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

LUTDAY JESUS GARRILLO-VICTORA,

Petitioner,

v.

Warden, Imperial Regional Detention Facility,
et al.,

Case No.: **3:26-cv-03604-JO-JLB**



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

I. Introduction

Petitioner originally filed this habeas action pro se. Unaware that Petitioner had already commenced this action, undersigned counsel later filed a separate habeas petition, Case No. 3:26-cv-03857-TWR-MMP, asserting substantially the same constitutional challenge to Petitioner's continued detention. After Respondents filed their Notice of Related Case, counsel promptly entered an appearance in this action and will move to voluntarily dismiss the later-filed petition so that Petitioner's claims may proceed here.

Although Petitioner's pro se Petition plainly alleged the constitutional violations at issue, those allegations were presented without the assistance of counsel and therefore were not organized or fully developed in the manner reflected in this Traverse.

1 Federal courts liberally construe pro se pleadings and hold them to less stringent
2 standards than pleadings drafted by attorneys. This Traverse therefore does not present new
3 claims; rather, it organizes and develops the constitutional claims already alleged in the Petition.

4 Petitioner challenges the constitutionality of his continued immigration detention
5 following the government's decision to revoke his previously granted liberty and return him to
6 physical custody. The question presented is straightforward: whether the government may re-
7 detain a noncitizen whom it previously determined did not require detention, without first
8 providing constitutionally adequate process. It may not.

9 In a materially indistinguishable case involving the same constitutional issue, this Court
10 recently granted habeas relief, concluding that the government could not continue detaining a
11 previously released noncitizen without affording constitutionally adequate process before
12 revoking that previously granted liberty. Respondents identify no material factual or legal
13 distinction warranting a different result here.

14 Respondents' Response does not establish that Petitioner received constitutionally
15 adequate process before his liberty was revoked. Respondents do not contend that Petitioner
16 received prior notice that his liberty would be withdrawn, a meaningful opportunity to be heard
17 before a neutral decisionmaker, or any individualized custody determination before being
18 returned to immigration detention. Because Respondents have failed to demonstrate that
19 Petitioner's re-detention complied with the requirements of the Fifth Amendment, the Petition
20 should be granted and Petitioner immediately released or, in the alternative, afforded the same
21 constitutionally adequate relief this Court recently ordered in its prior re-detention decision.

22 **II. Respondents Fail to Demonstrate That Petitioner's Re-Detention Complied**
23 **with the Requirements of the Due Process Clause**

24 Respondents' Response fails to establish that Petitioner's re-detention complied with the
25 requirements of the Fifth Amendment. Although Respondents defend the statutory basis for
26 Petitioner's detention and argue that detention under INA § 235(b) is lawful, those arguments do
27 not answer the constitutional question presented by the Petition.

1 The Petition challenges the government's decision to revoke Petitioner's previously
2 granted liberty and return him to physical detention without constitutionally adequate process.
3 Specifically, Petitioner alleges that DHS previously determined he did not present a danger to the
4 community or a flight risk, released him from immigration custody, permitted him to remain at
5 liberty in the United States for approximately three years, and then abruptly re-detained him
6 without prior notice, without any identified change in circumstances, and without an
7 individualized determination justifying the revocation of that previously granted liberty.

8 Respondents do not contend that Petitioner received prior notice that his liberty would be
9 revoked. They do not contend that Petitioner was afforded a meaningful opportunity to be heard
10 before a neutral decisionmaker prior to his re-detention. Nor do they identify any individualized
11 custody determination made before Petitioner was returned to physical detention. Instead,
12 Respondents rely principally upon their contention that Petitioner's current detention is
13 authorized by statute.

14 Even assuming Respondents' statutory arguments are correct, they do not resolve the
15 constitutional issue presented here. The question is not simply whether Congress authorized
16 detention under a particular provision of the Immigration and Nationality Act. Rather, the
17 question is whether the government may revoke previously granted liberty without first
18 providing the procedural protections required by the Due Process Clause.

19 Respondents identify no constitutionally adequate procedures preceding Petitioner's re-
20 detention. They likewise identify no individualized finding that circumstances had changed since
21 DHS previously determined that detention was unnecessary. Because Respondents fail to
22 establish that Petitioner's previously granted liberty was revoked through constitutionally
23 adequate procedures, Petitioner's continued detention violates the Fifth Amendment.

