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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 Alma Martinez Cruz,) CASE NO.: 5:25-cv-02879-MCS-MBK
14)
15 Petitioner,)
16) PETITIONER'S REPLY TO RESPONDENTS'
17) OPPOSITION TO PETITIONER'S EX
18 v.) PARTE APPLICATION FOR A
19) TEMPORARY RESTRAINING ORDER
20 Todd Lyons, Acting Director)
21 Immigration and Customs)
22 Enforcement; Ernesto) Hearing
23 Santacruz, Jr., Los Angeles) Date: November 5, 2025
24 Field Office Acting Director,) Time: 10:30 A.M.
25 Immigration and Customs) Courtroom: 7C
26 Enforcement, Enforcement) Judge: Hon. Mark C. Scarsi
27 and Removal Operations;)
28 Fereti Semaia, Warden,)
Adelanto ICE Processing)
Center)
Respondents.)
_____)

1 Respondent's opposition to Petitioner's TRO Application (Dkt. 9) does not
2 state a reason for Petitioner's re-detention and ignores Petitioner's argument that
3 she has developed substantial liberty interests over the thirteen years since her
4 release from Government custody and her arrest and re-detention without a pre-
5 deprivation hearing, violates her right to due process under the Fifth Amendment.

6 Respondents argue that Petitioner's claims are barred by different
7 jurisdictional provisions in 8 U.S.C. § 1252, but Supreme Court and Ninth Circuit
8 precedent squarely foreclose those arguments. Respondents argue that 8 U.S.C. §
9 1252(g) bars Petitioner's claims because her "detention arises from the decision to
10 resume removal proceedings against her." Opp to TRO, Dkt. 9, p. 11. But
11 Petitioner does not challenge any decision to "commence proceedings" within the
12 meaning of § 1252(g) and Petitioner's removal proceedings commenced over
13 thirteen years ago.¹ See TRO Exhibit E, Notice to Appear. Accepting
14 Respondents' interpretation would bar nearly all detention challenges brought by
15 noncitizens, at odds with the narrow interpretation of this subsection that courts
16 have consistently adopted.

17 As the Supreme Court has explained, § 1252(g) is "much narrower" than
18 what Respondents claim. *Reno v. Am.-Arab Anti-Discrimination Comm. (AADC)*,
19 525 U.S. 471, 482 (1999). Rather than encompassing "all deportation-related
20 cases," *id.* at 478, § 1252(g) insulates from litigation the immigration authorities'
21 "exercise of [their] discretion," *id.* at 484 (emphasis added), with respect to the
22 three specified actions: "commenc[ing] proceedings, adjudicat[ing] cases, [and]
23 execut[ing] removal orders," *id.* at 483 (alterations in original). The subsection was
24

25 ¹ Petitioner was released from DHS custody on parole at the commencement of her
26 removal proceedings in 2012 and had remained free from detention for
27 approximately three years before the immigration judge administratively closed her
28 removal proceedings in 2015. See TRO Exhibit D, I-94 dated July 10, 2012, TRO
Exhibit F, Immigration Judge Order Administratively Closing Proceedings dated
February 13, 2015.

1 “directed against a particular evil: attempts to impose judicial constraints upon
2 prosecutorial discretion.” *Id.* at 485 n.9; see also *id.* at 485 (providing as an
3 example of such prosecutorial discretion “‘no deferred action’ decisions and similar
4 discretionary determinations”). Indeed, the Court found it “implausible” that “the
5 mention of three discrete events along the road to deportation was a shorthand way
6 of referring to all claims arising from deportation proceedings.” *Id.* at 482.

7 Subsequent Supreme Court precedent has affirmed § 1252(g)’s narrow scope
8 and focus on discretionary decisions. *See, e.g., Dep’t of Homeland Sec. v. Regents*
9 *of the Univ. of California*, 591 U.S. 1, 19 (2020) (noting § 1252(g) is “narrow”).

