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13 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
14 **SAN JOSE DIVISION**

15
16 FULVIO CASTILLO GOMEZ,

17 Petitioner,

18 v.
19

20 SERGIO ALBARRAN et al.,

21 Respondents.
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CASE NO. 3:26-cv-01790-NW

**PETITIONER'S REPLY IN SUPPORT
OF MOTION FOR PRELIMINARY
INJUNCTION**

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INTRODUCTION

The fundamental flaw with Respondents' argument is their belief that Fulvio Castillo Gomez is "similarly situated" to Vijayakumar Thuraissigiam, a man who was stopped "within 25 yards of the border" and never released into the interior. Opp. at 12; *DHS v. Thuraissigiam*, 591 U.S. 103, 114 (2020). But Mr. Castillo Gomez's life diverged from Mr. Thuraissigiam in so many ways that matter for due process. Petitioner was released on his own recognizance in 2006. Though he was ordered removed *in absentia*, Respondents never served this order on Petitioner and now claim they never had to because it was merely a "document[]" issued by the court itself." Opp. at 22. For 20 years, Respondents did not try to remove Petitioner or tell him about his removal order, though he was easily findable. On March 2, 2026, however, Respondents sent masked agents to Napa to violently arrest him without any pre-deprivation process. No warrant was served at the time of the arrest and the warrant in the record may have been created *after* he was taken into custody.

Petitioner, a husband, a caregiver to his wife throughout her cancer treatment, an employer of four, a man who has contributed to society for decades, deserves more. Respondents violated the Constitution, statutes, and regulations by detaining him without process. Petitioner cited cases granting relief in circumstances substantially similar to his own—cases that offer a blueprint for resolving this litigation. But Respondents avoid analyzing or even citing these cases. Throughout the Opposition, they press the implausible claim, contradicted by the record, that Petitioner "acted to evade the execution of his removal order for twenty years." Opp. at 23.¹ In truth, Petitioner was living in the open and easily findable, but Respondents were not looking. The Opposition attempts to distract from the core issues by misrepresenting Petitioner's filings, withholding evidence that Petitioner and this Court have requested, and raising spurious procedural objections. This Reply explains why a preliminary injunction should issue.

¹ Citations to the Opposition are abbreviated "Opp." and made to the ECF-stamped page number.

I. RESPONDENTS VIOLATED DUE PROCESS, STATUTE, AND REGULATIONS IN DETAINING PETITIONER WITHOUT PRE-DEPRIVATION PROCESS.

Respondents propose a series of self-contradicting arguments to justify the detention of Mr. Castillo Gomez, without process, twenty years after his *in absentia* removal order.

A. 8 U.S.C. § 1231(a)(6) and 8 C.F.R. § 241.4.

Respondents present a classic Catch-22. They say “detention is squarely authorized by 8 U.S.C. § 1231(a)(6),” Opp. at 16, even though Section 1231(a)(6) applies only to continuing the detention of those who are already arrested during the removal period. Then, when it comes 8 C.F.R. § 241.4, the implementing regulations that creates procedural protections, Respondents take the opposite position. They say the regulations cannot apply to Petitioner because it is only for the “[c]ontinued detention” of those who have already been arrested after their removal order. Opp. at 17; *id.* (“ICE was not seeking to ‘continue’ that detention.”). This jarring contradiction is wrong. It ought not be deployed to deprive Petitioner of any pre-deprivation process.

The text of 8 U.S.C. § 1231 makes clear why Petitioner cannot be detained under subsection 1231(a)(6). Sections 1231(a)(1) and (2) define the 90-day removal period and its limitations. Section 1231(a)(3) explains what happens to the noncitizen who “is not removed within the removal period.” And Section 1231(a)(6) explains when a person with a removal order “may be detained *beyond* the removal period.” 8 U.S.C. 1231(a)(6) (emphasis added). The word “beyond” indicates that the detention starts within the removal period and, for certain classes of people, it may continue “beyond” that period. This is not an invitation to start detention for the first time after the removal period, as the government would have it. The U.S. Supreme Court agrees with Petitioner’s reading of 1231(a)(6):

After entry of a final removal order and during the 90-day removal period, however, aliens must be held in custody. § 1231(a)(2). *Subsequently*, as the post-removal-period statute provides, the Government ‘may’ *continue to detain* an alien who still remains here or release that alien under supervision. § 1231(a)(6).

