

Alejandro Monsalve
CA SBN 324958
Alex Monsalve Law Firm, PC
240 Woodlawn Ave., Suite 9
Chula Vista, CA 91910
(619) 777-6796
Counsel for Petitioner

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

ESAU WILBERTO DIEGO GONZALEZ,

Case No.: 3:26-cv-03579-JO-DEB

Petitioner

v.

JEREMY CASEY, *et al.*,

**PETITIONER'S TRAVERSE
TO RESPONDENTS'
RESPONSE TO ORDER TO
SHOW CAUSE**

I. Introduction

Petitioner challenges the constitutionality of his continued immigration detention following the government's decision to revoke his previously granted liberty and return him to physical custody. The question presented is straightforward: whether the government may re-detain a noncitizen who has been permitted to remain at liberty without first providing constitutionally adequate process. It may not.

Respondents' Response does not meaningfully address that constitutional question. Instead, Respondents focus principally upon issues that do not resolve the constitutional violation presented by the Petition. Regardless of the statutory authority or factual basis upon which Respondents rely to justify Petitioner's detention, Respondents do not explain why

1 Petitioner was re-detained without the procedural protections required by the Due Process
2 Clause.

3 Most significantly, Respondents fail to identify any constitutionally adequate process
4 preceding Petitioner's re-detention. They do not contend that Petitioner received prior notice that
5 his liberty would be revoked. They do not contend that Petitioner received a hearing before a
6 neutral decisionmaker. Nor do they contend that any individualized custody determination was
7 made before Petitioner was returned to physical detention.

8 Because Respondents fail to rebut Petitioner's central constitutional claim, Petitioner's
9 continued detention remains unlawful. The Court should therefore grant the Petition and order
10 Petitioner's immediate release or, alternatively, order such other relief as the Constitution
11 requires.

12 **II. Respondents Fail to Rebut Petitioner's Constitutional Claim**

13 Respondents' Response does not meaningfully rebut the constitutional claim presented in
14 the Petition. Rather than addressing whether Petitioner's re-detention complied with the
15 requirements of the Due Process Clause, Respondents focus upon arguments that do not resolve
16 the constitutional violation presented by the Petition.

17 The Petition does not challenge Respondents' authority to initiate or continue removal
18 proceedings, nor does it seek review of any discretionary immigration determination. Instead,
19 Petitioner challenges the constitutionality of the government's decision to revoke previously
20 granted liberty and return him to physical detention without constitutionally adequate process.

21 Accordingly, even if Respondents' factual or statutory assertions are accepted for
22 purposes of this proceeding, they do not answer the central question presented: whether the
23 government may deprive Petitioner of his liberty without first providing the procedural
24 protections required by the Fifth Amendment.

25 Most significantly, Respondents do not contend that Petitioner received prior notice that
26 his liberty would be revoked, a meaningful opportunity to be heard before a neutral
27 decisionmaker, or an individualized custody determination before being returned to physical
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1 detention. Nor do Respondents identify any constitutional principle authorizing the government
2 to dispense with those protections under the circumstances presented here.

3 Because Respondents fail to address the constitutional violation alleged in the Petition,
4 their Response provides no basis for denying habeas relief.

5 **III. Petitioner Possessed a Protected Liberty Interest in Remaining**
6 **Free From Re-Detention**

7 Respondents previously granted Petitioner liberty from physical detention. That decision
8 created a protected liberty interest in remaining free from re-detention.

9 The relevant facts are undisputed. Respondents previously released Petitioner from
10 immigration custody and permitted him to reside openly in the United States for an extended
11 period of time. During that period, Petitioner remained physically present in the United States
12 and subject to the government's authority. Respondents do not contend otherwise.

13 Once the government affirmatively grants a noncitizen liberty from physical detention,
14 that individual acquires a protected liberty interest in remaining free from re-detention. The
15 liberty interest at issue does not arise merely from Petitioner's physical presence in the United
16 States. Rather, it arises from the government's own decision to release Petitioner from custody
17 and permit him to remain at liberty in the community. By doing so, Respondents necessarily
18 determined that detention was not then required to ensure Petitioner's appearance or to protect
19 the public.

20 Having created that liberty interest, Respondents could not later revoke it arbitrarily or
21 without complying with the requirements of the Due Process Clause. The Constitution does not
22 permit the government to grant liberty, allow an individual to remain free in the community for
23 an extended period of time, and then abruptly return that individual to physical custody without
24 constitutionally adequate process.

