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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

FULVIO CASTILLO GOMEZ, Petitioner, v. SERGIO ALBARRAN et al., Respondents.	CASE NO. 3:26-cv-01790-NW **PETITIONER'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION**

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NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION

PLEASE TAKE NOTICE that on April 28, 2026, at 10 a.m., before the Honorable Noël Wise, United States District Judge, in Courtroom 3 of the United States District Court for the Northern District of California, San Jose Division, Petitioner Fulvio Castillo Gomez will and hereby does move for a preliminary injunction.

Petitioner seeks a preliminary injunction continuing and extending the relief granted in this Court's Temporary Restraining Order of March 3, 2026, ECF No. 6, specifically: (1) enjoining Respondents from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker; and (2) enjoining Respondents from deporting, removing, or otherwise transferring Petitioner outside the United States or this District pending resolution of this matter. This motion is brought pursuant to Federal Rule of Civil Procedure 65 and in accordance with the briefing schedule entered by this Court on March 9, 2026. ECF No. 17.

This motion is based on this Notice and Motion; the pleadings and records on file in this action; and such other argument and evidence as may be presented at or before the hearing.

INTRODUCTION

On March 2, 2026, masked ICE agents arrested Fulvio Castillo Gomez outside a bank in downtown Napa. ECF No. 12-2 at ¶ 11. He had lived in the United States for twenty years, run a janitorial business with four employees, paid income taxes, and cared for his wife while she was recovering from breast cancer. ECF No. 12-2 at ¶¶ 3, 10; Ex. B at ¶¶ 7, 11.[1] He has never been convicted of a crime. In May 2006, Petitioner was ordered removed "in absentia." ECF No. 9-2 at 9. But that removal order was never served on him. For twenty years, he had no idea that he had been ordered removed. ECF No. 12-2 at ¶ 9. Petitioner is a monolingual Spanish speaker. He is also illiterate, having never attended school in his home country of El Salvador or in the United States. ECF No. 12-2 at ¶ 2; Ex. A at 3; Ex. B at ¶ 7. His name is the only word he can read or write. ECF No. 12-2 at ¶ 2.

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[1] This Motion is supported by the Declaration of Counsel ("Abel Decl.") and accompanying exhibits. Citations to "Ex." are to the exhibits to this declaration.

Back in 2024, he had hired an attorney to investigate his immigration status. ECF No. 12-2 at ¶ 9; Ex. G. That attorney submitted multiple FOIA requests to Respondents asking for "every record in your authority for the subject of the record, Fulvio Castillo Gomez (DOB: [redacted])." Ex. G at 5, 11. The government replied that no records could be found in response to the request. Ex. G at 9 ("After conducting a name search in our database, we could not locate the record with the information provided. Therefore, the request has been administratively closed."); Ex. G at 19 ("The primary key for our database is the Alien Number ('A-number'). The A-number you provided does not appear in our database. Therefore, your request has been administratively closed.").[2] Petitioner recalls that his attorney "told me that no records appeared, which suggested that I was never given a court date." ECF No. 12-2 at ¶ 9; *see* Ex. B at ¶ 10.

The government concedes that the removal order from 2006 was never served on Petitioner. Ex. K, Tr. 26:16-18.[3] As this Court noted at the March 5, 2026 hearing on Respondents' Motion to Dissolve, the Notice to Appear and other documents from 2006 listed no address for Petitioner, yet the government released him on his own recognizance. Ex. K, Tr. 27:19-23 (Court: "the Government elected—when they apparently were able to detain him for a day, elected to let him leave 20 years ago when he didn't have an address."). In his declaration, Petitioner says: "I believe I provided my friend's address to immigration officers, but I do not remember for certain." ECF No. 12-2 at ¶ 4. Over the twenty years since his release, as this Court observed, Petitioner was anything but hidden. Ex. K, Tr. 38:9-11. Petitioner's name and address appear in numerous government records. He paid taxes, Ex. E; married and obtained a marriage certificate, Ex. D; started a business and registered it in Napa County and San Jose, Exs. J, C; obtained a driver's license and attached it to a federal Freedom of Information Act

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[2] The government's July 16, 2024, FOIA response incorrectly claims that "[t]he A-number you provided does not appear in our database." Ex. G at 19. In fact, Petitioner did not know his A-number. ECF No. 12-2 at ¶ 9. And the lawyer's FOIA request made clear that the A-number was unknown. This can be seen where the lawyer entered "0" in the box that stated: "If you do not know the A-number, enter '000000000' (nine zeros) in this field." Ex. G at 16; *see* Ex. G at 6 (same).

[3] Citations to Exhibit K refer to the page number and line(s) of the court transcript.

("FOIA") request, Ex. G at 3; and had his name and identifying information listed on FOIA filings and other official documents, Exs. G, F. In short, Petitioner lived in the open. He used his freedom to contribute to society. He was not hiding from the government, and the government was not looking for him. However, on March 2, 2026, the government decided to take action after nearly 20 years of not pursuing him. Masked ICE agents followed him to a bank parking lot in downtown Napa and violently arrested him. ECF Nos. 2-4 at 2, 12-2 at ¶ 11.