Zadvydas v. Davis, 533 U.S. 678, 683 (2001) (emphasis added). If the government were correct about 1231(a)(6)—that it could initiate detention at any time after the removal period—it would directly conflict with Section 1231(a)(3), which requires that, if a noncitizen “is not removed

1 within the removal period, the alien . . . shall be subject to supervision under regulations
 2 prescribed by the Attorney General.” The government’s reading of 1231(a)(6) claims the power
 3 to detain “inadmissible” people whom 1231(a)(3) says must be released on supervision.

4 The other fundamental flaw with the government’s 1231(a)(6) argument is the
 5 contradiction it creates with its reading of 8 C.F.R. § 241.4. The government tries to apply
 6 1231(a)(6) to new detentions, ignoring the fact that 1231(a)(6) applies only to detentions
 7 continued “beyond” the removal period. But when it comes to 8 C.F.R. § 241.4, the government
 8 insists that the regulation cannot protect Petitioner because the regulation applies only to
 9 “[c]ontinued detention,” Opp. at 17, and “ICE was not seeking to ‘continue’ that detention,”
 10 Opp. at 17. How can the government attempt to apply 1231(a)(6) but then deny the applicability
 11 of its implementing regulation, 8 C.F.R. § 241.4? This seems like an effort to read the law in a
 12 way that would deny Petitioner legal protections.

13 Respondents accuse Petitioner of “basis [*sic*] errors of legal interpretation.” Opp. at 17.
 14 But Respondents do not cite any case law in support of their claims about 1231(a)(6) and 8
 15 C.F.R. § 241.4. Meanwhile, Petitioner cites cases that refute Respondents’ position, yet
 16 Respondents do not even cite these cases even though they squarely address and reject
 17 Respondents’ arguments. For example, *Ordoñez v. Bondi* said:

18 The Government argued during oral argument that these regulations do not apply because
 19 petitioner was not detained during the initial 90-day removal period, and these regulations
 20 contemplate only *continued* detention beyond the 90-day period. But these regulations
 21 appear to be *the only relevant regulations governing the determinations regarding custody*
 22 *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. And,
 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.

23 *Ordoñez v. Bondi*, No. 2:25-cv-02356-JHC-TLF, 2025 U.S. Dist. LEXIS 269568 at *24-25
 24 (W.D. Wash. Dec. 19, 2025), *report and recommendation adopted sub nom. Gregorio Ordoñez*
 25 *v. Bondi*, No. 2:25-cv-02356-JHC-TLF, 2026 U.S. Dist. LEXIS 840 (W.D. Wash. Jan. 5, 2026)
 26 (emphasis added). *Gadyan* also rejected the government’s argument about the regulations:
 27 “Petitioner is subject to ‘other conditions of release,’ as referenced in 8 C.F.R. § 241.4(l).”

1 *Gadyan v. Noem*, No. 5:25-cv-03219-RGK-JDE, 2025 U.S. Dist. LEXIS 274605 (C.D. Cal. Dec.
 2 18, 2025). *See M.L.G.G. v. Wamsley*, No. 6:25-cv-02012-AA, 2025 U.S. Dist. LEXIS 255583, at
 3 *7 (D. Or. Dec. 10, 2025) (“Petitioner . . . is entitled to release because she is being detained
 4 after the expiration of the ninety-day removal period.”).

5 **B. 8 U.S.C. § 1231(a)(3).**

6 Respondents violated Section 1231(a)(3) by detaining Petitioner without process nearly
 7 20 years after the removal period. Their position seems to be that “the removal period has not
 8 expired and § 1231(a)(3) does not apply.” Opp. at 16. This argument fails. The text of 1231(a)(3)
 9 says: “If the alien does not leave or is not removed within the removal period, the alien, pending
 10 removal, shall be subject to supervision.” 8 U.S.C. § 1231(a)(3). Mr. Castillo Gomez was “not
 11 removed within the removal period,” so he was supposed to be “subject to supervision.” Section
 12 1231(a)(3) does not permit Respondents’ actions. Nearly 20 years passed, and Respondents did
 13 not remove, or even attempt to remove, Petitioner. The text of Section 1231(a)(3) shows why
 14 they cannot detain him without process so far outside the removal period.

