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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

YANGLING XIE,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

Case No. 5:26-cv-07571-EKL

RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE FOR SANCTIONS

Hon. Eumi K. Lee

Hearing Date: N/A

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I. INTRODUCTION

The U.S. Attorney's Office for the Northern District of California ("NDCA USAO)" respectfully requests that the Order to Show Cause be discharged. Respondents did not represent in their response to Petitioner's Motion for Temporary Restraining Order—and certainly did not intend to represent—that Petitioner would not be re-detained or that her re-detention "was not 'imminent' and 'may not occur.'" Dkt. No. 10 at 4. They understand, however, that the language they used in their Response caused an unintended understanding, and they regret the lack of clarity that led to this misunderstanding. Upon learning that the Court misunderstood their position, Respondents swiftly prepared and filed a status report with a clarification of their position and an update of Petitioner's status so that the Court could modify its order if it deemed appropriate. Respondents' position in their original Response had a reasonable basis in law and fact, and their arguments were neither baseless nor lacking evidentiary support. While Respondents regret the confusion they caused, in no way do their actions or intent rise to the level required for sanctions under Federal Rule of Civil Procedure 11.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Counsel of Record for Respondents

Michael J. Starrett, the Attorney of Record for Respondents in the instant case (hereinafter "undersigned counsel"), is a Special Assistant United States Attorney ("SAUSA") in the NDCA USAO. Declaration of Michael J. Starrett ("Starrett Decl.") ¶ 1. As a SAUSA, he concurrently maintains his employment as Counsel with the U.S. Immigration and Customs Enforcement ("ICE") Office of the Principal Legal Advisor ("OPLA"), but does not perform his usual duties as Counsel with OPLA. *Id.* ¶ 2. He has worked for the federal government in the area of immigration law since 2019. *Id.* ¶ 3.

B. The Petitioner and the Eastern District of California's Permanent Injunction

Petitioner, a native and citizen of China, was ordered removed by an immigration judge on February 4, 2020. Dkt. No. 13 ¶ 7. On April 13, 2020, ICE released Petitioner on an Order of Supervision ("OSUP"). *Id.* ¶ 8. On October 14, 2025, ICE revoked Petitioner's OSUP pursuant to 8 C.F.R. §§ 241.4, 241.13, and took her into custody to execute the removal order. Dkt. No. 13 ¶ 9. Shortly thereafter, Petitioner filed a petition for writ of habeas corpus with the U.S. District Court for the Eastern District of California, *Yan-Ling X. v. Lyons*, No. 25-cv-1412 (E.D. Cal. Oct. 22, 2025) ("*Yan-*

Ling X"). *Id.* ¶ 10.

Petitioner's habeas petition was referred to a Magistrate Judge for preparation of findings and recommendation thereon. *Yan-Ling X. v. Lyons*, No. 25-cv-1412, 2026 WL 494468, at *1 (E.D. Cal. Feb. 23, 2026), *report and recommendation adopted*, No. 1:25-cv-1412, 2026 WL 1198417 (E.D. Cal. May 1, 2026). On February 23, 2026, the Magistrate Judge entered an order making those findings and recommendations. 2026 WL 494468, at *2–3. The Magistrate Judge concluded that "the regulations at 8 C.F.R. §§ 241.13(i) and 241.4(*l*) apply and outline the process to be followed" and, further, "establish that, when ICE revokes release to effectuate removal, 'it is [ICE's] burden to show a significant likelihood that the alien may be removed." 2026 WL 494468, at *2. The Magistrate Judge made clear that under those regulations, Petitioner's "[d]etention is permissible only if ICE can show that there is a significant likelihood of removal in the reasonably foreseeable future or if there was a violation of the order of supervision," *id.* at *3, and enjoined re-detention because the government could not show that China was likely to issue a travel document in the reasonably foreseeable future. *Id.* at *5. On May 1, 2026, the U.S. District Court for the Eastern District of California adopted the Magistrate Judge's report and recommendations, granted Petitioner's petition for writ of habeas corpus, and issued a permanent injunction enjoining ICE "from re-detaining [Petitioner] unless and until they obtain a travel document for her removal, and unless and until they follow all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures." *Yan-Ling X. v. Lyons*, No. 25-cv-1412, 2026 WL 1198417 at *1. (E.D. Cal. May 1, 2026) ("Prior Injunction"). On May 1, 2026, the district court in *Yan-Ling X* granted the petition and issued a permanent injunction enjoining ICE "from re-detaining [Petitioner] unless and until they obtain a travel document for her removal, and unless and until they follow all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i), and any other applicable statutory and regulatory procedures." *Yan-Ling X. v. Lyons*, No. 25-cv-1412, 2026 WL 1198417 at *1. (E.D. Cal. May 1, 2026) ("Prior Injunction").