Over the years, Respondents' actions created a significant liberty interest that could not be taken away without process. First, they released Petitioner on his own recognizance on March 4, 2006, which amounted to a formal determination that he posed no danger and no flight risk. ECF No. 9-2 at 3. Then, they failed to communicate to him when his court hearing was. ECF No. 12-2 at ¶ 3. When Petitioner was ordered removed in absentia on May 6, 2006, Respondents failed to serve this order, despite the requirement to serve all court records. Second, Respondents allowed the 90-day statutory "removal window" to lapse without detaining or removing Petitioner, and then allowed nearly twenty more years to pass, without placing Petitioner on an Order of Supervision or taking any action on his case. Third, when they finally arrested him in 2026, they provided no pre-deprivation hearing, no notice of the removal order, no individualized custody determination, and no compliance with any of the other procedural requirements governing re-detention under 8 C.F.R. § 241.4 or due process case law. At the March 5, 2026 hearing, the government took the position that no pre-detention process was due:

> THE COURT: . . . I'm asking is what due process existed between the time the order of removal was issued and the time that masked agents grabbed him in a parking lot and put him in a vehicle, what due process was required?
>
> RESPONDENTS' COUNSEL: Nothing additional to what was done.
>
> THE COURT: So, the answer is none? The Government's position is no due process is required, that—that there is due process that is available but it's later?
>
> RESPONDENTS' COUNSEL: Correct. There's no pre-detention process that the Respondent is entitled to.

Ex. K, Tr. at 32:1-11.

Respondents' position is incorrect. A removal order—especially an in absentia order that was never served on Petitioner—cannot wipe away the Fifth Amendment's due process protections. A person whom the government has released on his own recognizance and then allowed to be free for nearly twenty years has a constitutionally protected liberty interest in that freedom. That liberty cannot be taken away without, at minimum, notice and an opportunity to be heard. This procedural due process right flows from *Mathews v. Eldridge* and its progeny. And the importance of such pre-deprivation process is confirmed by the Immigration and Nationality Act and the implementing regulations, which impose numerous requirements on the government before it can detain a person with a removal order outside of the 90-day removal period. As the agency's regulations explain, a person in Petitioner's circumstances cannot be detained without individualized review by specified senior officials, evaluation of specific criteria regarding dangerousness and flight risk, written notice of the detention decision, and a prompt informal interview. 8 C.F.R. § 241.4. None of these pre-deprivation procedures were respected in Petitioner's case. Instead, masked agents violently arrested Petitioner in the parking lot of a bank, forced him into their vehicle, and threatened him that if they stopped by his house to pick up his medication they would "make the situation bigger" by arresting members of his household. ECF 12-2 at ¶ 11.

Petitioner satisfies every factor for a preliminary injunction. He is likely to succeed on the merits of his procedural due process claim, his statutory and regulatory claims, and his substantive due process claim. The irreparable harm from even a day of unlawful custody cannot be disputed. Not only does this custody amount to a violation of his constitutional and other legal rights, but detaining a medically and psychologically vulnerable person, like Petitioner, places him at grave risk of harm. In addition, separating him from his wife, who is recovering from breast cancer, risks irreparable harm to her, too. The balance of equities and the public interest both favor Petitioner.

LEGAL STANDARD

A preliminary injunction issues when the movant shows he is "likely to succeed on the merits," "likely to suffer irreparable harm in the absence of preliminary relief," that "the balance of equities tips in his favor," and that "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, a petitioner who raises "serious questions" on the merits and shows the balance of hardships tips "sharply" in his favor may also obtain relief. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Petitioner satisfies both standards.

ARGUMENT

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. Petitioner's Re-Detention Without a Pre-Deprivation Hearing Violated Procedural Due Process.

Procedural due process analysis asks whether the government has deprived a person of a protected liberty interest without adequate process. Where such a deprivation exists, courts apply the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing: (1) the private interest affected; (2) the risk of erroneous deprivation and the value of additional procedural safeguards; and (3) the government's interest, including the burden of providing additional process.

1. Petitioner Has a Protected Liberty Interest Arising from His Release on Recognizance and the Decision Not to Detain Him for Nearly Twenty Years.

Petitioner's liberty interest has two independent and reinforcing sources: his formal release on recognizance in 2006, and the government's decision, over the span of twenty years, not to detain and remove him.

Release on Recognizance. On March 4, 2006, Respondents released Petitioner on his own recognizance. ECF No. 9-2 at 3. That release "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *3 (E.D. Cal. Oct. 27, 2025); see 8 C.F.R. § 1236.1(c)(8). Courts in this district and elsewhere provide that the government cannot reverse this determination without a pre-deprivation hearing. *See, e.g.*, *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025); *Pablo Sequen v. Albarran*, 806 F. Supp. 3d 1069, 1090 (N.D. Cal. 2025); *Leandro v. Albarran*, No. 3:25-CV-10042, 2025 WL 3247767, at *2 (N.D. Cal. Nov. 20, 2025); *Bilal A. v. Wofford*, No. 1:25-CV-01715-KES-HBK (HC), 2025 WL 3648366, at *5 (E.D. Cal. Dec. 16, 2025); *J.A.E.M.*, 2025 U.S. Dist. LEXIS 211728, at *19 (collecting cases).