15 Respondents go to lengths to escape the language of 1231(a)(3). To do so, they turn to
 16 1231(a)(1)(C), which governs the tolling of the removal period. They claim that Petitioner is still
 17 within that removal period. Opp. at 15-16. But the text of Section 1231(a)(1)(C) says:

18 The removal period shall be extended beyond a period of 90 days and the alien *may*
 19 *remain in detention during such extended period* if the alien fails or refuses to make
 20 timely application in good faith for travel or other documents necessary to the alien’s
 departure or conspires or acts *to prevent* the alien’s removal subject to an order of
 removal.

21 *Id.* (emphasis added). The words “may remain in detention” show that this extension applies to
 22 someone already detained within the removal period, not someone detained decades after the
 23 removal period closed. Second, even if Petitioner could be covered by this provision, the
 24 removal period would require a showing that he “acts to prevent” the effectuation of the removal
 25 order. *Id.* But Petitioner did not know about his order of removal, so he could not have acted
 26 with the purpose “to prevent” his removal “subject” to that order.

Ordoñez v. Bondi—which Respondents do not address—is instructive. There, the court explained that an extension of the removal period requires a “bad faith failure to cooperate” and “some affirmative and misleading act to thwart the removal process.” *Ordoñez*, 2025 U.S. Dist. LEXIS 269568, at *17 (“a failure to appear at removal proceedings is not an act sufficient to trigger extension of the removal period. Rather the ‘overwhelming’ weight of authority applying § 1231(a)(1)(C) indicates that ‘the removal period is subject to tolling where the noncitizen acts to prevent his or her removal through judicial action, or by demonstrating some sort of bad faith failure to cooperate.’”) (internal citations omitted). Respondents cite not authority to explain how an alleged failure to update an address could extend the removal period.² Respondents say the failure to update an address was “a crime, specifically a federal misdemeanor, under 8 U.S.C. § 1306(b),” ECF No. 21 at 16 (emphasis in original). But they fail to note that mens rea for that crime is “intent to do so willfully” and “where willfulness is an element, the government must establish that a person acted with knowledge that [their] conduct was unlawful.” *United States v. [Redacted]*, 806 F. Supp. 3d 17, 23, 24, 32 (D.D.C. 2025) (internal quotation marks omitted). Petitioner does not meet that threshold. His actions did not “prevent” the removal; Respondents could have found him, if they wanted to, but they let decades pass without looking for him. *See infra* Section II.A-B.

C. Respondents’ Actions Violated Basic Principles of Due Process.

Respondents released a man from detention in 2006, ordered him removed with an *in absentia* decision that they never served on him, and then effectively took no action on his case for nearly twenty years, even though it would have been exceedingly easy to find him. *See infra* Section II.B. Meanwhile, this man created a life, contributed to society, and—to no avail—tried to learn about his immigration case. *See infra* Section II.C. Respondents’ actions created a valuable liberty interest, which Petitioner has documented throughout his pleadings. Respondents took away that interest without any pre-deprivation process, raising grave risks of error. Though

² Petitioner believes that he did provide an address, and Respondents have not provided the immigration court file, despite Petitioner’s requests. *See infra* Section III.A.

Respondents say that “[r]emoval orders even older than Petitioner’s are routinely enforced,” Opp. at 23, they cite only one case for this “routine[]” occurrence—and it is not an *in absentia* order. See *Vo v. Albarran*, No. 26-CV-01489-BLF, 2026 WL 483056, at *1 (N.D. Cal. Feb. 20, 2026). Petitioner lived his life for 20 years not knowing about this removal order. Meanwhile, Respondents knew about this order for 20 years but took no action to execute it. In fact, Respondents argue that they wait 80 years to carry out a removal order, ECF No. 20-12 at 25:6-11, and then detain Petitioner without any pre-deprivation process, ECF No. 20-12 at 32:1-11.³ This strident position is not compatible with the Constitution or the statute and regulations that operate in the shadow of the Constitution. To accept Respondents’ position, one must ignore 20 years of Petitioner’s life and Respondents’ inaction. Such erasure is anathema to due process.