10 With these principles in mind, 1252(g) does not “sweep in any claim that can
11 technically be said to ‘arise from’ the three listed actions,” including constitutional
12 challenges and challenges to the proper interpretation of the INA’s detention
13 provisions. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). In fact, although the
14 Supreme Court has reviewed several cases involving the government’s application
15 of immigration detention authorities, it has never held that such claims might be
16 barred by § 1252(g). *See Jennings*, 583 U.S. 281 (§§ 1226 & 1225); *Zadvydas v.*
17 *Davis*, 533 U.S. 678 (2001) (§ 1231); *Demore v. Kim*, 538 U.S. 510 (2003) (§
18 1226); *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) (§§ 1226 & 1231);
19 *Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (§ 1231). That omission is
20 significant because “courts, including th[e] [Supreme] Court, have an independent
21 obligation to determine whether subject-matter jurisdiction exists, even in the
22 absence of a challenge from any party.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514
23 (2006). Moreover, in *Jennings*, the Court expressly reiterated that § 1252(g) must
24 be “read . . . to refer to just those three specific actions themselves.” 583 U.S. at
25 294.

26 Petitioner does not challenge any discretionary action by Respondents to
27 “resume removal proceedings against her” by seeking to recalendar proceedings.
28

1 Rather, she challenges the lawfulness of her re-detention without a pre-deprivation
2 hearing, thirteen years after the Government released her pursuant to 8 C.F.R. §
3 212.5(b). Determining whether Petitioner's detention is lawful is not discretionary,
4 nor does resolving that question challenge Respondents' discretionary decision to
5 place Petitioner in removal proceedings thirteen years ago, or to seek to recalendar
6 those removal proceedings that the immigration judge administratively closed in
7 2015 pursuant to Respondents' exercise of prosecutorial discretion. *See United*
8 *States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (clarifying § 1252(g) does
9 not prevent district court jurisdiction over "a purely legal question that does not
10 challenge the Attorney General's discretionary authority, even if the answer to that
11 legal question—a description of the relevant law—forms the backdrop against
12 which the Attorney General later will exercise discretionary authority"). As a result,
13 § 1252(g) does not bar Petitioner's claims.

14 Respondents have not stated a reason for Petitioner's re-detention. *See*
15 *generally* Opp to TRO, Dkt. 9. Respondents argue that they are "are allowed to
16 revoke for nearly any reason", but do not state any reason for revoking Petitioner's
17 previous release and re-detaining her. *Id.*, p. 15. Respondents rely on statutory and
18 regulatory authority to re-detain a noncitizen to execute a final removal order, but
19 Petitioner does not have a final removal order and that authority simply doesn't
20 apply. Respondents contend the "government is thus broadly authorized to exercise
21 its discretion to revoke such release pursuant to 8 C.F.R. § 241.1(l)(1) and 8 C.F.R.
22 § 241.1(l)(2)", but those regulations require a final order of removal, which
23 Petitioner does not have. Opp to TRO, Dkt. 9, p. 15. Respondents also cite cases
24 authorizing re-detention of noncitizens with final removal orders under 8 U.S.C.
25 §1231 (a). *See* Opp to TRO, Dkt. 9, pp. 15-17 (citing *Moran v. U.S. Dep't of*
26 *Homeland Sec.*, 2020 WL 6083445, at *9 (C.D. Cal. Aug. 21, 2020) (authorizing
27 re-detention based on valid removal orders), citing *Ahmad v. Whitaker*, 2018 WL
28

6928540, at *6 (W.D. Wash. Dec. 4, 2018), *rep. & rec. adopted*, [2019 WL 95571](#) (W.D. Wash. Jan. 3, 2019) (finding no injury based on violation of regulation where the government obtained a travel document and re-detained noncitizen to execute a final removal order), citing *Doe v. Smith*, [2018 WL 4696748](#), at *9 (D. Mass. Oct. 1, 2018) (finding no injury from violation of regulation where re-detention based on valid removal order), citing *Sanchez v. Bondi*, No. 5:25-cv-02530-ABDTB, [2025 U.S. Dist. LEXIS 196639](#), at *13 (C.D. Cal. Oct. 3, 2025) (finding statutory authority to re-detain under §1231(a)(2)–(6) because of final removal order). Respondents’ Exhibit BB, an order denying a preliminary injunction in *Long Ton v. Kristi Noem*, et al., 5:25-cv-02033-SB-AGR [[Dkt. no. 17](#)] (Sept. 3, 2025) (Order), does not establish any fact in support of its opposition. In that case, the petitioner, a Vietnamese citizen, had been convicted of gang-related homicide, ordered removed, and was under a post-removal order of supervision for twenty years. The Court determined that the Petitioner had not shown his re-detention to effectuate a removal order was unreasonable.