Twenty Years of Non-Detention. In addition to the liberty interest created by Petitioner's original release on recognizance, the government's decision not to detain him for the next two decades created an independent and substantial liberty interest. In those twenty years of liberty, Petitioner contributed to society and was "free to be with family and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Courts have recognized that a government decision not to detain creates the same protected liberty interest as an affirmative release decision. *Kharitonova v. Albarran*, No. 3:26-cv-01362-JSC, 2026 U.S. Dist. LEXIS 39213, at *6 (N.D. Cal. Feb. 25, 2026) ("Although the government did not detain and then release her, it made a decision not to detain her in the first place; Petitioner thus has the same liberty interest in her continued freedom as an individual initially detained."). Even an accidental release creates constitutional protections. *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("[A] person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated."); *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (inmate mistakenly released on parole could not be re-incarcerated as "to return Johnson to prison now would be 'inconsistent with fundamental principles of liberty and justice.'").

Thus, Petitioner's liberty interest can be sourced to either the release on recognizance in 2006, or the decision not to detain for the twenty years since, or both. Regardless of the source, his liberty interest is profound. He built a life for himself, which includes employing four people in his janitorial business, paying taxes, caring for his wife, Alma, in health and in sickness.

Petitioner continues to play a pivotal role in the physical and emotional care of his wife as she recovers from her battle with breast cancer, which included rounds of radiation and surgery. As Alma's declaration explained, he helps Alma get to her medical appointments; he cooks, cleans, and assisted her in bathing and other core functions, while she was recovering from surgery. Ex. B. Petitioner also suffers from a number of medical conditions, including "hypertension, glaucoma, lung nodule, lumbar spine stenosis with abnormal MRI, polycythemia, chronic pain, hepatic steatosis, and hyperlipidemia" and is receiving both "primary and specialty care." Ex. A at 4. The Supreme Court has recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Twenty years of such freedom is, in the words of *Mathews*, a substantial "private interest."

It is worth noting that Respondents' actions created the liberty interest that they now seek to take away. The government released a man on his own recognizance, never served him with the removal order, and never moved to detain or remove him, even though Petitioner was living openly and was eminently findable through public records of all sorts. As this Court observed: "[I]f there's some suggestion that I guess Mr. Gomez was hiding, he was clearly hiding in plain sight." Ex. K, Tr. at 38:9-15.

2. There Is a Significant Risk of Erroneous Deprivation from Taking Away Petitioner's Liberty Interest Without Pre-Deprivation Process.

The second factor of the *Mathews* test requires the Court to assess "the risk of an erroneous deprivation of such [liberty] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Haygood v. Younger*, 769 F.2d 1350, 1357 (9th Cir. 1985) (en banc) (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)). Here, Respondents were required to provide Petitioner with notice and other process *prior* to his arrest. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990); *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982).

The importance of pre-deprivation process has been established in both the relevant lines of precedent in this case. For a person released on their own recognizance, pre-deprivation process is required before that person can be re-detained. *See, e.g.*, *Pinchi*, 792 F. Supp. 3d at 1034; *Pablo Sequen*, 806 F. Supp. 3d at 1090. For a person with a final removal order who has been living free on an Order of Supervision or "other conditions of release," pre-deprivation process is also required before that person can be re-detained. *See* 8 C.F.R. § 241.4(*l*); *Gadyan v. Noem*, No. 5:25-cv-03219-RGK-JDE, 2025 U.S. Dist. LEXIS 274605 at *8 (C.D. Cal. Dec. 18, 2025) (applying Section 241.4(*l*) to a person who was released on bond in 2001, ordered removed in 2010, and for whom ICE never properly served notice that bond release was being cancelled).

The risk of erroneous deprivation in Petitioner's case is unusually severe for several interrelated reasons. First, Petitioner is illiterate. Ex. A; ECF No. 12-2. He speaks only Spanish. He has no formal schooling. Ex. A. He needs help with basic communication tasks. Exs. A, B. Though a fingerprint is listed on the Notice to Appear, which was given to him before release from detention, Petitioner states that the document was never translated into Spanish for him; he heard the immigration officer say the word "court," which sounds similar in Spanish. The officer held up six fingers, which he thought meant that court would be in six months. ECF No. 12-2 at ¶ 3. But he did not know where the court would be and he lost the paperwork. ECF No. 12-2 at ¶ 4. He, therefore, lacked notice of this court hearing.

Indeed, Petitioner's recent experience being detained at Mesa Verde on March 2, 2026, suggests the reality of how written notice is provided in immigration detention: "[O]fficers had me sign many papers and told me that I had to sign them to be able to receive things like food and clothing." ECF No. 12-2 at ¶ 12. The coercive nature of these practices is self-evident. Not only do these documents provide no actual notice to a man who is illiterate and a monolingual Spanish speaker, but they do not provide *legal* notice, when signatures are extracted by threat of depriving a detainee of "things like food and clothing."

Two months after his release from detention in Texas in 2006, Petitioner failed to show up for his one and only court hearing, and the immigration judge ordered him removed "in absentia." But this removal order was never served on Petitioner. Nor is there any certificate of service showing that it was not possible to serve him, even though every document in immigration court must have a certificate of service. This resulted in Petitioner being genuinely unaware that he had been ordered removed. Further, the removal order itself shows no notice of appeal rights. ECF No. 9-2 at 9. Respondents admit that "[t]he Government was not—the Government was not able to serve [Petitioner] with the notice of—with the removal order . . . ." Ex. K, Tr. 26:16-18.[4]

Respondents claim that "there's no expiration to a removal order." Ex. K, Tr. 25:17. This Court asked whether "the Government could choose to effectuate that [removal] order 50 years later, 80 years later?" Ex. K, Tr. 25:9-10. Respondents replied: "Yes, yes." Ex. K, Tr. 25:11. Their position appears to be that it was Petitioner's fault for not updating his address with immigration officials. Ex. K, Tr. 25:18-19 (Respondents: "[T]he key issue here is that the Petitioner never provided an address to ICE."); Ex. K., Tr. 26:18-19. However, Petitioner's declaration states: "I believe I provided my friend's address to immigration officers, but I do not remember for certain." ECF No. 12-2 at ¶ 4.