25 Respondents' Response does not meaningfully address this protected liberty interest.
26 Instead, Respondents attempt to justify Petitioner's current detention without explaining why the
27 Constitution permitted the government to revoke Petitioner's previously granted liberty in the
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1 manner that occurred here. Because Petitioner possessed a protected liberty interest in remaining
2 free from re-detention, Respondents were required to provide constitutionally adequate
3 procedural safeguards before depriving him of that liberty.

4 **IV. Re-Detention Without a Pre-Deprivation Hearing Violates Due Process**

5 The Due Process Clause does not permit the government to revoke previously granted
6 liberty through abrupt physical detention without constitutionally adequate procedures.

7 Here, Respondents re-detained Petitioner without prior notice, without a meaningful
8 opportunity to be heard, without a hearing before a neutral decisionmaker, and without any
9 individualized custody determination explaining why detention had become necessary.
10 Respondents do not contend otherwise.

11 The constitutional violation does not arise merely from the existence of Petitioner's
12 current detention. Rather, it arises from the manner in which Respondents deprived Petitioner of
13 his previously granted liberty. Once Petitioner acquired a protected liberty interest in remaining
14 free from re-detention, Respondents were constitutionally required to provide meaningful
15 procedural safeguards before revoking that liberty.

16 Respondents' Response identifies no such safeguards. They do not contend that Petitioner
17 received notice that his liberty would be revoked. They do not contend that Petitioner was
18 afforded an opportunity to challenge the basis for his re-detention before a neutral
19 decisionmaker. Nor do they contend that any individualized determination preceded Petitioner's
20 return to physical custody.

21 The Due Process Clause requires more. Before the government may revoke previously
22 granted liberty and return a noncitizen to immigration detention, it must provide procedures
23 reasonably calculated to protect against the erroneous deprivation of that liberty. Respondents'
24 failure to provide those basic procedural protections renders Petitioner's continued detention
25 unconstitutional.

1 Accordingly, because Respondents deprived Petitioner of his protected liberty interest
2 without constitutionally adequate process, Petitioner's continued detention violates the Fifth
3 Amendment and habeas relief is warranted.

4 **V. Respondents' Response Confirms That the Petition Should Be Granted**

5 Rather than rebutting Petitioner's constitutional claim, Respondents' Response confirms
6 that the Petition should be granted. Respondents acknowledge that "the facts are not materially
7 distinguishable" from the prior re-detention decisions of this Court and further state that they "do
8 not oppose the petition" and "defer[] to the Court on the appropriate relief."

9 Although Respondents preserve their statutory arguments, those arguments do not answer
10 the constitutional question presented by the Petition. Respondents likewise identify no
11 individualized basis for Petitioner's continued detention and do not address Petitioner's due
12 process claim.

13 Equally significant, Respondents fail to identify any meaningful factual or legal
14 distinction that would justify a different result in this case. Nor do they explain why the
15 constitutional principles recognized in prior re-detention decisions should not apply here.
16 Instead, Respondents rely upon arguments that do not address the central issue presented by the
17 Petition: whether Petitioner's previously granted liberty could be revoked without
18 constitutionally adequate process.

19 Accordingly, Respondents' Response provides no basis for denying the Petition and
20 instead confirms that Petitioner's continued detention violates the Due Process Clause.

21 **VI. Immediate Release Is the Appropriate Remedy**

22 Where detention violates the Constitution, the traditional function of habeas corpus is to
23 secure release from unlawful custody. Immediate release is therefore the appropriate remedy.

24 Indeed, this Court has recognized that immediate release is the appropriate remedy in
25 materially similar re-detention cases. See, e.g., *Herrera-Mendez v. LaRose*, No. 3:26-cv-02110-
26 JO-MMP (S.D. Cal. Apr. 10, 2026). Respondents themselves acknowledge that this Court's prior
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1 decisions "will control the result here if the Court adheres to its prior decisions" and that "the
2 facts are not materially distinguishable."