The authority Respondents rely on does not apply to Petitioner who does not have a final order of removal. And although inapplicable, even Respondents’ cited cases required some reason to revoke release: a final removal order.

Respondents also cite *Rodriguez Diaz v. Garland*, [53 F.4th 1189, 1194](#) (9th Cir. 2022) in support of its opposition to Petitioner’s immediate release. In dismissing Rodriguez Diaz’s due process challenge to his prolonged detention, the Ninth Circuit determined Rodriguez Diaz was not entitled to a second bond hearing where the government had the burden of proof after an immigration judge had already denied bond in determining Rodriguez Diaz posed a danger to the community based on his lengthy criminal history and admission that he was a gang member. *Rodriguez Diaz v. Garland*, [53 F.4th at 1194](#). Even *Rodriguez Diaz v. Garland* concedes that there must be some reason for the ongoing detention. Here,

1 the Government already determined Petitioner did not pose a danger or risk of
2 absconding in releasing her pursuant to 8 C.F.R. § 212.5(b). That determination
3 has only been strengthened since that time as Petitioner has lived at the same
4 address since her release thirteen years ago, attended immigration court proceedings
5 for years, has no criminal record, and reported as instructed to a credible fear
6 interview which was an apparent ruse for her arrest- the opposite of the notice and
7 hearing that should have been provided. *See* TRO Exhibit D, I-94 Asylum
8 Processing; TRO Exhibit I, Declaration of Petitioner's Son, Erik De Lira; and TRO
9 Exhibit A, Notice of Credible Fear Interview. Respondents have not provided a
10 reason for re-detaining Petitioner and that is exactly why Petitioner should have
11 been provided a pre-deprivation hearing under the Fifth Amendment Due Process
12 Clause. Respondents have erroneously deprived Petitioner of her liberty for
13 approximately 48 days without a reason, and the injury is continuing. The
14 government's interest in seeking to recalendar Petitioner's removal proceedings
15 does not require her re-detention or outweigh her substantial liberty interest. *See*
16 *Mathews v. Eldridge*, 424 U.S. 319 (1976) (due process protections require
17 balancing government interest against individual liberty interest).

18 Contrary to Respondents' contention they have broad discretion to revoke
19 release for any reason, courts have consistently held that even when the
20 Government retains discretion to re-detain an individual, that discretion is not
21 unfettered:

22
23 . . . even when ICE has the initial discretion to detain or release a
24 noncitizen pending removal proceedings, after that individual is
25 released from custody she has a protected liberty interest in remaining
26 out of custody. *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL
27 1443250, at *2 (N.D. Cal. May 6, 2022) (“[T]his Court joins other
28 courts of this district facing facts similar to the present case and finds
Petitioner raised serious questions going to the merits of his claim that
due process requires a hearing before an IJ prior to re-detention.”);

1 *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2
2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785,
3 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F.
4 Supp. 3d at 969 (“Just as people on preparole, parole, and probation
5 status have a liberty interest, so too does [a noncitizen released from
6 immigration detention] have a liberty interest in remaining out of
7 custody on bond.”).

8 *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL
9 2084921, at *3 (N.D. Cal. July 24, 2025).