C. The Events of July 22, 2026

On July 22, 2026 at approximately 11:18 a.m., Pamela T. Johann, Chief of the Civil Division of the NDCA USAO ("Civil Chief Johann"), forwarded undersigned counsel the Habeas Petition, Motion for Temporary Restraining Order ("Motion"), and associated filings that were filed in this action.

Starrett Decl. ¶ 4. At 1:01 p.m., undersigned counsel filed Respondents' Response, Dkt. No. 4, in which Respondents argued that "Petitioner lacks standing because [she has] suffered no injury in fact but instead seek[s] relief for conjectural or hypothetical injuries that [she] believes may occur at some point in the future." Dkt. No. 4 at 2. Respondents explained that "Petitioner's scheduled appointment where she is afraid this will happen is scheduled for 2:00 p.m. today, so [ICE] has not yet had the opportunity to comply with the regulations before Petitioner alleges that ICE violated them." *Id.* at 3. Respondents represented that "ICE cannot violate the process described in the [applicable] regulations [of 8 C.F.R. §§ 241.4(l), 241.13(i)] in advance of the time at which that process actually occurs." *Id.*

Because the TRO motion was filed less than three hours before the scheduled check-in, undersigned counsel understood that he had very limited time to file a response. Although he filed the Response less than two hours after receiving notice of the Motion, he ensured prior to filing that all the information included was accurate to the best of his knowledge, but he had limited time to edit or wordsmith the response. Starrett Decl. ¶ 6. Further, he believed that, pursuant to the terms of the Prior Injunction that allowed for re-detention after certain conditions were met, any re-detention after meeting those conditions would be lawful. *Id.* Undersigned counsel understood "injury" and consequent "irreparable harm"—as he used those terms in his Response—to mean *unlawful* re-detention, not *any* re-detention, both because alleged unlawful detention is the basis for habeas jurisdiction, and also because the Prior Injunction specifically authorized re-detention if certain conditions were met. *Id.* At no point, therefore, did undersigned counsel believe that any re-detention *per se* was the prospective injury, or consequently that re-detention *per se* would constitute "irreparable harm."

It was with this understanding that undersigned counsel prepared the response. Accordingly, Respondents argued that Petitioner's alleged injury and irreparable harm—by which they meant injury from re-detention not in compliance with the regulations and Prior Injunction—were conjectural and hypothetical. In making this argument, Respondents were careful to not represent that Petitioner would not be detained; rather, Respondents' position was premised on the argument that it was speculative that Petitioner would be detained *in violation of* the Prior Injunction or the applicable regulations. In addition, Respondents did not argue or intend to imply that they had failed to satisfy all of the conditions in the Prior Injunction (and therefore could not detain Petitioner) but rather that certain conditions—

relating to the OSUP revocation regulations—*could not* be satisfied until Petitioner's appointment, but there was no indication that they would not be complied with at the appropriate time, such that Petitioner would suffer the injury of unlawful detention. Dkt. No. 4 at 3. At all times, Respondents intended to—and did—comply with all of the OSUP revocation regulations in connection with Petitioner's detention.

