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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ERNESTO GIOVANNI CALDERON RAMIREZ, Petitioner, v. SERGIO ALBARRAN, et al., Respondents.	CASE NO. 3:26-cv-11633-PCP **RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE** Hon. Casey J. Pitts

Petitioner failed to disclose to this Court material facts in his Ex-Parte Motion for a Temporary Restraining Order. *See* Dkt. No. 2. A party seeking an ex parte TRO must disclose *all* material facts to the Court. *See* Cal. R. Prof. Conduct 3.3(d) (requiring disclosure of adverse material facts in ex parte proceeding); *see also* NDCA Civil Local Rule 11-4(a) (requiring compliance with the standards of professional conduct of California). Petitioner had an obligation to disclose material facts even when adverse to his claims.

In 2023, San Pablo Police arrested Petitioner on three felony violations: two felonies for inflicting corporal injury on a spouse or cohabitant under California Penal Code ("CPC") § 273.5(a) and one felony for inflicting corporal punishment or injury on a child under CPC § 273d(a). *See* Exh. 1. The

elements of a violation under § 273.5(a) include "willfully inflict[ing] corporal injury resulting in a traumatic condition upon a victim." The statute defines a traumatic condition as a "condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force." The elements of a violation under § 273d(a) include "willfully inflict[ing] upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition." There is no indication that San Pablo Police lacked probable cause for the arrest.

These are crimes that Respondents take seriously.

As established above, Petitioner had an obligation to disclose the reasons for his arrest. These facts are material because his arrest on these felonies undercuts the claims in his filings that he is *not* a danger and that there has been *no change* in circumstances since 2019. Petitioner will likely claim that these material facts nevertheless do not support a finding of danger or changed circumstances. But that is a determination ultimately left up to the Court. Under this Court's rules, Petitioner was not free to withhold these facts because *he* thought they should not change the Court's determination.

Instead, Petitioner's ex-parte motion is strategically coy about his criminal history. Petitioner obliquely stated that "He has no criminal convictions, and the District Attorney has confirmed that no criminal complaint was ever issued arising from his 2023 arrest." Dkt. No. 2 at 4. There is no mention of the reasons for the 2023 arrest. Petitioner mentions that "no criminal complaint was ever issued" and submits a letter from the Contra Costa District Attorney's office to that effect, but Petitioner does not attach a police report of the incident which he surely has or could easily obtain from the same District Attorney's office or San Pablo Police.[1] The police report contains additional material facts regarding the 2023 arrest that the Court was entitled to consider before ruling on the ex-parte motion.

Respondents are also concerned that Petitioner's filings contain statements from his wife regarding the reasons for his 2023 arrest. Petitioner has not submitted a declaration from his wife. However, Petitioner's habeas petition states that "When the incident occurred, Ms. Garcia

[1] Respondents are working to obtain a copy of the police report from the 2023 arrest and will submit to the Court a copy of the police report if they obtain it.

explained…that she has never felt in danger, did not wish to press charges, and that the argument was a normal dispute between spouses." Dkt. No. 1 at 11. It is unclear how this description of the 2023 incident would have given rise to the three felony offenses supporting Petitioner's arrest. As the purported victim in the 2023 incident, Petitioner's wife's interests are not necessarily the same as Petitioner's. This gives rise to an apparent conflict in representation.

The additional factual background now before the Court better explains Respondents' decision to detain Petitioner and defeats Petitioner's claims for relief. As Petitioner acknowledges, his wife had applied to sponsor two minors in Office of Refugee Resettlement ("ORR") custody. Dkt. No. 2 at 3. As part of that application process, ORR conducted due diligence into the sponsoring household of which Petitioner forms part. Dkt. No. 1 at 7. Respondents then learned that Petitioner had the arrest on three felony offenses including domestic violence to his spouse and inflicting injury on a child. Respondents also knew that Petitioner lacked lawful status in the United States. Respondents thus called Petitioner in for an interview at which they detained Petitioner due to his unlawful immigration status and the danger that he poses to the community.

Petitioner's 2023 arrest constituted a material change of circumstance since his 2019 illegal entry.[2] Accordingly, his arrest by Respondents does not violate *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025). *See* Dkt. No. 1 at 16 ("Third Claim for Relief"). Moreover, because Petitioner's 2023 felony arrest establishes that he is a danger, his claim that his "detention thus does not serve any legitimate governmental purpose" fails. Dkt. No. 1 at 14 ("First Claim for Relief"). Lastly, Petitioner's procedural due process claim fails because he lacks a constitutionally protected liberty interest. *See* Dkt. No. 1 at 15 ("Second Claim for Relief."). As he acknowledges, at the time of his arrest by Respondents, he was not in removal proceedings and he claims no actively pending application for asylum. *See* Dkt. No. 4 at 4.

Finally, the TRO enjoins Petitioner's removal and transfer. *See* Dkt. No. 5 at 4. This relief is not available in habeas. *See Mena v. Albarran*, No. 26-CV-04749-BLF, 2026 WL 1549201, at *6 (N.D. Cal.

[2] Petitioner's 2023 arrest also postdates the 2022 dismissal of removal proceedings. Dkt. No. 4 at 4.

June 1, 2026) (denying Petitioner's request to enjoin in habeas both transfer and removal). This Court lacks jurisdiction to enjoin Petitioners' removal under 8 U.S.C. § 1252(g), which provides in relevant part that "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or *execute removal orders* against any alien[.]" 8 U.S.C. § 1252(g) (emphasis added). As regards transfer, "jurisdiction attaches on the initial filing for habeas corpus relief, and it is not destroyed by a transfer of the petitioner and the accompanying custodial change." *Francis v. Rison*, 894 F.2d 353, 354 (9th Cir. 1990) (citation omitted); *see also Vaskanyan v. Janecka*, No. 25-cv-01475-MRA-AS, 2025 WL 2014208, at *6 (C.D. Cal. June 25, 2025) (declining to prohibit transfer in habeas).

In light of the foregoing, Respondents respectfully request that the Court deny Petitioner's requested relief and dismiss the habeas petition.

Dated: October 13, 2026

Respectfully submitted,

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