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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DIANA CAROLINA RIVERA MENDOZA,

Petitioner,

v.

KRISTI NOEM, Secretary of the United States Department of Homeland Security; PAMELA BONDI, Attorney General of the United States; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; FERETI SEMAIA; Warden, Adelanto ICE Processing Center; ERNESTO SANTACRUZ, Acting Field Office Director of the Los Angeles Immigration and Customs Enforcement Office in their official capacities,

Respondents.

Case No. 5:25-CV-03227-MWF-AGR

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION IN SUPPORT OF *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER

Honorable Michael W. Fitzgerald
United States District Court Judge

I. INTRODUCTION

Respondents take the position in their opposition [Dkt. 7, "Opp."] that the government has authority to re-detain individuals in the government's discretion without a pre-deprivation hearing and that Petitioner's remedy is to obtain a bond hearing from immigration judges who will not release her on bond. [*See* Dkt. 7, Opp. at 1, 3]. Respondents essentially ignore the case law cited by Petitioner in her application for a temporary restraining order [Dkt. 2] (the "TRO Application") that makes it clear that the due process clause of the Fifth Amendment requires that individuals such as Petitioner who are released on their own recognizance be provided with notice and an opportunity to contest their re-detention *prior* to any such re-detention. *See Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671, 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that re-detention after pre-parole conditional supervision requires a pre-deprivation hearing).

Yesterday, while this matter was pending, Respondents conceded that Petitioner's request for a bond hearing was denied on the grounds that the immigration judge lacks jurisdiction to hear such requests [Dkt. 8, Ex. A]. Thus, the remedy that Respondents propose to address Petitioner's over three-month long unlawful detention is illusory.[1] [*See* Dkt. 7, Opp. at 4] ("the narrowly tailored remedy would not be immediate release, but rather (1) rectifying that procedural deficiency; or (2) Petitioner simply seeking a bond hearing consistent with her rights as a detainee—which are adequately protected, like other detainees, by the existing bond hearing regime."). Federal courts have unfortunately become the sole

[1] Indeed, the American Civil Liberties Union and Northwest Immigrant Rights Project issued an alert yesterday indicating that, even where wrongfully-detained individuals are subject to an order of the Central District of California pursuant to which immigration judges are *required* to hear bond requests, "reports from practitioners indicate that the Department of Justice (DOJ) has instructed IJs to ignore the Court's order." *See* PRACTICE ADVISORY, Seeking Bond Hearings for *Maldonado Bautista* Class Members – Those Who Entered Without Inspection and Are Subject to *Yajure-Hurtado* (December 3, 2025), https://www.nwirp.org/our-work/impact-litigation/assets/bautista-noem/2025.12.03%20-%20Draft%20Bautista%20Practice%20Advisory_final.pdf

forum in which unlawfully-detained refugees, such as Petitioner, can hope to have their due process rights recognized—and enforced. Thus, Petitioner's TRO Application should be granted.

II. ARGUMENT

A. Petitioner Has Met the Standard for *Ex Parte* Relief

Respondents' argument that Petitioner has not met the standard for *ex parte* relief is unpersuasive. [Dkt. 7, Opp. at 3-4]. The *ex parte* standard requires that a party make two showings. "First, the evidence must show that the moving party's cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures. Second, it must be established that the moving party is without fault in creating the crisis that requires *ex parte* relief, or that the crisis occurred as a result of excusable neglect." *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F.Supp. 488, 492 (C.D. Cal. 1995).

Petitioner has made the necessary showings. First, prolonging Petitioner's over three-month long wrongful detention throughout the regular noticed motion process would constitute irreparable injury due to the ongoing unlawful deprivation of liberty. See, *e.g., Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.") (internal quotation marks omitted).

Second, Petitioner is without fault in creating the circumstances requiring *ex parte* relief. The fact and arbitrary manner of Respondents' re-detention of Petitioner without notice or cause or the availability of bond hearing (confirmed yesterday, December 3, 2025 [Dkt. 8, Ex. A]) necessitates *ex parte* relief from this Court. Petitioner's *ex parte* request was filed only one day prior to the denial of her bond request before the Adelanto immigration judge. [Dkt. 8, Ex. A]. These facts affirm that Petitioner is without fault in creating the circumstances requiring *ex parte* relief.

B. Petitioner Has Shown That Respondents Violated Her Due Process Rights

Petitioner acknowledges that Respondents have the authority to detain "some classes of aliens during the course of certain immigration proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). Without any evidence, Respondents contend that Petitioner is subject to the mandatory detention framework of 8 U.S.C. § 1225(b)(2)—"aliens present in the United States who have not been admitted" [Dkt. 7, Opp. at 1] and that she should also seek a bond hearing (again) in immigration court—which is not available to refugees such as Petitioner who, according to Respondents, are subject to mandatory detention. *See Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA May 15, 2025).