The government also claimed that Petitioner could have and should have been able to learn of this removal order on his own. Ex. K, Tr. 17:20-18:12. But Petitioner lost the document that contained his Alien Registration Number ("A-number"), and without that number, this removal order remained hidden.[5] Even when Petitioner hired a lawyer in 2024 "to find out what happened with my court case and try to work towards getting legal status," ECF No. 12-2 at ¶ 9,

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[4] *See also* Ex. K, Tr. 17:6-17 (Court: "[T]here is no documentation at this point to show that it was ever served on him. . . . If there is any documentation that the Government has that this was served on the Petitioner at the time that it was effectuated and the time that was required by statute after that or, in fact, it had been served at any period of time in the many interim years before this arrest took place, I would ask, please, in the supplemental briefing that will ultimately come in here that the Government please provide it.").

[5] Respondents' counsel stated, "Yes," when asked by the Court: "Do you need that A number in order to be able to search the system?" Ex. K, Tr. 51:14-16.

no information was available. Petitioner's immigration attorney made multiple Freedom of Information Act ("FOIA") requests to Respondents for "every record in your authority for the subject of the record, Fulvio Castillo Gomez (DOB: May 20, 1968), including but not limited to any Records of Proceeding (ROP), any apprehension records . . . ." Ex. G at 5. Accompanying this request, Petitioner sent Respondents a Form EOIR-59 with his name, date of birth, home address, and California driver's license authorizing release of the records. Ex. G at 2-3. Respondents replied to the FOIA request by stating that records could not be found. Ex. G at 9. The lawyer followed up with another request, which also came back with a statement that no records could be found. Ex. G at 14-19. "The lawyer did a search for my records and told me that no records appeared," Petitioner explains, "which suggested that I was never given a court date." ECF No. 12-2 at ¶ 9.[6]

A pre-deprivation hearing would have allowed Petitioner to explain these and other facts before seeing his liberty taken away. Such pre-deprivation process would have surfaced the fact that he did not have notice of the initial hearing, that he never knew of the "in absentia" removal order, and that the order, which was never served on him, was not something that he was able to learn about, even after hiring an attorney. A neutral adjudicator presented with those facts would confront serious questions whether re-detention was justified. A hearing would have surfaced these and other problems. Without one, Petitioner had no chance to raise any of them.

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[6] The difficulty in obtaining the records from the 2006 case continues to this day, as Petitioner and counsel work on his Motion to Reopen. After Petitioner's March 2, 2026 arrest, he is now represented pro bono in his immigration proceedings by the Immigration Institute of the Bay Area ("IIBA"). On March 5, 2026, IIBA requested the "Record of Proceedings" from the Harlingen Immigration Court so that IIBA could "evaluat[e] the case for a possible motion to reopen." Ex. I at 3. The court responded the next day to say that this was a "Record of Proceeding (ROP) that has been retired to the Federal Records Center, which falls under the purview of the Executive Office for Immigration Review's Office of the General Counsel, under the Freedom of Information Act (FOIA)." Ex. I at 2. IIBA filed the required FOIA and asked for the government to expedite that request, but the expedite request was denied by the government on March 9, 2026. Ex. I at 5-6. The records still have not been provided.

3. The Government Has a Minimal Interest in Re-Detaining Petitioner Without Pre-Deprivation Process.

The third factor in the *Mathews* analysis examines "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews*, 424 U.S. at 335). The government's interest in proceeding without a hearing or other process is minimal. A pre-deprivation hearing in this context is not a jury trial; it is a prompt, informal determination of whether the grounds for re-detention withstand scrutiny. The relevant statutes and regulations already contemplate this kind of review. The INA's supervision and custody provisions, 8 U.S.C. §§ 1231(a)(3) and (6), and the implementing regulations, 8 C.F.R. § 241.4, lay out a review process that the government must undertake before detaining anyone beyond the removal period. Complying with those requirements is not burdensome. At the March 5, 2026 hearing, this Court noted that there are

> [M]any questions about why when you've got somebody who's been paying taxes, who's been here for 20 years, who runs a business, who has four employees, that they clearly were able to easily find for the purposes of effectuating this arrest, why they could not have served him at some point previously with the removal order.

Ex. K, Tr. 31:18-24.

4. There Is No Legal Foundation for Respondents' Position That Petitioner Is Not Due Any Pre-Deprivation Process.

At the March 5, 2026 hearing, the government took the position that no pre-detention process was owed to Petitioner. Ex. K, Tr. at 32:1-11 (Respondents' Counsel: "There's no pre-detention process that the Respondent is entitled to."). The government's theory appears to be that because Petitioner's original release in 2006 predated the final removal order, and because he was never placed on an Order of Supervision, he falls into a procedural gap—subject to neither the case law governing revocation of release on recognizance nor the regulations governing revocation of Orders of Supervision. This argument fails on its own logic.