At approximately 2:00 p.m., Petitioner reported to her scheduled appointment with ICE. Dkt. No. 13 ¶ 18. ICE conducted a medical screening with a telehealth medical professional and the assistance of a telephonic Mandarin interpreter. *Id.* At approximately 2:57 p.m., following the medical screening, ICE conducted an interview with Petitioner, with Petitioner's attorney present and with support from a Mandarin interpreter. *Id.* During the course of the interview, ICE presented Petitioner and her attorney with the denial of the Form I-246 she had previously filed, and informed them that Petitioner's OSUP had been revoked. *Id.* At 3:08 p.m., ICE served Petitioner with ICE Form 71-091, Notice of Revocation of Release ("Form 71-091"). Dkt. Nos. 13 ¶ 20; 13-3.

The "Notice of Revocation Release" that was served on Petitioner on July 22, 2026 had been previously signed by ICE, on July 16, 2026. Dkt. No. 13-3. Undersigned counsel was unaware of this at the time of the filing of the Response. Starrett Decl. ¶ 11. The regulations require that ICE notify a noncitizen of the reasons for revocation "[u]pon revocation." 8 C.F.R. §§ 241.4(*l*)(1), 241.13(i)(3). As such, it is undersigned counsel's understanding that OSUP is not officially revoked until ICE provides the noncitizen with the reasons for revocation and serves them with the ICE Form 71-091. Starrett Decl. ¶ 11. Additionally, Petitioner had a check-in with ICE on July 17, 2026, the day after the OSUP revocation form was signed, yet ICE did not serve her with the OSUP revocation form or re-detain her at that time. *Id.* Thus, although the Notice of Revocation Release had been signed on July 16, 2026, Petitioner's OSUP was not actually revoked until she was served with the document, and until that occurred, ICE could determine not to revoke her OSUP, as it did at the July 17, 2026 check-in.

After providing Petitioner with the Form 71-091, ICE conducted an informal interview to afford Petitioner an opportunity to respond to the reasons for revocation stated in the Form 71-091. Dkt. No. 13 ¶ 20. During the interview, Petitioner's attorney informed ICE that Petitioner did not want to make a statement at that time and verbally requested to provide a statement in the future. *Id.* Petitioner's attorney also verbally requested ICE provide a 72-hour notice before Petitioner would be removed from

the United States. *Id.* This interview was memorialized in the ICE Form 71-090, Alien Informal Interview Upon Revocation of Order of Supervision Under 8 C.F.R. § 241.4(l); 8 C.F.R. § 241.13(i) ("Form 71-090"). Dkt. Nos. 13 ¶ 20; 13-4.1 At 3:26 p.m., after the informal interview concluded, ICE served Petitioner with ICE Form 71-089, Notice of Imminent Removal Pursuant to 8 C.F.R. § 241.4(g)(4) ("Form 71-089"). Dkt. Nos. 13 ¶ 21; 13-5. ICE then took Petitioner into custody. Dkt. No. 13 ¶ 21. Due to Petitioner's mental condition, as acknowledged by the telehealth nurse, ICE chose not to use handcuffs on Petitioner. *Id.*

At approximately 2:33 p.m., this Court issued an Order for Status Report ("Status Report Order"). Dkt. No. 6. In that Order, the Court stated that "[i]n their opposition, Respondents do not indicate that they have satisfied all of the conditions set forth in the Prior Injunction." Dkt. No. 6 at 1. The Court then stated that "based on Respondents' representations, the Court understands that Respondents will not re-detain Petitioner at the ICE appointment scheduled for today at 2:00 p.m., and that Respondents do not intend to violate the Prior Injunction." *Id.* Part of this statement accurately reflected Respondents' position—Respondents indeed did not intend to violate the Prior Injunction. But the rest of the Court's statement appears to be based on a misunderstanding of Respondents' response. Undersigned counsel sincerely regrets that his response led the Court to the understanding ICE would not re-detain Petitioner. *Id.* ¶ 16.

At 2:51 p.m., undersigned counsel forwarded the Status Report Order to Civil Chief Johann. Starrett Decl. ¶ 7. Civil Chief Johann and undersigned counsel discussed the Court's Status Report Order and agreed that it appeared that the Court had misunderstood undersigned counsel's Response. They further agreed that undersigned counsel would submit an update to the Court as soon as possible to report on Petitioner's current status and to clarify Respondents' previous response—in particular that undersigned counsel did not intend to represent that Petitioner would not be detained, but rather to argue that it was speculative that the regulations would be violated. Undersigned counsel sought to provide this information to the Court as soon as possible so that the Court could modify its Order in response to the TRO motion, should it deem modification appropriate in light of this clarification. *Id.* ¶ 8.

