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OF THE SAN FRANCISCO BAY AREA
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ERNESTO GIOVANNI CALDERON RAMIREZ,

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director for the San Francisco Field Office of ICE Enforcement and Removal Operations;

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security;

DAVID VENTURELLA, Acting Director for U.S. Immigration and Customs Enforcement;

TODD BLANCHE, Attorney General of the United States and head of the Department of Justice,

Respondents.

CASE NO. 5:26-CV-11633-PCP

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

HEARING DATE: OCTOBER 19, 2026

TIME: 3:00 P.M.

JUDGE: HON. P. CASEY PITTS

I. PRELIMINARY STATEMENT

Respondents' entire defense of the re-detention of Petitioner Ernesto Giovanni Calderon Ramirez ("Petitioner" or "Mr. Ramirez") rests on one fact: a 2023 arrest that never led to a criminal complaint. On October 8, before the Petition was filed, and again on October 14, Petitioner's counsel asked Respondents for their internal records documenting Mr. Ramirez's arrest, including the I-213, the I-200 warrant, and the Notice to Appear.[1] Respondents have not provided those records, and their Response (Dkt. No. 9) omits them. Further, the Response includes no declaration from an Immigration and Customs Enforcement ("ICE") officer or other evidence stating that ICE found Mr. Ramirez to be dangerous before arresting him. Respondents' only evidence is an FBI RAP sheet that, by its own timestamps, was generated on October 13, 2026, five days after the arrest and the same day Respondents filed their Response. Dkt. No. 9-1 at 1.

On all three of Petitioner's claims, Respondents cannot meet their burden "to show cause why the writ of habeas corpus should not be granted and to make a return certifying the true cause of the detention" (Dkt. No. 6) with a RAP sheet documenting a three-year-old arrest. ***First***, as a matter of procedural due process, Respondents have failed to distinguish Mr. Ramirez's case from this District's majority rule[2] that noncitizens who are released into the United States to pursue immigration relief are entitled to pre-deprivation process before Respondents revoke their liberty, even if the noncitizen has a subsequent criminal arrest. ***Second***, Respondents cannot

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[1] Second Declaration of Victoria Petty ("Second Petty Decl.") ¶¶ 2–4.

[2] *Chavez Escobar v. Alberran*, No. 26-cv-08659-CRB, 2026 WL 2640659, at *4 (N.D. Cal. Sept. 8, 2026) (DUI arrest and resulting misdemeanor conviction did not justify re-detention without a hearing); *Mucu Maaz v. Albarran*, No. 5:26-cv-08452-BLF, 2026 WL 2447545, at *3 (N.D. Cal. Aug. 20, 2026) ("Mr. Mucu Maaz is presumed innocent until proven guilty."); *Hernandez Serrano v. Albarran*, No. 26-cv-03452-EKL, 2026 WL 1611876, at *3 (N.D. Cal. June 4, 2026) (collecting cases holding that arrests alone are insufficient).

demonstrate that Mr. Ramirez's re-detention complied with substantive due process, since the bare fact of an arrest three years ago does not prove that Mr. Ramirez's detention was reasonably related to the regulatory goal of protecting the community. Indeed, Mr. Ramirez's wife, Zulma Angelica Bercian Garcia ("Ms. Garcia"), attests that after his 2023 arrest, she "called the police and everyone [she] could to explain that [she] did not want any of this to happen to Ernesto and that [she] was never afraid of him." Decl. of Zulma Bercian Garcia ("Garcia Decl.") ¶ 6. ***Finally***, Respondents' RAP sheet is insufficient to rebut Mr. Ramirez's claim that ICE re-detained him without a determination that materially changed circumstances bear on his flight risk or danger and justify his detention, in violation of this Court's order in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025).

The Court should thus grant the Petition and enjoin Respondents from re-detaining Mr. Ramirez unless Respondents provide at least seven days' notice and a pre-deprivation bond hearing before a neutral arbiter at which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community, considering alternatives to detention and Petitioner's ability to pay a bond.