It was Respondents who created this gap. They released Petitioner on recognizance. They never served him with the removal order. They allowed the 90-day statutory removal window to expire. They failed to place him on an Order of Supervision, even though that is required by 8 U.S.C. § 1231(a)(3): "If the alien does not leave or is not removed within the removal period, the alien, pending removal, *shall be subject to supervision* under regulations prescribed by the Attorney General." *Id.* (emphasis added). The statute required Respondents to put Petitioner on supervision when they failed to remove him. They did not do so. Now they apparently argue that Petitioner does not fit within the procedural due process protections for either an individual released on recognizance or an individual "who has been released under an order of supervision *or other conditions of release*." 8 C.F.R. § 241.4(*l*) (emphasis added). But courts do not allow the government to exploit its own noncompliance to eliminate constitutional protections. Moreover, Petitioner does fit within the protections of 8 C.F.R. § 241.4 because he was on "other conditions of release," a point that is discussed in more depth below.

Moreover, the government's position is logically untenable. It claims Petitioner was not subject to the due process protections of the release-on-recognizance cases (because the removal order superseded his release), not subject to the Order of Supervision cases (because he was never put on supervision), and therefore subject to no process at all. As noted in the cases below, the government cannot straddle this fence. If it now claims authority to detain him under Section 1231(a)(6), it cannot simultaneously disclaim the procedural requirements that attach to detention under that provision. As this Court framed the question: "[W]hat due process existed between the time the order of removal was issued and the time that masked agents grabbed him in a parking lot and put him in a vehicle[?]" Ex. K, Tr. 32:1-4. The Respondents' reply—"Nothing additional to what was done." Ex. K, Tr. 32:5-6—is not correct.

5. The Weight of Recent Authority Confirms the Due Process Violation.

Recent cases support Petitioner's position. Courts in this circuit and elsewhere have rejected the precise arguments the government makes here, in cases with similar facts. Read together, they establish a clear doctrinal rule: a person who has been released from custody—whether on recognizance, on bond, on parole—or simply remains free because of the government's years-long decision not to act has a protected liberty interest that cannot be extinguished without a pre-deprivation hearing.

An in absentia order of removal does not defeat the due process analysis. The clearest statement of that rule comes from *Ordoñez v. Bondi*, No. 2:25-cv-02356-JHC-TLF, 2025 U.S. Dist. LEXIS 269568 (W.D. Wash. Dec. 19, 2025), *report and recommendation adopted sub nom. Gregorio Ordoñez v. Bondi*, No. 2:25-cv-02356-JHC-TLF, 2026 U.S. Dist. LEXIS 840 (W.D. Wash. Jan. 5, 2026). This case was decided on facts nearly identical to Petitioner's. The noncitizen there was "issued a notice to appear charging petitioner as inadmissible pursuant to 8 U.S.C. §§ 1182 (a)(6)(A)(i)," the provision governing those, like Petitioner, who entered without inspection. *Id.* at *3. He was then "released from custody . . . during the pendency of his removal proceedings." *Id.* In 2020, when he failed to appear, he was ordered removed in absentia. *Id.* It was not until five years later, in 2025, that Respondents re-detained him, and when they did so it was through a violent arrest with no pre-deprivation process. *Id.* at *9.

As in the present case, the court in *Ordoñez* noted that "the Government presents no evidence that petitioner was provided with the final order of removal." *Id.* at *13. And, just as in Petitioner's case, the government in *Ordoñez* made the argument that "because he failed to appear for an immigration hearing and a final order of removal was issued *in absentia*, the Government was entitled to re-detain petitioner without any additional notice or process." *Id.* at *7. The *Ordoñez* court rejected that argument squarely: "[E]ven if the Government might believe it has a valid reason to detain petitioner, this does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *Id.* at *11. The court also held—again directly applicable here—that "even if a particular statute or regulation does not require a pre-arrest hearing in these specific circumstances, this does not mean such a hearing is not required by Due Process." *Id.* at *12.

The *Ordoñez* court went further in an analysis that bears directly on the regulatory claim discussed in Section B, *infra*. The government argued there that 8 C.F.R. § 241.4 does not apply "because petitioner was not detained during the initial 90-day removal period, and these regulations contemplate only continued detention beyond the 90-day period." *Id.* at *24. But the court rejected that argument, too, holding that the regulations "appear to be the only relevant regulations governing the determinations regarding custody under 8 U.S.C. § 1231(a)(6), beyond the initial 90-day removal period, and the Government does not point to any other regulations that would otherwise control." *Id.* at *24-*25. The *Ordoñez* decision, which was adopted by the district judge, went further to recommend that "even if the Court assumes for purposes of analysis that these regulations are not controlling, the Court should hold that under the *Mathews* factors a pre-deprivation hearing is required by Due Process." *Id.* at *25. Respondents did not appeal this decision. Ex. L.