Undersigned counsel then began to draft a Status Report that would clarify and explain Respondents' position. *Id.* As noted above, undersigned counsel intended to convey that revocation procedures could not occur until the appointment, not that re-detention would not occur that afternoon even if ICE complied with the applicable procedures outlined in the Prior Injunction.

At 3:35 p.m., undersigned counsel sent the Court's Order to ICE Enforcement and Removal Operations ("ERO") and requested that ERO send him the OSUP revocation and informal interview forms. *Id.* ¶ 9. Approximately thirty minutes later, undersigned counsel received the OSUP revocation and information interview forms. *Id* ¶ 10. Although these documents indicated that ERO had revoked OSUP, undersigned counsel was not yet informed whether Petitioner had actually been taken into custody at that time. *Id.* Based upon his review of the OSUP revocation documents, undersigned counsel did not believe ERO violated the Prior Injunction. *Id.*

At 4:11 p.m., undersigned counsel received an e-mail from Petitioner's counsel, indicating that "ICE just stated that they want to detain our client, Xie." *Id.* ¶ 12.

At 4:48 p.m., undersigned counsel filed the Report with the Court. Dkt. No. 8. To ensure that the report was both accurate and clear, the draft went through two levels of supervisory review within the U.S. Attorney's Office before it was filed. Starrett Decl. ¶ 15. Additionally, as undersigned counsel received the OSUP revocation documents while drafting the Report, he believed that it was important to include those documents to update the Court on the latest status, to demonstrate that ICE did comply with the regulations and Prior Injunction, and to illustrate Respondents' position that at the time of the Response, any injury or irreparable harm—i.e., ICE's purported violation of the regulations and Prior Injunction—was speculative. *Id.* Undersigned counsel filed the Report as soon as internal review was completed.

At approximately 8:03 p.m., this Court issued a Temporary Restraining Order And Order To Show Cause Regarding Sanctions ("OSC"). Dkt. No. 10. The Court explained that "Respondents claimed that Petitioner lacked standing to bring a habeas petition, or to seek emergency relief, because her fears of re-detention were 'conjectural' and 'hypothetical,' and her re-detention 'may not occur . . . at all,'" *id.* at 1 (internal citations omitted), yet the Court found ICE had decided to detain Petitioner at an earlier date, *id.* at 2. Accordingly, this Court ordered Respondents to show cause why sanctions

should not issue pursuant to Federal Rule of Civil Procedure 11. *Id.* at 3.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 11(b) provides that when a party submits a pleadings to the Court, the party certifies, among other requirements, that "the factual contentions have evidentiary support." Fed. R. Civ. P. 11(b). The Court may sanction an attorney under Rule 11 for filing a pleading that is "frivolous, legally unreasonable, or without factual foundation, or is brought for an improper purpose." *Estate of Blue v. Cty. of Los Angeles*, 120 F.3d 982, 985 (9th Cir. 1997). A court may, on its own, "order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11." Fed. R. Civ. P. 11(c)(3).

If "the court determines that [Rule 11] has been violated" after the party or attorney facing sanctions has had a reasonable opportunity to respond, "the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). "Courts must apply an objective test in assessing whether the rule has been violated. *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir. 1993) (citations omitted). "If, judged by an objective standard, a reasonable basis for the position exists in both law and in fact at the time that the position is adopted, then sanctions should not be imposed." *Golden Eagle Distrib. Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986), *superseded by statute on other grounds*.

"Rule 11 is an extraordinary remedy, one to be exercised with extreme caution." *Operating Eng'rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1345 (9th Cir. 1988). It "is not intended to permit sanctions simply because the court decides that the lawyer made the wrong decision." *Khan v. Park Capital Sec., LLC*, No. C 03 00574, 2004 WL 1753385, at *6 (N.D. Cal. Aug. 5, 2004) (citing *Golden Eagle Distrib., Corp.*, 801 F.2d at 1536).