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

26 Respondents previously determined that Petitioner did not require continued physical
27 detention. On or about July 3, 2023, DHS released Petitioner from immigration custody after
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1 determining that he did not present a danger to the community or a risk of flight. Petitioner
2 thereafter remained at liberty in the United States for approximately three years. During that
3 period, DHS did not revoke Petitioner's release, did not identify any violation of the conditions
4 of his release, and continued to permit him to reside openly in the community.

5 That release created a protected liberty interest in remaining free from physical detention.
6 The liberty interest at issue does not arise merely from Petitioner's physical presence in the
7 United States. Rather, it arises from the government's own discretionary decision to release
8 Petitioner from immigration custody after determining that detention was unnecessary. By
9 granting that liberty, Respondents necessarily concluded that Petitioner's appearance could be
10 secured and that he did not present a danger requiring continued physical detention.

11 Once the government affirmatively grants such liberty, the Due Process Clause prohibits
12 its arbitrary revocation. Although the government retains authority to initiate and pursue removal
13 proceedings, it may not revoke previously granted liberty without constitutionally adequate
14 procedural safeguards.

15 Respondents do not dispute that Petitioner was previously released from immigration
16 custody and permitted to remain at liberty for approximately three years before being re-
17 detained. Nor do Respondents identify any individualized determination explaining why the
18 government departed from its prior custody determination or why continued liberty was no
19 longer appropriate. Instead, Respondents rely primarily upon generalized statutory detention
20 authority while leaving unanswered the constitutional question whether Petitioner's previously
21 granted liberty could be revoked in the manner that occurred here.

22 Because Petitioner possessed a protected liberty interest in remaining free from re-
23 detention, Respondents were required to provide constitutionally adequate procedures before
24 depriving him of that liberty. Their failure to do so renders Petitioner's continued detention
25 unconstitutional.

IV. Re-Detention Without Constitutionally Adequate Pre-Deprivation Process
Violates the Due Process Clause

The Fifth Amendment prohibits the government from depriving an individual of a protected liberty interest without constitutionally adequate process. That principle applies with particular force where, as here, the government previously exercised its discretion to release a noncitizen from immigration custody, thereby permitting him to remain at liberty in the community for an extended period before abruptly revoking that liberty through re-detention.

Respondents previously determined that Petitioner did not require continued physical detention and released him from immigration custody. Petitioner thereafter remained at liberty in the United States for approximately three years. During that period, Respondents did not revoke Petitioner's release, did not identify any violation of the conditions of his release, and did not contend that Petitioner presented a danger to the community or a risk of flight warranting renewed detention.

Despite having previously determined that detention was unnecessary, Respondents abruptly re-detained Petitioner without first providing constitutionally adequate process. Respondents do not contend that Petitioner received advance notice that his previously granted liberty would be revoked. They do not contend that Petitioner received a meaningful opportunity to be heard before a neutral decisionmaker. Nor do they identify any individualized custody determination made before Petitioner was returned to physical detention.

Respondents instead rely principally upon their contention that Petitioner's detention is authorized under INA § 235(b). That argument misses the constitutional issue presented by the Petition. Even assuming Respondents correctly identify the statutory authority governing Petitioner's detention, statutory detention authority does not eliminate the government's independent obligation to comply with the Due Process Clause before revoking a previously granted liberty interest.

The constitutional violation therefore lies not merely in Petitioner's present detention, but in the manner in which Respondents revoked Petitioner's previously granted liberty. Once the

1 government affirmatively determined that Petitioner did not require continued detention and
2 released him into the community, the Fifth Amendment required constitutionally adequate
3 procedures before that liberty could be withdrawn. Respondents identify no such procedures
4 here.

5 This Court recently recognized these same constitutional principles in a materially
6 indistinguishable re-detention case. There, the Court concluded that the government could not
7 continue detaining a previously released noncitizen without constitutionally adequate process
8 and ordered Petitioner's immediate release subject to narrowly tailored prospective relief.
9 Respondents identify no material factual or legal distinction warranting a different result here.

10 Because Respondents have failed to demonstrate that Petitioner's previously granted
11 liberty was revoked through constitutionally adequate pre-deprivation process, Petitioner's
12 continued detention violates the Due Process Clause, and the Petition should be granted.