Other courts in this circuit have reached the same result. In *M.L.G.G. v. Wamsley*, No. 6:25-cv-02012-AA, 2025 U.S. Dist. LEXIS 255583 (D. Or. Dec. 10, 2025), a noncitizen was detained at the border in 2016, issued a Notice to Appear as one who is "inadmissible," and then paroled into the country. *Id.* at *2. In July 2017, the noncitizen was ordered removed in absentia after failing to appear at immigration court. *Id.* It was not until October 30, 2025 that respondents re-detained her, and when they did so it was without any pre-deprivation process. *Id.* at *2-*3. The district court ruled that the Petitioner was entitled to release. The court ruled that the noncitizen's failure to appear was "not the sort of bad faith action that would allow extension of the removal period." *Id.* at *6. This conclusion applies with equal force to Petitioner, an illiterate man who never understood the Notice to Appear and was never served with the removal order. Similarly, a court in the Eastern District of California endorsed the *Ordoñez* ruling. *See Quan Nguyen Tran v. Chestnut*, No. 1:25-cv-01816-DAD-JDP, 2026 U.S. Dist. LEXIS 4644, at *2 (E.D. Cal. Jan. 10, 2026). The *Quan Nguyen Tran* decision concerned ICE's re-detention of a noncitizen to execute a removal order without providing notice of the reasons. "Even if § 1231(a)(6) were to apply and there were to be a change in circumstances as to petitioner, petitioner claims, and respondents do not dispute, that petitioner was detained without notice of the reasons for petitioner's re-detention," the court explained. *Id.* The court explained that it was "persuaded by the analysis in *Gregorio Ordoñez v. Bondi*, where the district court found that under such circumstances, the respondents had violated applicable regulations and petitioner's due process rights." *Id.* (internal citation shortened). Re-detention without notice amounted to a due process violation justifying release.

The Central District of California applied these principles to regulatory violations in *Gadyan v. Noem*, No. 5:25-cv-03219-RGK-JDE, 2025 U.S. Dist. LEXIS 274605 (C.D. Cal. Dec. 18, 2025). There, a noncitizen was detained in 2001, placed in removal proceedings, and then released on a $5,000 bond. *Id.* at *2. In 2005, he was ordered removed, and that order became final in 2008. *Id.* *2-*3. In October 2025, ICE detained the noncitizen, some 17 years after his removal order became final. *Id.* at *4. The government in that case argued that the noncitizen's bond had been cancelled, but the court disagreed:

> Petitioner was released on bond after entering the United States in 2001, and continued to be subject to this conditional release after his order of removal became final in 2008. Accordingly, Petitioner is subject to "other conditions of release," as referenced in 8 C.F.R. § 241.4(*l*).

Id. at *9. The court went on to explain that "Respondents failed to follow the required procedures when revoking Petitioner's release. These failures are in clear violation of federal immigration laws and Petitioner's procedural due process rights, rendering Petitioner's current detention unlawful." *Id.* at *11. The court rejected the government's argument that the remedy for procedural deficiencies should be a remand for those procedures to be carried out. The court, instead, concluded "immediate release to be the proper remedy." *Id.* There is a direct parallel to Petitioner's case: a release on recognizance, like a release on bond, amounts to "other conditions of release," thereby triggering the procedures in 8 C.F.R. § 241.4(*l*). The entry of the removal order does not automatically extinguish the due process interests that were created by the release on recognizance and the failure to re-detain within the 90-day removal period.

Decisions from this district complete the picture. In *Claros v. Albarran*, No. 25-cv-09473-EMC, 2025 U.S. Dist. LEXIS 235179 (N.D. Cal. Dec. 2, 2025), a noncitizen had been removed from the country in 2011, reentered in 2019, and was detained upon reentry. *Id.* at *2. The government reinstated the removal order, but released him on his own recognizance to await his credible fear interview. *Id.* For six years, the noncitizen remained free. *Id.* at *3. But in November 2025, ICE agents re-detained him at the Asylum Office: "The ICE agents did not explain to Mr. Claros why they were arresting him beyond stating that Mr. Claros 'has a deportation order.'" *Id.* at *4. The *Claros* decision explains that "Mr. Claros gained a liberty interest when the Government elected to release him on July 8, 2019 on his own recognizance." *Id.* at *7. This liberty interest was created even though his earlier removal order had been reinstated. The government argued that the noncitizen's "current detention was legitimate under the authority of Section 1231, which allows for discretionary detention." *Id.* at *8. But the court rejected that claim: "[T]he fact that Mr. Claros may have been subject to discretionary detention at some earlier point under 8 U.S.C. § 1231(a), the statute governing noncitizen ordered removed, does not negate his liberty interest where he had been released on his own recognizance *instead of being detained*." *Id.* (emphasis added). The court's due process analysis focused on the fact that the noncitizen had not been removed during the 90-day removal period, so he "shall be subject to supervision": "A noncitizen inadmissible under 8 USC 1182 'may' be detained beyond the removal period, but 'if released, shall be subject[] to the terms of supervision in paragraph (3).'" *Id.* at *8. The court went on to discuss the "limitations on revocation of supervised release" that are imposed by 8 C.F.R. § 241.4. *Id.* at *8-*9. In Mr. Castillo Gomez's case, because Respondents released him and then decided not to detain him at any point in the nearly 20 years since the removal order became final, they could not re-detain him without providing pre-deprivation process.

Most recently, in *Kharitonova v. Albarran*, No. 3:26-cv-01362-JSC, 2026 U.S. Dist. LEXIS 39213 (N.D. Cal. Feb. 25, 2026), a court in this district extended the principle to its logical conclusion: the government's decision not to detain someone in the first place, but to allow her to live in the United States for 13 years while pursuing her asylum claim, created the same liberty interest as one who has been detained and released. *Id.* at *6 ("Although the government did not detain and then release her, it made a decision *not* to detain her in the first place; Petitioner thus has the same liberty interest in her continued freedom as an individual initially detained."). Together, *Claros* and *Kharitonova* confirm that Petitioner's twenty years of freedom entitled him to pre-deprivation process before he could be re-detained.