II. THE FACTUAL RECORD SHOWS THAT RESPONDENTS WERE NOT LOOKING FOR PETITIONER AND HE WAS NOT HIDING.

Respondents were not looking for Petitioner, even though they knew that he had an *in absentia* removal order. Petitioner, for his part, was not hiding and did not know about the order. Respondents’ repose, over two decades, vested Petitioner with a liberty interest that cannot be taken away without process.

A. Respondents’ Declaration Shows Nearly Two Decades of Inaction.

From the date of the *in absentia* order to the date of Petitioner’s ICE arrest twenty years later, what did Respondents do to look for Petitioner? Respondents present a declaration from Deportation Officer Maika Rentería. ECF No. 21-1. It presents a sparse chronology spanning nearly 20 years, yet never mentions what, if anything, Respondents did to look for Petitioner. It does not mention what “leads” they have on Petitioner, only that there were no “current” or “new” leads. *Id.* at ¶¶ 8-9. It does not explain why September 27, 2011, and July 21, 2025, were selected as points of updates. But what it does show is that Respondents were not looking for Mr.

³ At oral argument, the Court asked: “[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, what due process was required?” Respondents answered: “Nothing additional to what was done.” ECF No. 20-12 at 32:1-11.

Castillo Gomez. They let his *in absentia* order sit for two years, one month, and one day before even referring it to ICE Fugitive Operations, the group tasked with looking for him. ECF No. 21-1 at ¶ 7; ECF 9-2 at 9 (May 2, 2006, order date). On its own, that delay would have taken Petitioner well outside the removal period. Then, another three years pass before the declaration's next statement: "As of September 27, 2011, ICE had no current leads as to Petitioner's whereabouts." *Id.* at ¶ 8. And nearly fourteen years more pass before the next update: "As of July 21, 2025, ICE had no new leads regarding Petitioner." *Id.* at ¶ 9. Respondents were not looking for Petitioner. They were not even updating their search log.

B. Petitioner Was Not Hiding. He Was Living in Plain View.

Had Respondents looked for Petitioner, they would have found him. One measure of how openly Petitioner was living was the volume of public and government records that announce his presence. These include:

- Years of federal income tax filings. ECF No. 20-6.
- Three FOIA requests submitted to Respondents by his prior counsel, bearing his name, date of birth, and other identifying information, along with a Form EOIR-59 containing his address and driver's license. ECF No. 20-8.
- Publicly accessible state and local business licenses for his cleaning company, which could be accessed by the public. ECF Nos. 20-4, 20-11.
- A Napa County marriage certificate and license. ECF No. 20-5.
- Petitioner's wife's 2018 asylum application listing his name and the couple's home address (with a minor typographical error in his first name). An "updated" asylum application also listing his name and their address. This update was filed by his wife subsequent to his March 2, 2026 arrest and in advance of her individual hearing, which had been scheduled for April 7, 2026. Reply Exs. E, I; Abel Decl. at ¶ 4(e); ECF No. 20-7.

Respondents provide various arguments why they never learned or could have learned of Petitioner's location through these records. Opp. at 21-22. Some of the records they claim not to have access to. But other records—like the marriage certificate or business licenses—are accessible to any member of the public. ECF No. 20-11; Reply Ex. H. Respondents have no

1 explanation for why ICE could not have accessed them. Moreover, the records show that
2 Petitioner was not hiding. Respondents could have found Mr. Castillo Gomez if they had tried. It
3 is notable that Respondents never state what, if anything, they did to look for Petitioner. Free-of-
4 charge websites, like truepeoplesearch.com, have been around for years and allow any member
5 of the public to search and find Mr. Castillo Gomez's name, address history, and phone number.
6 Reply Ex. F. A private investigator, retained by habeas counsel, used commonly accessible
7 databases to generate address records, an example of which is attached as an exhibit. Reply Ex.
8 G. An agency with the resources and sophistication of the Department of Homeland Security
9 could have found his address. The fact that they did not find him for nearly 20 years is evidence
10 that they were not looking for him. Yet Respondents cannot concede this lack of a search,
11 because such a concession would undermine their legal claims.