10 To clarify, judges in this District have held that due process requires a
11 noncitizen be given a “pre-deprivation hearing” before re-detention. *See e.g.*,
12 *Navarrete Hernandez v. Lyons*, No. 2:25-cv-5376-FWS-AGR (C.D. Cal. July 10,
13 2025) (preliminary injunction), Dkt. 22 at 10-12, 15 (re-detention was unlawful and
14 Fifth Amendment due process requires pre-deprivation hearing before any re-
15 arrest). In a similar matter rejecting similar arguments made by Respondents in
16 revoking parole, the court in *C.A.R.V. v. Minga Wofford, et al* 1:25-cv-01396 (E.D.
17 Cal. November 3, 2025) (preliminary injunction), Dkt. 14, pp. 13-18, determined
18 (1) 8 C.F.R. § 241.13 and § 241.4 procedures did not apply because petitioner did
19 not have final removal order; (2) petitioner was not subject to mandatory detention
20 during pendency of removal proceedings under Respondents’ new interpretation of
21 §1225(b); and petitioner had obtained substantial liberty interests during his four
22 years of release on parole while he built a relationship with his family and
23 community and there was a risk of erroneous deprivation of liberty without a pre-
24 deprivation hearing. Notably, the record in *C.A.R.V. v. Minga Wofford* suggested
25 that the petitioner may have violated terms of release because he was arrested for
26 driving under the influence which could be a change of circumstances warranting
27 revocation of parole, but even then, the court determined a pre-deprivation hearing
28 was required for an immigration judge to determine whether the change in

1 circumstance was sufficient to warrant re-detention. *C.A.R.V. v. Minga Wofford, et*
2 *al.*, 1:25-cv-01396 (E.D. Cal. November 3, 2025) (preliminary injunction), Dkt. 14,
3 pp. 15. Here, there is nothing in this record to even suggest a change in
4 circumstances or violation of terms of release.

5 Respondents argue that should this Court consider granting relief, relief
6 would be limited to a bond hearing pursuant to 8 U.S.C. § Section 1226(a) as “other
7 Judges in this District have issued in similar cases.” Opp to TRO, Dkt. 9, p. 24
8 (citing *Gonzalez v. Noem*, 2025 U.S. Dist. LEXIS 206688 (C.D. Cal. Aug. 13,
9 2025)). *Gonzalez v. Noem* is not a similar case. In *Gonzalez v. Noem*, the
10 petitioners were arrested for the first time and placed in removal proceedings that
11 commenced after their arrest. The issue was whether they were entitled to bond
12 hearings under 8 U.S.C. § Section 1226(a) or subject to mandatory detention under
13 8 U.S.C. § Section 1225(b). Petitioners in *Gonzalez v. Noem* had not been re-
14 detained after a previous release from DHS custody. Likewise, Respondents’
15 Exhibit AA does not establish any facts in opposition because the petitioner in that
16 case was arrested at her workplace and placed in removal proceedings and was not
17 re-detained after a previous release from DHS custody on parole. The proper relief
18 is immediate release. After her release, should Respondents seek to re-detain
19 Petitioner, only then would a bond hearing before a neutral immigration judge be
20 appropriate.

21 Respondents argue that Petitioner has not shown irreparable harm because
22 her detention “is common to all [noncitizens] seeking review of their custody or
23 bond determinations.” Opp to TRO, Dkt. 9, p. 22 (citing *Resendiz v. Holder*, 2012
24 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012). Again, Respondents regard
25 Petitioner as if she has not been re-detained but rather detained for the first time and
26 ignore Petitioner’s arguments that her re-detention- after release from custody over
27 thirteen years ago- without a pre-detention hearing violates the Fifth Amendment.
28

1 It has long been held that constitutional violations constitute irreparable injury. *See*
2 *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (affirming that injuries to constitutional
3 rights are considered irreparable.) The Ninth Circuit has also recognized that
4 immigration detention imposes irreparable harm. *Hernandez v. Sessions*, 872 F.3d
5 976, 995 (9th Cir. 2017) (recognizing “irreparable harms” are “imposed on anyone
6 subject to immigration detention” including economic burdens on detainees and
7 their families).

8 For the foregoing reasons, this Court should grant Petitioner’s Application
9 for TRO and order Respondents to show cause as to why a preliminary injunction
10 should not issue.

11
12
13 Dated: November 4, 2025

Respectfully submitted,

14 s/ Jean Reisz

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Reply contains 2,362 words, which complies with the word limit of L.R. 11-6.1.

s/ Jean Reisz

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