3 Similarly, other courts throughout the Southern District of California have likewise
4 reached the same conclusion. See *Point Dujour v. LaRose*, No. 3:26-cv-02207-JES-MSB (S.D.
5 Cal. Apr. 21, 2026); *Tido-Ngoumtsop v. Warden*, No. 3:26-cv-02913-LL-VET (S.D. Cal. May
6 21, 2026); *Jimenez Quevedo v. LaRose*, No. 3:26-cv-03211-JES-MSB (S.D. Cal. May 29, 2026);
7 *Revelorio-Osorio v. Casey*, No. 3:26-cv-03440-JAO-GC (S.D. Cal. June 16, 2026); *Hidalgo*
8 *Gonzalez v. LaRose*, No. 3:26-cv-03561-GPC-GC (S.D. Cal. June 24, 2026). In each of those
9 cases, the constitutional injury arose not merely from the existence of detention, but from the
10 government's decision to revoke previously granted liberty without constitutionally adequate
11 procedures. Once that constitutional violation occurred, continued detention could not be
12 justified by post hoc explanations or generalized detention authority.

13 The constitutional violation in this case was complete when Respondents revoked
14 Petitioner's previously granted liberty and returned Petitioner to physical custody without the
15 process required by the Due Process Clause. Respondents do not contend that Petitioner received
16 notice before his liberty was revoked. They do not contend that he received a hearing before a
17 neutral decisionmaker. They do not contend that any individualized custody determination
18 preceded his re-detention. Thus, Petitioner's present detention cannot be sustained.

19 To the extent Respondents suggest that the appropriate remedy is a future custody
20 hearing, that proposal does not cure the constitutional injury that has already occurred. The issue
21 before the Court is not whether the government may attempt to justify detention at some future
22 date. The issue is whether Petitioner's present detention is lawful. Because Respondents revoked
23 Petitioner's liberty without constitutionally adequate procedures, continued detention is unlawful.

24 Nor have Respondents established that continued detention is necessary pending any
25 future proceedings. Respondents identify no individualized finding that Petitioner presents a
26 danger to the community, no individualized finding that Petitioner presents an unacceptable risk
27 of flight, and no determination concluding that less restrictive alternatives would be insufficient.

1 Instead, Respondents rely upon generalized detention authority while failing to establish why
2 continued physical detention is necessary in Petitioner's particular case.

3 Immediate release is especially appropriate because Respondents themselves previously
4 determined that Petitioner could safely remain at liberty in the community. Having once
5 concluded that detention was unnecessary, Respondents cannot now revoke that liberty without
6 first providing the procedural protections required by the Constitution.

7 Accordingly, because Respondents revoked Petitioner's previously granted liberty
8 without constitutionally adequate process, because Respondents have failed to establish any
9 lawful basis for Petitioner's continued detention, and because immediate release is the remedy
10 consistently ordered by courts confronting materially similar constitutional violations, the Court
11 should grant the Petition and order Petitioner's immediate release under the same conditions that
12 existed immediately prior to his re-detention.

13 In the alternative, should the Court decline to order immediate release, Petitioner
14 respectfully requests that the Court order a prompt constitutionally adequate custody hearing
15 before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear
16 and convincing evidence, that continued detention is necessary to prevent flight or danger to the
17 community.

18 **VII. Conclusion**

19 Respondents have failed to rebut Petitioner's constitutional claim. They do not establish
20 that Petitioner received constitutionally adequate process before his previously granted liberty
21 was revoked. Nor do they identify any lawful basis for dispensing with the procedural
22 protections required by the Due Process Clause before returning Petitioner to physical detention.

23 The Constitution does not permit the government to revoke previously granted liberty
24 through summary re-detention unaccompanied by notice, a meaningful opportunity to be heard,
25 and an individualized custody determination. Because Respondents failed to provide those
26 protections, Petitioner's continued detention is unlawful.

1 Accordingly, Petitioner respectfully requests that the Court grant the Petition for Writ of
2 Habeas Corpus and order Petitioner's immediate release under the same conditions that existed
3 immediately prior to his re-detention.

4 In the alternative, should the Court decline to order immediate release, Petitioner
5 respectfully requests that the Court order a prompt constitutionally adequate custody hearing
6 before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear
7 and convincing evidence, that continued detention is necessary to prevent flight or danger to the
8 community.

9 Finally, Petitioner respectfully submits that the issues presented are purely legal and have
10 now been fully briefed. Respondents do not dispute the relevant facts, and the questions before
11 the Court concern the constitutional consequences of those undisputed facts. Accordingly, if the
12 Court concludes that oral argument would not materially assist its resolution of the Petition,
13 Petitioner respectfully requests that the Court decide the matter on the papers and vacate the July
14 9, 2026 hearing.

15 Respectfully submitted,

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

17 Alex Monsalve Law Firm, PC

18 240 Woodlawn Ave, Suite 9

19 Chula Vista, CA 91910

20 Phone: (619) 777-6796

21 Counsel for Petitioner

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