II. ARGUMENT

A. Respondents Offer No Evidence That ICE Determined Mr. Ramirez To Be Dangerous.

The Petition alleges that ICE agents told Mr. Ramirez that he was being detained because he had entered without inspection; they mentioned nothing about his 2023 arrest or about Mr. Ramirez being dangerous. Pet. ¶ 34. The Response asserts that ICE learned of the 2023 arrest during the Office of Refugee Resettlement's ("ORR") review of Ms. Garcia's sponsorship application and then detained Mr. Ramirez "due to his unlawful immigration status and the

danger that he poses to the community." Dkt. No. 9 at 3.[3] Not one word of that account is supported by a declaration or any other evidence, such as the I-213, despite counsel's requests for that and other records on October 8 and again on October 14. Second Petty Decl. ¶¶ 2–5. It appears only in the unsworn brief of Respondents' counsel, and "the arguments and statements of counsel 'are not evidence and do not create issues of material fact[.]'" *Barcamerica Int'l USA Tr. v. Tyfield Imps., Inc.*, 289 F.3d 589, 593 n.4 (9th Cir. 2002) (quoting *Smith v. Mack Trucks*, 505 F.2d 1248, 1249 (9th Cir. 1974) (per curiam)). Respondents' only evidentiary submission is the FBI RAP sheet, the face of which says nothing about ICE determining Mr. Ramirez to be dangerous and has a timestamp showing that it was generated on October 13, 2026, five days after ICE re-detained Mr. Ramirez. Dkt. No. 9-1 at 1, 4. Respondents' conclusory statements and a RAP sheet obtained after the arrest are not sufficient to rebut the Petition's allegation that ICE justified its re-detention decision based on Mr. Ramirez's 2019 entry without inspection, not dangerousness.

"[C]ourts may not accept appellate counsel's post hoc rationalizations for agency action. . . . It is well-established that an agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). ICE has not articulated the pre-arrest danger determination, so Respondents' litigation position is unsupported. Absent any evidence that ICE in fact determined Mr. Ramirez's 2023 arrest to render him dangerous, the Court should find that Respondents violated the *Garro Pinchi*

[3] The Petition stated that the family's home had been preliminarily approved by the Office of Refugee Resettlement for the children's placement. Pet. ¶¶ 1, 24. That statement was incorrect, and undersigned counsel regrets the error. Ms. Garcia's sponsorship application remains pending. *See* Garcia Decl. ¶¶ 8–10.

order staying ICE's new policy of re-detaining previously released noncitizens without changed circumstances. *See* 813 F. Supp. 3d at 1040.[4]

Even if ICE had made an individualized dangerousness calculation about Mr. Ramirez that complied with *Garro Pinchi*, this Court has held that noncitizens in Mr. Ramirez's posture remain constitutionally entitled to a pre-deprivation hearing. In *Ome Osorio*, this Court rejected the argument that the petitioner's felony robbery and DUI arrests established "a change in circumstances sufficient to deem [the petitioner] such a danger to the public that the government must detain him without any pre-deprivation hearing," because "merely being arrested on a charge does not establish a criminal conviction that would actually allow the government to infer the noncitizen at issue can be assumed to be a danger to the community." *Ome Osorio v. Albarran*, No. 26-cv-08783-PCP, 2026 WL 2741855, at *5 (N.D. Cal. Sept. 16, 2026). Other judges of this District agree. *See, e.g.*, *Hernandez Serrano*, 2026 WL 1611876, at *3 (collecting cases holding that arrests alone are insufficient).

Mr. Ramirez's case is no different from *Ome Osorio*. Not only does the 2023 arrest not establish guilt or dangerousness, but the FBI RAP sheet also confirms that Mr. Ramirez's 2023 arrest is the only criminal arrest in his life. Dkt. No. 9-1 at 3, 6. An arrest is an accusation, not a finding; and the Contra Costa County District Attorney reviewed the matter and issued no criminal complaint. Dkt. No. 2-1 Ex. C. Moreover, Respondents cannot fill the vacuum of evidence establishing Mr. Ramirez's present dangerousness with a police report of the 2023 incident, obtained after the fact, that ICE did not review before Mr. Ramirez's re-detention on

[4] Respondents do not contest that Mr. Ramirez is a member of the *Garro Pinchi* class. Mr. Ramirez is a member of the main *Garro Pinchi* class because he "(1) entered . . . the United States without inspection; (2) ha[s] been . . . charged with inadmissibility under 8 U.S.C. § 1182 and ha[s] been . . . released from DHS custody; and . . . (3) [is] in removal proceedings under 8 U.S.C. § 1229a, and (4) [is] not subject to detention under 8 U.S.C. § 1226(c)." *Garro Pinchi*, 813 F. Supp. 3d at 1010. He is also a member of the subclass as someone who was released on his own recognizance in 2019. *See id.*

October 8, 2026. *See* Dkt. No. 9 at 2 n.1 (stating that Respondents are "working to obtain" the police report). Respondents correctly state that whether the 2023 arrest is a material changed circumstance "is a determination ultimately left up to the Court." *Id.* at 2; *see also Chavez Escobar*, 2026 WL 2640659, at *4 ("an IJ might determine, following such a hearing, that Petitioner's conviction for a wet reckless (a lesser conviction than a DUI) makes him a danger to the community. But . . . an IJ might determine otherwise. . . . That is what hearings are for.").

