UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DIEGO ANÍBAL ALIAGA PEÑA Petitioner-Plaintiff, v. SIXTO MARRERO, *in his official capacity* as WARDEN, Imperial Regional Detention Facility; GREGORY J. ARCHEMBEAULT, *in his official capacity* as Field Office Director of the San Diego Immigration and Customs Enforcement Operations, U.S. Immigrations and Customs Enforcement; TODD M. LYONS, *in his official capacity as* Acting Director, U.S. Immigration and Customs Enforcement; U.S. Department of Homeland Security; MARKWAYNE MULLIN, i*n his official capacity* as Secretary, U.S. Department of Homeland Security: TODD BLANCHE, *in his official capacity* as Attorney General of the United States, Respondents - Defendants.	Case No. 26-cv-3279-JLS-MSB RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEFING

RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEFING

I. DHS Mischaracterizes Petitioner's Criminal History

DHS repeatedly emphasizes that Petitioner "was arrested for murder" and relies extensively upon police reports recounting the underlying allegations. That characterization omits the most significant fact in Petitioner's criminal case: a California jury acquitted Petitioner of the following charges:

1. Jury found Petitioner NOT GUILTY of crime PC 187(a), First Degree Murder;
2. Jury found Petitioner NOT GUILTY of crime PC 187(a), Second Degree Murder;
3. Jury found Petitioner NOT GUILTY of crime PC 273.5(a), Inflicting Injury on Cohabitant Resulting in a Traumatic Condition;
4. Jury found that Petitioner DID NOT use deadly or dangerous weapon, to wit, a knife.

The jury's verdict necessarily reflects that the prosecution failed to prove beyond a reasonable doubt that Petitioner committed murder. *See* Exhibit A.

The only criminal conviction that remains is Petitioner's misdemeanor conviction for PC 243(e)(1), Battery To Cohabitant, for which he accepted responsibility and fully served the sentence imposed by the state court. *See* Exhibit A.

Notably, DHS never informs this Court that Petitioner was acquitted by a jury. That omission is significant. A jury acquittal—rendered after the presentation of testimony, documentary evidence, cross-examination, and argument—is entitled to far greater weight than preliminary allegations contained in an investigative police report prepared before trial. Rather

than acknowledging the acquittal, DHS attempts to relitigate the criminal prosecution by inviting this Court to accept the investigating officer's narrative in place of the jury's verdict.

Due process does not permit the Government to justify continued civil detention by relying upon criminal allegations that failed to result in a conviction. *See Addington v. Texas*, 441 U.S. 418, 425–27 (1979) (recognizing that civil detention implicates a substantial liberty interest requiring heightened procedural protections); *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (holding that civil detention cannot be justified absent constitutionally sufficient proof supporting continued confinement).

The Ninth Circuit has likewise recognized that an arrest, standing alone, is not evidence that criminal conduct occurred. *See United States v. Berry*, 258 F.3d 971, 976 (9th Cir. 2001) ("An arrest, without more, does not establish conduct."). Courts have therefore cautioned against giving dispositive weight to mere arrests or unproven accusations in subsequent proceedings. See also *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (*en banc*) (observing that arrests are merely accusations and do not establish criminal wrongdoing).

DHS's repeated references to the dismissed murder allegations therefore substantially overstate Petitioner's criminal history and improperly invite this Court to disregard the jury's acquittal in favor of allegations that were never proven beyond a reasonable doubt.

II. Police Reports Do Not Override the Jury's Verdict

DHS relies almost exclusively on investigative reports prepared shortly after Petitioner's arrest. Those reports merely summarize accusations made before trial. They are not judicial findings of fact and cannot supersede the verdict returned by the jury after presentation of live testimony, cross-examination, and the full evidentiary record.

Indeed, the Government asks this Court to treat allegations of which Petitioner was acquitted by a jury as though they remain established facts.

The acquittal demonstrates precisely why reliance upon arrest reports is problematic. A jury heard substantially more evidence than appears in the police report and nevertheless declined to convict Petitioner of murder.

Accordingly, the Court should accord little weight to the dismissed and acquitted allegations when evaluating whether continued immigration detention is constitutionally justified.

III. The Misdemeanor Conviction Does Not Justify Continued Detention

Petitioner does not minimize the seriousness of his misdemeanor domestic violence conviction. He accepted responsibility, served the sentence imposed by the state court, and fully completed his criminal punishment.

Civil immigration detention, however, is not intended to impose additional punishment for completed criminal conduct. Rather, the Supreme Court has consistently held that immigration detention is constitutional only because it serves a limited regulatory purpose—not a punitive one. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment —from government custody, detention, or other forms of physical restraint—lies at the heart of

the liberty that [the Due Process] Clause protects."); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003) (recognizing that immigration detention is civil, not criminal, in nature); *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979) (holding that civil detention becomes constitutionally impermissible where it is excessive in relation to its legitimate regulatory purpose); *United States v. Salerno*, 481 U.S. 739, 747 (1987) (preventive detention is constitutionally permissible only where it serves a legitimate regulatory objective rather than punishment).

Accordingly, continued detention is justified only if the Government demonstrates that incarceration remains necessary because Petitioner presently poses a danger to the community or a risk of flight. *See Zadvydas*, 533 U.S. at 690–91 (civil detention must bear a reasonable relation to its nonpunitive purpose); *Foucha v. Louisiana*, 504 U.S. 71, 79–83 (1992) (continued civil confinement violates due process where the justification for detention no longer exists).

