv-03579-JO-DEB
17 (Judge Ohta); *Nicolas-Jimenez v. LaRose*, No. 26-cv-03720-BJC-VET (Judge Curiel).

18 Respondents state that they "do not oppose the Petition" and defer to the Court regarding
19 the appropriate relief. Yet Respondents never attempt to justify the constitutional revocation of
20 Petitioner's previously granted liberty or explain why the Due Process Clause permitted that
21 deprivation without constitutionally adequate pre-deprivation process. Having failed to address
22 the constitutional violation presented by the Petition, Respondents identify no basis for departing
23 from the consistent remedial approach adopted by courts throughout this District.

24 Accordingly, because Respondents have failed to justify Petitioner's re-detention under
25 the Due Process Clause, the Court should grant the Petition and order Petitioner's immediate
26 release.

**VII. ALTERNATIVELY, THE COURT SHOULD ORDER A
CONSTITUTIONALLY ADEQUATE CUSTODY HEARING**

If the Court declines to order Petitioner's immediate release, it should nevertheless order Respondents to provide Petitioner with a constitutionally adequate custody hearing before a neutral decisionmaker.

As demonstrated above, the Constitution required Respondents to provide adequate procedures before revoking Petitioner's previously granted liberty. Although a post-deprivation custody hearing cannot fully remedy the completed constitutional violation, it remains the minimum relief necessary to ensure that Petitioner's continued detention is not based solely upon Respondents' unilateral determination.

Any such hearing must satisfy the requirements of due process. At a minimum, Respondents should bear the burden of demonstrating, by clear and convincing evidence, that Petitioner's continued detention is justified because he poses a danger to the community or presents a flight risk that cannot be addressed through less restrictive alternatives. The neutral adjudicator should also consider Petitioner's ability to pay any monetary bond imposed and whether conditions of supervision would reasonably ensure Petitioner's future appearance.

Accordingly, if the Court declines to order Petitioner's immediate release, it should direct Respondents to provide Petitioner with a constitutionally adequate custody hearing within a time certain.

VIII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant the Petition for Writ of Habeas Corpus and order Petitioner's immediate release from immigration custody. In the alternative, if the Court declines to order Petitioner's immediate release, Petitioner respectfully requests that the Court order Respondents to provide a constitutionally adequate custody hearing consistent with the requirements of the Due Process Clause. Petitioner further requests such other and further relief as the Court deems just and proper.

1 Because Respondents do not oppose the Petition, identify no material factual dispute, and
2 present only legal issues capable of resolution on the existing record, Petitioner respectfully
3 requests that the Court decide the Petition on the existing record and vacate the hearing currently
4 scheduled for July 27, 2026.

5 Respectfully submitted,

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

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