12 **C. Petitioner Tried To, But Could Not, Learn About His Immigration Case.**

13 The *in absentia* order in this case heightens the need for due process. Respondents
14 concede that they never served the *in absentia* order on Petitioner. They say that the "removal
15 order was not hidden, but could have been discovered with the exercise of minimal due
16 diligence." Opp. at 21. The facts show otherwise. Even when Petitioner hired an attorney, and
17 that attorney filed three FOIA requests to gather any information about the immigration case, the
18 order never came to light. Nor did any other information about the case. Petitioner, an illiterate
19 man who speaks no English and has no formal education, was left to believe that he had no
20 immigration case. ECF No. 12-2 at ¶¶ 2, 9. After all, he went to a lawyer who tried three times to
21 find it and failed.

22 The Opposition finds various faults in the way the attorney filed the FOIA requests. For
23 example, they blame the attorney for mishandling the requests when he "filled in '0' for his A-
24 number, instead of '000000000' (nine zeroes)" as required on the form." ECF No. 21 at 10. But
25 this case is not about whether that attorney provided ineffective assistance of counsel in 2024.
26 Rather, this case is about due process and about the detention of a man based on a removal order
27 that was kept hidden from him. Respondents are quick to blame Petitioner for not learning of the

1 status of his immigration court, but they admit no fault as to their own role in denying records to
2 Petitioner (and his attorney). To this day, even with a new set of lawyers, even with Petitioner's
3 newly discovered A-number, and even with a new round of requests, Petitioner still has not been
4 able to get the immigration court or the FOIA process to provide a copy of his removal order and
5 the accompanying immigration court file. *See infra* Section III.A.

6 The plain facts are that Respondents could have assisted Petitioner in locating his A-
7 number or other records when they responded to his FOIA requests, and that would have put him
8 on notice of his immigration case. But they rebuffed his efforts. This decision led Petitioner to
9 believe he had no immigration case. ECF No. 12-2 at ¶ 9 ("The lawyer did a search for my
10 records and told me that no records appeared, which suggested that I was never given a court
11 date. At this point, I did not know that I had a removal order."). More recently, in response to
12 current counsel's FOIA request to USCIS for the "Entire A-file," the responsive records did not
13 include either the *in absentia* order or the Notice to Appear. Reply Exs. A, C; Abel Decl. at ¶
14 4(c). Nor have the requests to EOIR for the immigration court file resulted in any records. *See*
15 *infra* Section III.A. Now, Respondents claim they can detain him without any pre-deprivation
16 process, because the *in absentia* order "could have been discovered with the exercise of minimal
17 due diligence." Opp. at 21. The record shows why this claim is incorrect.

18 **III. RESPONDENTS ARE WITHHOLDING RECORDS AND INFORMATION, 19 INCLUDING ON QUESTION OF THE LEGALITY OF THE ARREST WARRANT.**

20 Respondents are withholding records and information critical to this case.

21 **A. The Immigration Court File**

22 Respondents rely on the *in absentia* order and Notice to Appear to justify the detention.
23 They concede that they did not serve the order on Petitioner. They claim Petitioner did not
24 provide an address, even though he states that he did. ECF No. 12-2 at ¶ 4 ("I believe I provided
25 my friend's address to immigration officers, but I do not remember for certain."). Petitioner has
26 requested help from opposing counsel in obtaining the complete file from immigration court.
27 However, counsel for Respondents stated that "ICE is generally opposed to providing ROPs
28

1 outside of FOIA requests.” Abel Decl. at ¶ 3. As described in the Motion for Preliminary
2 Injunction, Petitioner requested the file from the immigration court in Harlingen, Texas, and was
3 told that it had been “retired” to the Federal Records Center, where a FOIA request would be
4 required. ECF No. 20 at 15 n.6. Petitioner filed an expedited FOIA request, but the request to
5 expedite was denied. *Id.* Petitioner and the Court are being kept in the dark about what is
6 contained in the immigration court file. Respondents have not stated what the immigration court
7 file still contains. The Opposition casts doubt on whether Petitioner is working on a Motion to
8 Reopen. Opp. at 14 n.3. Yet it is Respondents who are holding on to the immigration court file
9 that would be significant to this Motion, and they are refusing to expedite the processing.