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

14 Rather than rebutting Petitioner's constitutional claim, Respondents' Response effectively
15 concedes that the Petition should be granted. Respondents acknowledge that this Court's prior
16 decisions "will control the result here if the Court adheres to its prior decisions," that "the facts
17 are not materially distinguishable," and, on that basis, expressly state that they "do not oppose
18 the petition" and "defer to the Court on the appropriate relief."

19 Although Respondents preserve their statutory arguments, those arguments do not resolve
20 the constitutional question presented by the Petition. Respondents do not contend that Petitioner
21 received constitutionally adequate pre-deprivation process before his previously granted liberty
22 was revoked. Nor do they identify any prior notice, meaningful opportunity to be heard, or
23 individualized custody determination preceding Petitioner's re-detention.

24 Equally significant, Respondents identify no material factual or legal distinction that
25 would justify a different result in this case. Having acknowledged that this case is not materially
26 distinguishable from this Court's prior re-detention decisions, Respondents offer no reason why
27 the same constitutional principles and the same relief should not apply here.

1 Accordingly, Respondents' Response provides no basis for denying the Petition. To the
2 contrary, Respondents' concessions confirm that this case is controlled by this Court's prior re-
3 detention decisions and that the Petition should be granted.

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

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

7 Most significantly, this Court recently granted immediate habeas relief in a materially
8 indistinguishable re-detention case. See *Diego Gonzalez v. Casey*, No. 3:26-cv-03579-JO-DEB
9 (S.D. Cal. July 3, 2026). There, this Court concluded that the government could not continue
10 detaining a previously released noncitizen after revoking his liberty without constitutionally
11 adequate process, ordered the petitioner's immediate release, and further required that any future
12 re-detention comply with the procedural protections mandated by the Due Process Clause.
13 Respondents identify no material factual or legal distinction warranting a different result here.

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

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

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

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

14 Nor have Respondents established that continued detention is necessary pending any
15 future proceedings. Respondents identify no individualized finding that Petitioner presents a
16 danger to the community, no individualized finding that Petitioner presents an unacceptable risk
17 of flight, and no determination concluding that less restrictive alternatives would be insufficient.
18 Instead, Respondents rely upon generalized detention authority while failing to establish why
19 continued physical detention is necessary in Petitioner's particular case.

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

24 Accordingly, because Respondents revoked Petitioner's previously granted liberty
25 without constitutionally adequate process, because Respondents have failed to establish any
26 lawful basis for Petitioner's continued detention, and because immediate release is the remedy
27 this Court recently ordered in a materially indistinguishable re-detention case, the Court should
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1 grant the Petition and order Petitioner's immediate release under the same conditions that existed
2 immediately prior to his re-detention.

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

9 **VII. Conclusion**

10 Respondents have failed to establish that Petitioner's re-detention complied with the
11 requirements of the Due Process Clause. They do not contend that Petitioner received
12 constitutionally adequate pre-deprivation process before his previously granted liberty was
13 revoked. Nor do they identify any lawful basis for dispensing with the procedural protections
14 required by the Fifth Amendment before returning Petitioner to physical detention.

15 The Constitution does not permit the government to revoke previously granted liberty
16 through summary re-detention without constitutionally adequate process. Because Respondents
17 failed to provide those protections, Petitioner's continued detention is unlawful.

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

21 In the alternative, should the Court decline to order immediate release, Petitioner
22 respectfully requests that the Court order a prompt constitutionally adequate custody hearing
23 before a neutral decisionmaker at which Respondents bear the burden of establishing, by clear
24 and convincing evidence, that continued detention is necessary to prevent flight or danger to the
25 community, and at which the adjudicator considers alternatives to detention and Petitioner's
26 ability to pay any bond imposed.

1 Finally, Petitioner respectfully submits that the issues presented are purely legal and have
2 now been fully briefed. Respondents expressly acknowledge that "the facts are not materially
3 distinguishable" from this Court's prior re-detention decisions, state that they "do not oppose the
4 petition," and defer to the Court regarding the appropriate relief. Accordingly, because oral
5 argument would not materially assist the Court's resolution of the Petition, Petitioner respectfully
6 requests that the Court issue a written decision on the merits before the hearing scheduled for
7 July 16, 2026, consistent with the Court's June 23, 2026 Minute Order.

8 Respectfully submitted,

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

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