IV. ARGUMENT

A. Respondents Did Not Intend to Convey That Petitioner Would Not Be Detained, and Undersigned Counsel Regrets the Lack of Clarity In The Response That Caused The Court To Misinterpret Respondents' Position.

At the outset, Respondent's wish to reiterate the clarification of the arguments made in their Response, Dkt. No. 4. *See* Dkt. No. 8 (clarifying prior arguments based on the Court's understanding of Respondents' representations, Dkt. No. 6.). While the Court's Order to Show Cause states that the

Response represented that Petitioner's "fears of re-detention were 'conjectural' and 'hypothetical,' and her re-detention 'may not occur . . . at all,'" Dkt. No. 10 at 1, in fact Respondents did not state that Petitioner's fears of *re-detention* were conjectural but that her fear of *injury* was conjectural because "the events of which they complain"—detention in violation of the Previous Injunction—"have not occurred and may not occur as they anticipate or at all." Dkt. No. 4 at 3. As discussed above, Respondents argued that Petitioner's claimed injury—detention in violation of the governing regulations and Prior Injunction—was speculative because the unlawful detention would require a showing that "ICE does not intend to comply with the regulations and the order of another District Court". Dkt. No. 4 at 3. Petitioner made no argument that re-detention itself is inherently unlawful, much less detention authorized by a District Court Judge after certain conditions are met. And, as the situation played out, Petitioner's fears did not materialize, as ICE properly followed the regulations to revoke Petitioner's OSUP before taking her into custody, in compliance with the Prior Injunction. Undersigned counsel regrets that he was not more explicit about the "injury" that he was discussing in making these arguments.

Similarly, Respondents regret that their representation that the "conditions set forth in the Prior Injunction" had not yet been satisfied at the time of Petitioner's habeas led the Court to understand that "that Respondents will not re-detain Petitioner at the ICE appointment" on July 22, 2026. Dkt. No. 6 at 2. While the Court accurately understood "that Respondents do not intend to violate the Prior Injunction," *id.*, Respondents did not intend to convey that they were not in a position to comply with the conditions if they detained Petitioner that afternoon.

Finally, Respondents regret using the follow language in the Response regarding the decision to revoke the OSUP: "ICE can make this determination that the purpose for release has been served and revocation is necessary to enforce a removal order because ICE now has a travel document for Petitioner. . . However, based on this record, that decision has not been made." Dkt. No. 2 at 3; Starrett Decl. ¶ 17. Undersigned counsel was unaware at the time of filing that ICE had already signed the OSUP revocation documents and had made the determination to revoke Petitioner's OSUP. He only became aware of this shortly before filing the Report. *Id* ¶ 11.

The date that the OSUP revocation document was signed apparently led the Court to believe that

"ICE had decided to re-detain Petitioner at [the July 22, 2026] appointment six days ago." Dkt. No. 10 at 2. This is not the case. Because the regulations require that ICE notify a noncitizen of the reasons for revocation "[u]pon revocation." it is undersigned counsel's understanding that OSUP is not officially revoked until ICE provides the noncitizen with the reasons for revocation, and serves them with the Form 71-091. Starrett Decl. ¶ 11 To illustrate this point, Petitioner had a check-in with ICE on July 17, 2026, after the OSUP revocation form was signed, at which ICE did not serve her with the OSUP revocation form or re-detain her. *Id.* Undersigned counsel understood that ERO likely intended to detain Petitioner if appropriate at the July 22, 2026 check-in but also knew that the decision actually to detain her would not be made until after Petitioner appeared at that appointment. *Id.* Nevertheless, given the likelihood of detention, Respondents did not represent that Petitioner would not be detained or even that the likelihood of detention was speculative, and undersigned counsel regrets any language that suggested otherwise to the Court. *Id.*

B. Respondents' Position Had a Reasonable Basis in Both Law and Fact To Represent That Petitioner's Alleged Injury Was Speculative