10 **B. The I-213 from March 2, 2026 and 23 Completely Redacted Pages**

11 On March 5, 2026, Petitioner’s immigration counsel submitted a FOIA request to USCIS
12 using Petitioner’s newly discovered A-number, requesting his “Entire A-file.” Reply Ex. A at 4,
13 8. On March 20, USCIS acknowledged receiving the request on March 17. Reply Ex. C at 2. On
14 April 4, USCIS identified 54 pages of responsive record, but completely redacted 23 of them. *Id.*
15 at 4. Respondents also partially redacted numerous others, including the entire narrative section
16 of the Form I-213 from March 2, 2026. Reply Ex. B at 2-4. That narrative section should
17 document the circumstances of the arrest, including when the arrest warrant was prepared and
18 served. These issues are squarely before the Court, as discussed more fully below. Indeed, this
19 Court specifically asked for information on the timing of the arrest warrant. Yet this and other
20 key documents are redacted. Petitioner does not know what information is contained in the
21 twenty-three fully redacted pages.

22 **C. Records and Information about the Creation and Service of the Warrant**

23 At the March 5, 2026, hearing, this Court directed counsel for Respondents to supply
24 specific information about the timing of the arrest warrant’s creation and service: “[I]f it is the
25 Government’s contention that this was a—a valid warrant . . . , I would want to know the time. I
26 would want to know that it predated in time the time of the arrest.” ECF No. 20-12 at 36:12-19.
27 Respondents’ counsel said: “Yes. I can—I can work on providing that to this Court.” *Id.* at

1 36:20-21. Respondents have not offered any statement or documentation about the timing of the
 2 warrant's creation or service. The Deportation Officer's statement says that "ICE arrested
 3 Petitioner pursuant to a warrant." ECF No. 21-1 at ¶ 12. But this assertion carefully avoids
 4 answering the timing questions: Was the warrant created *before* the arrest and served at the time
 5 of the arrest?⁴

6 The records that have been released in this litigation and through FOIA raise inferences
 7 that the warrant was not created and served until *after* Petitioner's arrest. The warrant states the
 8 place of service as "630 Sansome." ECF No. 21-2 at 4. This means it was served in the San
 9 Francisco ICE facility, not at the location of the arrest. According to Respondents, the arrest took
 10 place at approximately 12:49 p.m. in Napa and Petitioner was booked into the San Francisco ICE
 11 facility at approximately 3 p.m. ECF No. 9-1 at ¶ 9. That suggests a delay of more than two
 12 hours between the arrest and the service of the warrant. Further, FOIA records show that at 2:02
 13 p.m. and, again, at 2:24 p.m., Respondents printed a copy of "Automated Case Information"
 14 page, which contains no substantive information about Petitioner's case except that he was
 15 ordered removed in 2006. Reply Ex. D. If Respondents already had a warrant when Petitioner
 16 was arrested at 12:49 p.m. in Napa, why were they printing out this "Automated Case
 17 Information" page more than an hour later in San Francisco? One possibility is that they arrested
 18 Petitioner in Napa without a warrant and then set about gathering the documentation needed to
 19 create the warrant, which they served on him sometime after his 3 p.m. arrival in San Francisco.
 20 Respondents should address these concerns by specifying when the warrant was created and
 21 served, and they should provide all relevant documentation on this factual question.

22 **IV. PETITIONER'S WARRANTLESS ARREST VIOLATED FEDERAL LAW.**

23 Federal statute prohibits an ICE agent from making a warrantless arrest unless "he has
 24 reason to believe that the alien . . . is likely to escape before a warrant can be obtained for his
 25 arrest." 8 U.S.C. § 1357. As noted above, the warrant was not served upon Petitioner until more
 26 than two hours after his arrest and more than fifty miles away from the location of the arrest.

27 ⁴ The statement is not incorporated by the penalty of perjury clause. ECF No. 21-1 at ¶¶ 11-12.

1 This means that Petitioner was subjected to a warrantless arrest and no warrantless arrest is
 2 permitted by federal law unless the immigration agent had “reason to believe”—interpreted as
 3 probable cause—that Petitioner was “likely to escape before a warrant can be obtained.” *Id.*
 4 Since no such assessment occurred, Petitioner’s arrest violated federal law. As noted above, the
 5 facts suggest that it was not only a matter of not serving Petitioner with a warrant at the time of
 6 the arrest. There are serious factual questions concerning whether the warrant was even created
 7 prior to the arrest. It is incumbent upon Respondents to provide the information and documents
 8 on this critical legal issue, which on its own could justify habeas relief.