B. The Re-Detention Violated the Immigration and Nationality Act and 8 C.F.R. § 241.4.

In addition to the due process violations, the re-detention violated the Immigration and Nationality Act ("INA") and its implementing regulations on their own terms. These violations provide an independent basis for relief.

Statutory Framework. When a noncitizen is not removed within the 90-day removal period, the INA imposes limits on the government's ability to detain that person. Section 1231(a)(3) is mandatory: "[T]he alien, pending removal, *shall be* subject to supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3) (emphasis added).[7] And after a warrantless arrest, 8 U.S.C. § 1357(a)(2) requires that the detained individual be taken "without unnecessary delay" for a determination of their right to remain. Respondents never conducted such a determination.[8]

Regulatory Requirements. The regulations implementing Section 1231 require specific steps before and upon detention of a person beyond the removal period. *See* 8 C.F.R. §§ 241.4, 287.3(d). These apply to anyone "released under an order of supervision or other conditions of release." 8 C.F.R. § 241.4(*l*) (emphasis added). Petitioner's release on recognizance counts as "other conditions of release." *See Gadyan*, 2025 U.S. Dist. LEXIS 274605, at *9 (release on bond is "other conditions of release" under 8 C.F.R. § 241.4(*l*)). Respondents were required to, but did not:

(a) Delegate the detention decision to specific high-ranking ICE officials designated in 8 C.F.R. § 241.4(c).

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[7] On March 3, 2026, Respondents released Petitioner from detention in compliance with this Court's order. As part of the release process, they placed Petitioner on an Order of Supervision and required him to attend ICE check-ins on March 10 and March 16—both of which he attended. Ex. H at 2.

[8] At the March 5, 2026 hearing, counsel for Respondents stated that he had seen a copy of a warrant, but he was not sure whether it had been served upon Petitioner at the time of the arrest. Ex. K, Tr. 36:21-24. Respondents' counsel stated that "I can give that to the Court in a subsequent in filing." Ex. K, Tr. 35:23-25. Petitioner may respond to the statutory and Fourth Amendment issues further, once the relevant documentation has been provided.

(b) Evaluate the criteria for release and the factors for consideration in 8 C.F.R. §§ 241.4(e) and (f).

(c) Provide Petitioner with "a copy of any decision . . . to detain." 8 C.F.R. § 241.4(d).

(d) Conduct a "prompt informal interview." 8 C.F.R. § 241.4(*l*)(1).

These are not technicalities. As the *Ordoñez* court found, these regulations "appear to be the only relevant regulations governing the determinations regarding custody under 8 U.S.C. § 1231(a)(6) beyond the initial 90-day removal period, and the Government does not point to any other regulations that would otherwise control." 2025 U.S. Dist. LEXIS 269568, at *24-*25. The government argued in *Ordoñez*, as it appears to argue here, that the regulations do not apply because Petitioner was not detained during the initial 90-day period. That argument was rejected: the regulations govern detention beyond the removal period, not within it. *Id.* The same conclusion follows here. The remedy for these statutory and regulatory violations is the same as the remedy for the constitutional violation: immediate release. Courts in this circuit have held that failure to comply with these procedures renders detention unlawful and warrants release, not a mere remand to provide retroactive process. *See Gadyan*, 2025 U.S. Dist. LEXIS 274605, at *11 (finding "immediate release to be the proper remedy").

C. Petitioner's Re-Detention Also Violates Substantive Due Process.

Procedural due process is not the only constitutional violation here. Substantive due process requires that civil detention—including immigration detention—"bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring appearance at immigration proceedings and preventing danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001).

Petitioner is neither a flight risk nor a danger. The government made that conclusion on March 4, 2006, when it released Petitioner on his own recognizance. ECF No. 9-2 at 3. No finding to the contrary has ever been made. Ex. K, Tr. 32:25-33:2 (Respondents' Counsel:

"[T]here has not been a determination that he is a danger or a flight risk since the order of removal was issued in 2006."). The absence of any such finding, combined with 20 years of pro-social behavior, means there is no permissible purpose for his continued detention. His detention is therefore not "reasonably related" to any legitimate government goal under *Zadvydas*.

Indeed, the government's argument at the March 5 hearing—that it has the authority to detain Petitioner for up to 180 days simply by invoking the removal order, regardless of whether he poses any risk, Ex. K, Tr. 39:13-25—suggests the punitive character of this detention. Where detention serves no legitimate non-punitive goal, it violates substantive due process. *See Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) (detention "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons" violates substantive due process).

D. The Arrest Violated the Fourth Amendment and Governing Statutes and Regulations.

Under the Fourth Amendment, "[a]n arrest, of course, qualifies as a 'seizure' of a 'person' . . . and so must be reasonable under the circumstances." *Ashcroft v. al-Kidd*, 563 U.S. 731, 735–36 (2011). Furthermore, the warrantless arrest of Petitioner violated 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3(a). Section 1357(a)(2) provides that a warrantless arrest may take place only if an officer "has reason to believe that the alien so arrested is in the United States in violation of any [] law or regulation *and is likely to escape before a warrant can be obtained* for his arrest." 8 U.S.C. § 1357(a)(2) (emphasis added). Respondents did nothing to demonstrate that Petitioner was likely to escape. Nor have Respondents provided any warrant related to this detention. At the March 5 hearing, the government stated that agents appeared to have "prepared" a warrant of removal on the day of the arrest, but Respondents' counsel was unable to confirm whether the warrant was served on Petitioner at the time of the arrest. Ex. K, Tr. 36:21-24 (Respondents' Counsel: "I can just say I can see that [a warrant] was prepared ahead of time, but I'm not ready to just confirm—I'm not ready to confirm to this Court that it was then served on—on Petitioner.").