For the reasons set forth in her TRO Application, Petitioner is not an "arriving alien" subject to Section 1225(b)(2) mandatory detention. *See Polo v. Chestnut*, No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346 *10 (E.D. Cal. Oct. 17, 2025) (logically construing the statutory meaning of "arriving alien" as *not* a person who has been residing in the interior of the United States). Rather, Petitioner is subject to the discretionary detention framework of 8 U.S.C. § 1226(a). [*See* Dkt 2, TRO Application at 4]. Respondents do not refute the fact that Petitioner was released in 2022 on her own recognizance due to detention center capacity issues rather than for "for urgent humanitarian reasons or significant public benefit" pursuant to 8 U.S.C. § 1225(b)(2). [*See* Dkt. 7-1, Declaration of Angela Ramos ("Ramos decl.") at ¶ 6].

Pursuant to § 1226(b), "[t]he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). The implementing regulations elaborate that "such release [under § 1226] may be revoked at any time in the discretion of" various DHS officials, "in which event the alien may be taken into physical custody and detained." 8 C.F.R. § 1236.1(c)(9). However, DHS may not re-arrest that noncitizen absent a change in circumstance. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*

Sessions, 905 F.3d 1137 (9th Cir. 2018) ("[w]here the release decision was made by a DHS officer, not an immigration judge, the Government's practice has been to require a showing of changed circumstances before re-arrest.").

Regardless of the statutory basis for Petitioner's initial detention and release in 2022, Respondents' failure to provide Petitioner with any pre-deprivation notice or opportunity to be heard whatsoever was constitutionally deficient. Respondents do not address whether any due process limitations apply to the manner in which Petitioner was re-arrested and re-detained on August 25, 2025. [*See* Dkt. 7, Opp. generally]. Instead, Respondents merely contend that "the government's authority to re-detain individuals that ICE previously released on parole does not require an intensive evidentiary procedure." [*See* Dkt. 7, Opp. at 3]. This contention begs the question: what "procedure" *is* required to satisfy the requirements of the due process clause? Respondents' position appears to be: none.

Respondents arrested and re-detained Petitioner on August 25, 2025 without any notice as to the basis for her arrest or opportunity to contest it. Respondents appear to now take the position that her re-arrest was based on her alleged non-compliance with an ICE check-in obligation two years ago. *See* Dkt. 7-1, Ramos decl. at ¶ 8. The problem with this assertion is that it is not supported by the charging document leading to her arrest and re-detention on August 25, 2025 or other government records in this case, which make no mention of any alleged non-compliance issue as the basis for Petitioner's 2025 re-detention. [*See* Dkt. 1-1, Declaration of Carrie LeRoy ("LeRoy decl") at ¶ 4, (Dkt. 2) Ex. A]. Petitioner was informed on August 25, 2025 that she was being re-detained because she was an "arriving alien" who is in the United States without a valid visa or documents. *See id.* Any suggestion now by Respondents that Petitioner was properly arrested and re-detained is an impermissible post-hoc justification for Petitioner's arrest. *See e.g., Garcia v. Kaiser*, No. 4:25-cv-06916-YGR, 2025 U.S. Dist. LEXIS 178531, at *12 (N.D. Cal. Aug. 29, 2025) (declining to consider post-hoc rationalization for

detention raised for the first time in litigation).

C. Petitioner Was Entitled to a Pre-Deprivation Bond Hearing and Notice Prior to Revocation of Her Parole.

Due process required that Respondents provide Petitioner with notice and a pre-deprivation bond hearing *prior* to revocation of her parole. *See, e.g.*, *Mata Velasquez v. Kurzdorfer*, WL 1953796 at *17 (W.D.N.Y. 2025) ("To mitigate the risk of erroneous deprivation, due process requires, at a minimum, the opportunity for Mata Velasquez to submit evidence relevant to whether the government should revoke his parole before it makes a revocation decision"); *Valdez v. Joyce*, 2025 WL 1707737, *4 (S.D.N.Y. 2025) ("In the context of revocation of civil release, an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing") (internal quotation marks omitted); *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10–12 (D. Or. July 9, 2025) (explaining the parole process in immigration cases and noting that *before* parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons supporting the revocation decision).

Here, there is no evidence, nor even a suggestion, that Respondents employed any procedural safeguards whatsoever before revoking Petitioner's parole. [*See*, generally, Dkt. 7, Opp.]. Indeed, in this case Respondents failed to comply with the minimal amount of process contemplated by the relevant statutes and regulations. First, the government did not provide Petitioner with written notice *prior* to her parole revocation as is required by § 1182(d)(5)(A)'s implementing regulations. See 8 C.F.R. § 212.5(e)(2)(i) ("[P]arole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole."). [See, generally, Dkt. 7, Opp.]. Nor did the government arrest Petitioner pursuant to a warrant, as is contemplated in connection with revocation of bond under Section 1226(b). [*See* Dkt. 1-1, LeRoy decl. at ¶ 4, Dkt. 2,

Ex. A].

While Respondents argue that Petitioner's remedy should be limited to seeking a post-deprivation bond hearing—for a second time and while she suffers in detention, [*See* Dkt. 7, Opp. at 4]—such a "remedy" would surely lead to Petitioner's indefinite, prolonged detention, as immigration judges (and the Board of Immigration Appeals (BIA)) have taken the position that detainees such as Petitioner are not entitled to a bond hearing. *See Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA May 15, 2025) and *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025).