9 **V. RESPONDENTS MISSTATE THE RECORD IN THEIR ATTACKS ON**
 10 **PETITIONER’S CREDIBILITY.**

11 Respondents impugn Petitioner as “not a credible relator of fact.” ECF No. 21 at 15. But
 12 their allegations actually make false statements about the record. Respondents say: “Petitioner
 13 initially claimed that he ‘was never served with a Notice to Appear.’” ECF No. 21 at 15 (citing
 14 ECF Nos. 2-3 at 2 and No. 2-1 at 8). This is false. In fact, habeas counsel’s declaration related a
 15 statement from Petitioner’s *wife* on the evening of the arrest: “To her knowledge, no Notice to
 16 Appear was filed.” ECF No. 2-3 at ¶ 5. Respondents just deleted the words “To her knowledge”
 17 and attributed the statement to Petitioner, not his wife.⁵ There is nothing untoward about the
 18 wife’s statement. She came to the United States and started dating Petitioner more than a decade
 19 after he had lost his Notice to Appear, so it is understandable that she did not know about it.
 20 Moreover, at the time of this initial filing, Petitioner could not give a statement directly because
 21 he was being held incommunicado by Respondents on his way to detention in Bakersfield. Upon
 22 his release, he provided a detailed declaration, which was presented to the Court. ECF No. 12-2.

23 Respondents say that Petitioner claimed to be “a rider on his wife’s asylum application.”
 24 ECF No. 21 at 15. In fact, Petitioner’s filings say he was “listed” on his wife’s asylum
 25 application. A “rider” is a family member who stands to receive immigration benefits if the

26 _____
 27 ⁵ The Memorandum of Points and Authorities for the TRO cites this declaration and says:
 28 “He was apparently not issued a Notice to Appear.” ECF No. 2-1 at 8.

principal's application is granted. *Pazine v. Garland*, 115 F.4th 53, 62 (1st Cir. 2024) (defining "riders"). Being "listed" on the application is very different: asylum applicants must list their immediate relatives, include those not in the country, those not seeking status, and those who are deceased. Petitioner has always maintained that he was "listed," not that he was a "rider." Counsel has attached the wife's 2018 asylum application and the 2026 "updated" application, which she filed in advance of what was supposed to be her April 7, 2026 immigration hearing. Reply Ex. E. In both, Petitioner is *listed* as being married to his wife. *Id.* at 4, 15. Respondents falsely invented the "rider" claim and then try to attribute their own false statement to Petitioner.

Respondents pursue other lines of character attack. They blame Petitioner for an attorney error in referring to a "U-visa application"—a drafting error that counsel promptly called to the attention of the Court. ECF No. 12 at 9. Respondents blame him for saying in the initial filings that he had no "criminal history," even though Petitioner has never been convicted of a crime and has only a pending case, which he already called to the Court's attention. *See United States v. Juv. PWM*, 121 F.3d 382, 384 (8th Cir. 1997) ("charges that are merely pending against a defendant may not be counted as part of the defendant's criminal history . . ."); ECF No. 12-3. Respondents take issue with the fact that "the TRO still stands as originally written," and has not been "dissolved or updated," even though "Petitioner's presentation of the case . . . was completely inaccurate." Opp. at 10, 7. They do not seem to acknowledge that their Motion to Dissolve was denied, *see* ECF No. 15, saying of the hearing's disposition only that "both parties agreed to set a briefing schedule for a motion on a preliminary injunction," Opp. at 10.