An administrative warrant that was not served at or prior to the arrest does not satisfy statutory or constitutional requirements. Moreover, even a valid administrative warrant does not authorize the use of force or the manner of arrest that occurred here. Petitioner was arrested by officers who were wearing masks and who seized him outside a bank without warning. Such a show of force, in the absence of any exigent circumstances or evidence of flight risk or danger, raises independent Fourth Amendment concerns. The Court has the authority to order release on Fourth Amendment grounds independently of the due process, statutory, and regulatory grounds.

II. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT RELIEF.

The harm Petitioner faces from detention easily satisfies the standard for irreparable harm. 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 v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025) (finding irreparable harm from continued ICE detention).

Petitioner suffered from one day's detention earlier this month and he would face similar suffering if re-detained. When masked ICE agents arrested Petitioner, "They grabbed me by my arm, aggressively twisted it behind my back, and pushed me against my car. I have sciatica, so this caused pain in my arm." ECF No. 12-2 at ¶ 11. When he communicated to the officers that he had medication he took for his nerve pain, Petitioner was told by the officers that "if I wanted to 'make the situation bigger' then they could go back to my house to get the medication. I interpreted that as meaning that the officers would arrest anyone they found at my house." *Id.* He told them not to go to his house, thus choosing to protect his family over protecting himself. In the Mesa Verde Detention center that evening, Petitioner suffered further legal and physical indignities, when he was forced to sign papers that he did not understand (or else be denied food and clothing) and forced to spend the whole night in a cell with no bed:

> When I finally arrived at the facility, officers had me sign many papers and told me that I had to sign them to be able to receive things like food and clothing. From there, I was locked in a holding cell with a bench and a toilet but no bed. There was no place to sleep, and the lights were left on all night. I was suffering from extreme sciatica pain in my back, legs, and feet because I had missed my medication. I asked the guards for my medication, but they did not give me anything. I stayed in that cell all night. At around 6:30 a.m., I was transferred to a cell with a bed. At that point a guard finally gave me two painkillers. The sciatica pain was unbearable.

ECF No. 12-2 at ¶ 12. The suffering this caused is tangible and irreparable.

Nor is Petitioner the only one to face irreparable harm from his re-detention. Petitioner's wife, Alma, is recovering from breast cancer, for which she underwent radiation in 2023 and surgery in 2025. Ex. B at ¶ 11. She does not drive; Petitioner is the one who takes her to all her medical appointments, prepares her meals, and provides emotional support. Ex. B at ¶ 11. The prospect of re-detention, absent a preliminary injunction, is something of which Alma is "terrified": "I have severe trauma from the abuse I suffered in El Salvador. Fulvio creates safety and stability for me. . . . I need Fulvio to be here to support me if I get sick again." Ex. B. at ¶ 15. And beyond the harm to his wife, Petitioner's re-detention would cause harm to the four people he employs in his janitorial company.

III. THE BALANCE OF EQUITIES TIPS SHARPLY IN PETITIONER'S FAVOR.

The hardships here are not close. Petitioner faces loss of liberty, deteriorating medical conditions, destruction of his business, and the suffering of an ill spouse who depends on him. The government, by contrast, faces the minimal burden of a pre-deprivation hearing—the very process its own regulations require. The government has identified no public safety interest served by detaining Petitioner. It has made no finding that he is dangerous. It has made no finding that he is a flight risk. As Respondents conceded, "[T]here has not been a determination that he is a danger or a flight risk since the order of removal was issued in 2006." Ex. K, Tr. 32:25-33:2.

The government's sole justification for detention is the existence of the removal order. But as the authorities discussed above demonstrate, an "in absentia" removal order that was never served does not authorize the detention, without pre-deprivation process, of a man who has lived openly in this country for two decades. The balance of equities overwhelmingly favors Petitioner.

IV. A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTEREST.

The public interest is served when courts enforce the Constitution and other laws and require the government to follow its own rules. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). Requiring the government to comply with 8 C.F.R. § 241.4 and the due process requirements of the Fifth Amendment is not a burden on the public. Conversely, there is no public interest in re-detaining, without process, a man who poses no danger, no flight risk, and who has lived peaceably in this country for twenty years.

CONCLUSION

The government arrested Fulvio Castillo Gomez without a pre-deprivation hearing, without properly giving him notice of his court hearing back in 2006, without serving him with the "in absentia" removal order that is the purported basis for his detention, without complying with the regulatory procedures that govern re-detention, and without any finding that he poses a danger or flight risk. For the foregoing reasons, Petitioner respectfully requests that the Court:

1. Convert the relief in the Temporary Restraining Order into a Preliminary Injunction;
2. Enjoin Respondents from re-detaining Petitioner unless and until Respondents comply with the procedural requirements of 8 C.F.R. § 241.4 and the Due Process Clause, including providing Petitioner notice, an opportunity to be heard, and an individualized custody determination;

3. Enjoin Respondents from transferring Petitioner outside the Northern District of California or deporting him pending the resolution of this litigation;
4. Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and
5. Grant such other relief as the Court deems just and proper.

Date: March 27, 2026

Respectfully Submitted,

<u>/s/ Jonathan Abel</u>
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