Respondents failed to show that ICE made a pre-arrest determination that Mr. Ramirez's 2023 arrest made him a present danger. Even if Respondents had evidence of ICE's danger determination, as a matter of due process, equating a three-year-old arrest with present dangerousness is insufficient to justify re-detention without a pre-deprivation hearing. Thus, Mr. Ramirez's re-detention violated both due process and the *Garro Pinchi* stay.

B. Mr. Ramirez Has a Protected Liberty Interest.

Respondents argue that Mr. Ramirez lacks a protected liberty interest because, at the time of his arrest, he was not in removal proceedings and had no pending asylum application. Dkt. No. 9 at 3. This Court rejected a similar argument in *Murek v. Albarran*, holding that the government's position "ignores that any form of detention constitutes a deprivation of liberty." No. 26-cv-10719-PCP, 2026 WL 3062130, at *3 (N.D. Cal. Oct. 13, 2026). A noncitizen who has "established connections in this country" and become "a part of our population" is entitled to due process. *Id.* (quoting *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020), and *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903)). Mr. Ramirez has lived in the United States since 2019, where he and Ms. Garcia are raising their family and he supports their household. Pet. ¶¶ 10, 38; Garcia Decl. ¶¶ 2–3. Like the petitioner in *Murek*, he "has a substantial interest in remaining in his home, continuing his employment, caring for his [children], and providing . . . financial support for his family." 2026 WL 3062130, at *4.

Mr. Ramirez also has the additional liberty interest that arises from release. *See Llanes Tellez v. Bondi*, 826 F. Supp. 3d 1141, 1149 (N.D. Cal. 2025) (collecting cases). Respondents' RAP sheet confirms that they apprehended him on February 27, 2019, soon after his entry. Dkt. No. 9-1 at 3. He was later released, and ICE removed his ankle monitor rather than replace it and did not detain him again for more than seven years. Pet. ¶¶ 17–18. The 2022 dismissal of his removal proceedings only strengthens his reliance on that liberty: for four years, Respondents did not seek his removal at all. And Respondents' premise that he has no pending application is now out of date. On October 15, 2026, Ms. Garcia's immigration attorney filed an application to add Mr. Ramirez as a derivative applicant to her pending asylum claim. Garcia Decl. ¶ 16. Mr. Ramirez's liberty interest is enhanced by his release on his own recognizance in 2019 and his presence in the United States since then building a life with his family.

C. Respondents Offer No Justification for Using Deception to Arrest Mr. Ramirez.

Respondents do not dispute any part of how they lured Mr. Ramirez into his detention. A Homeland Security Investigations ("HSI") agent told him that if he did not appear for a face-to-face interview, "there is a good possibility that the children will not be released to your home." Dkt. No. 2-1 Ex. A at 2. The agent then sent a formal notice stating that the purpose of the appointment was to "[d]iscuss sponsorship of minor child." *Id.* Ex. B. When Mr. Ramirez arrived, ICE arrested him. Pet. ¶¶ 32–33. The Response now confirms that the interview about the ORR child placement was never the point: Respondents "called Petitioner in for an interview at which they detained Petitioner." Dkt. No. 9 at 3.

This is an oppressive "exercise of power without any reasonable justification" that runs afoul of the substantive due process guarantee. *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Given Respondents' actions and lack of justification therefor, the Court should enjoin Respondents from arbitrarily re-detaining Mr. Ramirez without a fair hearing.

III. CONCLUSION

The Court should grant the Petition and permanently enjoin Respondents from re-detaining Mr. Ramirez without providing at least seven days' notice and a hearing before a neutral decisionmaker at which Respondents bear the burden of proving by clear and convincing evidence that he is a danger to the community or a flight risk, considering alternatives to detention and Mr. Ramirez's financial ability to pay a bond.[5]

Dated: October 15, 2026

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

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[5] Mr. Ramirez's preliminary requests that the Court enjoin his transfer and removal during the pendency of this proceeding are now moot. He has been released from custody, and the Court is now resolving the merits of his petition. The Court therefore need not reach Respondents' arguments regarding transfer and 8 U.S.C. § 1252(g). *See* Dkt. No. 9 at 3–4.