The Court correctly concluded "that Respondents do not intend to violate the Prior Injunction." Dkt. No. 6 at 1. And Respondents' actions show that they not only intended to comply with the Prior Injunction, but in fact did comply with the Prior Injunction. The Prior Injunction required ICE to "obtain a travel document" and "follow all procedures set forth in 8 C.F.R. §§ 241.4(l), 241.13(i)". *Yan-Ling X. v. Lyons*, No. 25-cv-1412, 2026 WL 1198417, at *1 (E.D. Cal. May 1, 2026). As explained more fully in Respondents' Response to Order to Show Cause for Preliminary Injunction, both 8 C.F.R. § 241.4(*l*) and 241.13(i) authorize ICE to return a noncitizen released on OSUP to custody and only differ in prescribing under what circumstances the revocation may occur. Dkt. No. 12 at 12–13. However, both regulations require the same procedure for revocation: that the noncitizen be (a) "notified of the reasons for revocation of his or her release," and (b) given "an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. §§ 241.4(*l*)(1), 241.13(i)(3). Here, ICE obtained a travel document. Dkt. No. 13-2. An appropriately-delegated ICE official revoked the OSUP. *See* Dkt. Nos. 12 at 8, n.2; 13-3. ICE then notified Petitioner of the reason for her OSUP revocation, namely that they obtained a

travel document to execute her removal order.[2] Dkt. Nos.13 ¶ 13;13-3. Finally, ICE conducted an informal interview to afford Petitioner an opportunity to respond to the reasons for revocation stated in the OSUP revocation form. Dkt. Nos. 13 ¶ 20; 13-4. Although the regulations require the informal interview to be given "after [the noncitizen's] return to Service custody", ICE conducted the interview prior to taking Petitioner into custody to ensure absolute compliance with the Prior Injunction. *See* Dkt. No. 13 ¶¶ 20–21.

In the OSC, the Court contends that "Respondents represented in their opposition that Petitioner's re-detention was not 'imminent' and 'may not occur,'" that this "representation[] lacked 'evidentiary support,' and their arguments were made for an 'improper purpose' to baselessly dispute the ripeness of Petitioner's habeas petition." Dkt. No. 10 at 3. However, Respondents did not make any such a representation and certainly did not intend to convey this to the4 Court.

In their Response, Respondents argued "Petitioner lacks standing because they have suffered no injury in fact but instead seek relief for conjectural or hypothetical injuries that they believe may occur at some point in the future." Dkt. No. 4 at 2. Specifically, Respondents identified that "Petitioner's scheduled appointment where she is afraid this will happen is scheduled for 2:00 p.m. today, so [ICE] has not yet had the opportunity to comply with the regulations before Petitioner alleges that ICE violated them." *Id.* at 3. Undersigned counsel understands he may have erred in not clearly identifying "this" or "injury" to mean "a violation of the regulations or Prior Injunction." Respondents represented that "ICE cannot violate the process described in the regulations in advance of the time at which that process actually occurs." *Id.* As such, Respondents were arguing that Petitioner's fears that ICE would violate the regulations and Prior Injunction were conjectural and hypothetical. Respondents never contended that Petitioner's "fears of re-detention are 'conjectural' and 'hypothetical,'" as stated in this Court's Order. Dkt. No. 6 at 1.

In the Court's 2:32 p.m. Status Report Order, Dkt. No. 6, the Court stated that "[i]n their opposition, Respondents do not indicate that they have satisfied all of the conditions set forth in the Prior

[2] Respondents also informed Petitioner that they intended to revoke her OSUP due to obtaining a travel document at her July 17 appointment. Dkt. No. 2-3 ¶ 5. However, as Respondents decided to not detain Petitioner at that time, they did not serve her with the OSUP revocation form.