VI. RESPONDENTS' RESIDUAL ARGUMENTS FAIL.

A. Respondents Misstate the Legal Framework for a Preliminary Injunction.

A petitioner meets the preliminary injunction standard by showing "serious questions" and a balance of hardships that tips "sharply" in his favor. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Respondents omit the "serious questions" test from their statement of the law. Opp. at 11. Likewise, Respondents mischaracterize the requested relief as a "mandatory" injunction, even though the relief requested—release from detention and

1 a prohibition on unlawful re-detention—simply restores the parties to the status quo. *Lepe v.*
 2 *Andrews*, 801 F. Supp. 3d 1104, 1119 (E.D. Cal. 2025); *see also Pablo Sequen v. Albarran*, 810
 3 F. Supp. 3d 1084, 1127 n.117 (N.D. Cal. 2025) (dismissing similar arguments from government
 4 about prohibitory injunctions). Similarly, Respondents claim a preliminary injunction is
 5 inappropriate where it “seeks . . . the same relief sought on the merits.” Opp. at 11. But Courts
 6 have repeatedly granted preliminary injunctions releasing Petitioner’s from unlawful detention,
 7 even as the habeas case proceeds toward an adjudication on the merits. “A preliminary
 8 injunction, of course, is not a preliminary adjudication on the merits but rather a device for
 9 preserving the status quo and preventing the irreparable loss of rights before judgment.” *Sierra*
 10 *On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

11 **B. This Court Has Jurisdiction to Hear This Challenge to Unlawful Detention.**

12 Respondents’ jurisdictional argument gets the law backwards. Opp. 13-15. The Supreme
 13 Court has been clear that “Section 1252(g) applies only to three discrete actions that the Attorney
 14 General may take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or
 15 execute removal orders.’” *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471
 16 (1999). Challenges to *detention* are not covered within Section 1252(g). The government’s
 17 argument fails because it conflates the decision to execute a removal order with the decision to
 18 detain the Petitioner. These are not the same. And Petitioner’s habeas litigation challenges only
 19 the detention. This is in keeping with the Supreme Court’s reasoning in *Zadvydas v. Davis*,
 20 where the Court considered Section 1252(g) and other challenges and held that “§ 2241 habeas
 21 corpus proceedings remain available as a forum for statutory and constitutional challenges to
 22 post-removal-period detention.” *Zadvydas*, 533 U.S. at 688.

23 Respondents incorrectly claim Petitioner “waived any argument on the issue” of Section
 24 1252(g) jurisdiction because Respondents previously mentioned Section 1252(g) in their Motion
 25 to Dissolve. Opp. at 14. Jurisdiction cannot be waived. Further, the Motion to Dissolve cited
 26 Section 1252(g) solely for the proposition that “[t]he Court lacks jurisdiction to enjoin
 27 respondents from removing Petitioner from the United States.” ECF No. 9 at 18. It did not seek

to bar challenges to detention. The Motion to Dissolve was denied, ECF No. 15, and the litigation is proceeding on Petitioner’s Motion for Preliminary Injunction. The Reply brief is an appropriate place to address an argument from the Opposition. The waiver argument is spurious.

C. The Request to Dismiss Multiple Respondents and the Related Claim about Pre-Deprivation Hearings Are Wrong.

Respondents quote *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) for the proposition that only the immediate custodian may be named in a habeas petition. Opp. at 21. However, *Doe* required the immediate custodian to be named; it did not address whether additional respondents could be named. Courts have repeatedly rejected Respondents’ stock argument. *See, e.g., Pawandeep S. v. Murray*, No. 1:26-cv-02185-KES-SKO, 2026 U.S. Dist. LEXIS 77771, at *2-3 (E.D. Cal. Apr. 5, 2026); *Hernandez v. Wofford*, No. 1:25-cv-00986-KES-CDB (HC), 2025 U.S. Dist. LEXIS 162801, at *6 n.1 (E.D. Cal. Aug. 21, 2025). Respondents follow this erroneous argument with the assertion that the Court cannot order a pre-deprivation hearing because Petitioner’s “immediate custodian lacks the capability and authority to conduct” one. ECF No. 21 at 28. But no Respondent has been dismissed, and none should be. The Department of Justice has the power to hold a pre-deprivation hearing.

CONCLUSION

In his nearly 20 years in this country, Mr. Castillo Gomez lived, worked, and loved. He formed all the “enduring attachments of normal life” that due process protects. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Respondents detained him, without any pre-deprivation process, and refused to fulfill their legal requirements. Petitioner respectfully asks the Court to protect his due process and other legal rights by ordering the preliminary injunction.

Date: April 20, 2026

Respectfully Submitted,

/s/ Jonathan Abel

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