Petitioner's case is substantially similar to a number of cases in this district in which the exact relief that she seeks has been granted. [*See* Dkt. 2, TRO Application at 3-4]. Indeed, the Honorable Fernando M. Olguin recently granted an *ex parte* temporary restraining order application requiring the immediate release of an Adelanto detainee on nearly identical facts and has ordered Respondents to show cause as to why a preliminary injunction should not issue in that case. *See Jarquin-Gadea v. Kristi Noem et al.*, 5:25-CV-02800-FMO-BFM, [Dkt. 13] (November 17, 2025) (Order Re: Petition for Writ of Habeas Corpus).[2] Courts have recognized that only an order releasing an unlawfully-detained petitioner from detention and enjoining re-detention absent a pre-deprivation custody hearing would properly return the parties to the "last uncontested status which preceded the pending controversy." *Doe v. Noem*, __ F. Supp. 3d __, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)); *see also Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, at *4-5 (ordering petitioner's immediate release as the appropriate

[2] Counsel for Petitioner brought this decision on nearly identical facts to the attention of counsel for Respondents in an attempt to resolve this matter expeditiously, but Respondents instead chose to oppose this TRO Application. [Dkt. 8, Ex. A]. Respondents have unlimited resources in the form of American tax dollars to offer every frivolous argument to deny refugees and other immigrants their due process rights. Detainees such as Petitioner have the "right" to find a *pro bono* lawyer or pay for a lawyer (while in detention and unable to earn income) to protect their constitutional rights.

remedy for procedural due process violation).

The cases cited by Respondents in support of post-deprivation relief, (*see* Dkt. 7, Opp. at 5), are either factually distinguishable or unpersuasive because they do not provide reasoned analysis justifying post-rather than pre-deprivation relief. In *Ahmad v. Whitaker*, 2018 WL 6928540, at *6 (W.D.Wash. Dec. 4, 2018), rep. & rec. adopted, 2019 WL 95571 (W.D. Wash. Jan. 3, 2019), the court found that the petitioner could not establish "any actionable injury from this violation of the regulations" because the government in that case had procured a travel document for the petitioner and an end to his detention was reasonably foreseeable. *Id.* Petitioner is clearly subject to "actionable injury" in the form of suffering in detention with severe back pain and a loss of her ability to support her children, earn income and maintain her community ties. [Dkt. 1-1, LeRoy decl. at ¶ 10; Dkt. 1-2, Ex. I]. Moreover, there is no "foreseeable" end to Petitioner's detention and Respondents have not obtained travel documents for her to deport to a country in which she will not be persecuted on the basis of her pro-democracy political beliefs—or otherwise.

Similarly, Respondents cite *Doe v. Smith*, 2018 WL 4696748, at *9 (D. Mass. Oct. 1, 2018), where the court found that there was "no apparent reason why a violation of the regulation … should result in release." *Id.* [Dkt. 7, Opp. at 5]. In Petitioner's case, there are very compelling reasons for Petitioner's release: First, the immigration courts are now taking the position that detainees are no longer entitled to bond hearings, Petitioner's bond request was denied on December 3, 2025 and it would be futile to request a bond hearing in any further immigration court proceedings. Second, an appeal to the BIA would not change Petitioner's fate, as the BIA cannot review constitutional challenges. *See Sterkaj v. Gonzales*, 439 F.3d 273, 279 (6th Cir. 2006). Thus, this Court is the only forum that can grant Petitioner relief.

D. The Court Should Consider Petitioner's Inadequately-treated Physical Pain in Detention as Evidence of Irreparable Harm

Respondents take the position that the inadequately-treated physical pain endured by Petitioner in detention does not weigh in favor of granting her TRO Application. [Dkt. 7, Opp. at 2]. This position is incorrect. *See Padilla v. U.S. Immigration & Customs Enforcement*, No. 1935565, 2020 WL 1482393, at *9 (9th Cir. Mar. 27, 2020) (affirming district court's finding that "the deprivation of a fundamental constitutional right and its attendant harms, which range from *physical,* emotional, and psychological damages" in immigration detention constitutes irreparable harm justifying injunctive relief) (emphasis added). While it is in Respondents' interest to minimize the extent of Petitioner's pain and suffering for over three months in detention, this Court may properly consider it as evidence in support of a finding of irreparable harm. *See id.*

III. CONCLUSION

For the foregoing reasons, this Court should grant Petitioner's *Ex Parte* Application for a Temporary Restraining Order. If this Court disagrees that Petitioner's release is immediately required, Petitioner respectfully requests an order requiring Respondents to prove by clear and convincing evidence to a neutral arbiter that Petitioner is a flight risk or threat to others within seven days of the Court's issuance of its order and if Respondents fail to meet such burden of proof, immediately release Petitioner from detention and not re-detain or deport her in violation of applicable law, regulations and, specifically, the due process clause of the Fifth Amendment.

Dated: December 4, 2025.

Respectfully submitted,

/s/ Carrie LeRoy
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