Injunction." Dkt. No. 6 at 1. At the time Respondents filed their Response, some of the technical conditions had not been satisfied because they could not be, prior to Petitioner's appointment. However, Respondents did not represent that the conditions would not be satisfied at Petitioner's appointment later that day. In their Response, Respondents provided the regulatory language governing revocation of OSUP, which the Prior Injunction required to be followed prior to re-detention. Dkt. No. 4 at 3. Upon becoming aware of the Court's understanding of Respondents' representations, Respondents proactively filed their Report with the Court, clarifying their previous argument. Dkt. No. 8 at 3. In that Report, Respondents explained that they "intended to make no representation about whether Petitioner would be detained at her appointment with ICE." *Id.* Additionally, they reiterated that certain of the regulatory requirements would not be triggered until detention, and therefore an assessment of whether Respondents' violated the regulations and Prior Injunction could not be made until after the detention. *Id.* Because Respondents had secured a travel document and thus Petitioner had a substantial likelihood of removal in the reasonably foreseeable future, the lack of which was the basis for the Prior Injunction, this was a reasonable argument with a sound basis in law and fact.

In addition, as of the filing of Respondents' Response, any possible injury of *unlawful* detention—that is, a detention resulting from ICE's violations of the regulations and the Prior Injunction—was speculative and conjectural. Under an objective standard, Respondents had a reasonable factual and legal basis to support their position disputing the ripeness of Petitioner's habeas petition. *See Golden Eagle Distrib. Corp*, 801 F.2d at 1538. The evidence in Petitioner's Motion underscores this point.

Petitioner filed her Motion at 11:34 a.m., approximately two-and-a-half hours before her scheduled appointment with ICE on July 22, 2026. Dkt. No. 2. In support of her Motion, Petitioner's counsel submitted a sworn declaration claiming that "ICE also failed to notify Petitioner of the reasons for the revocation of her release and did not conduct an initial informal interview on the day of her arrest, in compliance with 8 C.F.R. § 241.13(i)(3) which violates [Eastern District] Judge Sheriff's order." Dkt. No. 2-3 ¶ 9. Petitioner's counsel continued, alleging that:

> ICE never served any paperwork on [Petitioner] at the time of her arrest and did not ask her to sign any documents, including to sign that she was served with the Notice of Revocation of Release. Petitioner has had no conversation or informal interview with any ICE officer about the basis

> for her re-detention. No notice was provided, nor was Petitioner given an opportunity to respond. ICE never provided Petitioner with a copy of her travel document. Without access to the travel document—the sole asserted basis for her redetention— it would have been impossible to afford Petitioner an opportunity to respond to reasons for her revocation.

Id. ¶ 10. But because Petitioner's re-detention had yet to occur, Petitioner's counsel could not have known these "facts" prior to Petitioner's appointment with ICE. Petitioner's counsel offered pure conjecture about what she thought would happen at least two-and-a-half hours prior to their occurrence.

As it turns out, none of these conjectures came to pass. Petitioner, and her attorney, were indeed provided with the reasons for revocation for release. Dkt. Nos. 13 ¶ 20; 13-3. ICE conducted two interviews with Petitioner, both before and after she was served with the Notice of Revocation of Release and before she was taken into custody, fully in compliance with the regulations and the Prior Injunction. *See* 8 C.F.R. §§ 241.4(*l*)(1); 241.13(i)(3). ICE provided Petitioner with an opportunity to respond to the reasons for revocation, but she did not want to make a statement. Dkt. No. 13 ¶ 20.

As such, Respondents made a plausible argument that Petitioner could not establish standing for her habeas petition, and while the undersigned counsel could have made this argument more clearly so that the Court understood what Respondents were and were not argument, Respondents did not make an argument that was not colorable or that warrants sanctions. *See Khan v. Park Cap. Sec., LLC*, No. 03-cv-00574 RS, 2004 WL 1753385, at *5 (N.D. Cal. Aug. 5, 2004) ("The Ninth Circuit has declined to impose sanctions where the complaint is not so lacking in plausibility as to make counsel's decision to certify it subject to sanctions under Fed. R. Civ. P. 11.")

V. CONCLUSION

For the foregoing reasons, the Order to Show Cause should be discharged.

Dated: July 29, 2026

Respectfully submitted,

/s/ Michael J. Starrett
MICHAEL J. STARRETT
Special Assistant United States Attorney