Here, DHS offers no evidence that Petitioner has engaged in any subsequent criminal conduct following his misdemeanor conviction, violated any conditions of release, failed to comply with immigration reporting requirements, or otherwise demonstrated that he presently poses a danger to the community or a flight risk.

Instead, DHS relies almost exclusively upon allegations of which Petitioner was acquitted by a jury. Such retrospective reliance is insufficient to establish that continued civil detention is presently necessary to accomplish the regulatory purposes of the immigration laws. *See Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (holding that due process requires the Government to justify continued immigration detention by proving dangerousness or flight risk by clear and convincing evidence); *Tijani v. Willis*, 430 F.3d 1241, 1242–43 (9th Cir. 2005)

(recognizing that prolonged civil immigration detention without adequate justification raises serious constitutional concerns).

Because DHS has failed to demonstrate that Petitioner's continued incarceration is presently necessary to protect the public or ensure his appearance, his continued detention has ceased to serve a legitimate regulatory purpose and instead functions as impermissible additional punishment for criminal conduct for which he has already completed his sentence, in violation of the Due Process Clause.

IV. DHS's Reliance on *Tulyakov* is Misplaced

DHS argues that this case differs from *Tulyakov* because Petitioner was later arrested and ultimately convicted of a misdemeanor offense. *See Tulyakov v. LaRose*, No. 26-CV-01695, 2026 WL 981218 (S.D. Cal. April 13, 2026). That argument misunderstands the constitutional issue before the Court.

The relevant question is not whether DHS possessed information that caused it to reconsider Petitioner's release. Rather, the constitutional question is whether DHS could revoke Petitioner's previously granted liberty without first providing constitutionally adequate procedures. Once the Government exercised its discretion to release Petitioner under an Order of Recognizance, Petitioner acquired a protected liberty interest in remaining free from physical restraint. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (recognizing that freedom from physical detention is "the most elemental of liberty interests.").

Numerous courts within this District have recognized that once DHS exercises its discretion to release a noncitizen from immigration detention, that individual possesses a protected liberty interest that cannot be revoked arbitrarily or without constitutionally sufficient process. *See,* e.g., *Tulyakov v. LaRose*; *Castaneda v. Bondi*, No. SA-26-CV-00830, 2026 WL 911416, at 9–10, 25 (W.D. Tex. Mar. 23, 2026) (Rodriguez, J.) (holding that a noncitizen released by DHS possesses a protected liberty interest and that "once it is determined that the Due Process Clause applies, the question remains what process is due"); *Hassen v. Noem*, No. 3:26-CV-48-DB, slip op. at 4 n.1 (W.D. Tex. Feb. 9, 2026) (holding that *Buenrostro-Mendez* did not alter the petitioner's procedural due process claim); *Pozo v. Bondi*, No. SA-26-CA-00547-XR, 2026 WL 752628, at 7 (W.D. Tex. Mar. 12, 2026) (recognizing that executive re-detention after release implicates heightened constitutional scrutiny because it deprives an individual of a previously granted liberty interest); *Giri v. Lyons*, No. 5:26-CV-00149, 2026 WL 1361557, at 6–8 (W.D. Tex. May 8, 2026) (holding that DHS may not revoke a previously granted liberty interest without constitutionally adequate procedures).

The Supreme Court has repeatedly made clear that "the right to some kind of prior hearing is paramount" whenever the Government seeks to deprive an individual of a protected liberty interest. *Board of Regents v. Roth*, 408 U.S. 564, 569–70 (1972). Likewise, "the root requirement" of the Due Process Clause is that an individual be afforded notice and a meaningful opportunity to be heard before being deprived of liberty, except in extraordinary circumstances. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Whether DHS ultimately possessed sufficient evidence to justify Petitioner's re-

detention is therefore a separate question from whether DHS complied with the Constitution before revoking his liberty.

Nothing in *Tulyakov* suggests that an arrest—or even a subsequent misdemeanor conviction—extinguishes a previously vested liberty interest or authorizes DHS to dispense with the procedural protections required by the Due Process Clause. Nor has DHS cited any statute, regulation, or precedent holding that an arrest alone automatically nullifies a constitutionally protected liberty interest previously conferred through an Order of Recognizance. To the contrary, because civil immigration detention is regulatory rather than punitive, the Government must still provide constitutionally adequate procedures before depriving an individual of his physical liberty. *See Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979); *United States v. Salerno*, 481 U.S. 739, 746–52 (1987).

V. DHS Actually Concedes Petitioner's Requested Relief

Perhaps most significantly, DHS expressly concedes that if the Court declines to order immediate release, Petitioner is entitled to a bond hearing under § 1226(a), and further concedes that the Government should bear the burden of proving dangerousness by clear and convincing evidence. That concession is significant because it acknowledges:

- Petitioner's detention falls under § 1226(a);
- The Government—not Petitioner—should bear the burden of proof; and
- The Government must establish dangerousness or flight risk by clear and convincing evidence before continued detention may be justified.

Accordingly, the only remaining dispute is whether the constitutional violation warrants immediate release or, alternatively, a constitutionally adequate bond hearing. Because DHS revoked Petitioner's previously granted liberty interest without any pre-deprivation process, immediate release remains the appropriate remedy.

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Respectfully Submitted,

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