IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

DIANA CAROLINA RIVERA MENDOZA, Petitioner, v. PAMELA BONDI, et al., Respondents.	NO. EDCV 25-3227 MWF (AGR) **REPORT AND RECOMMENDATION**

The court submits this Report and Recommendation to the Honorable Michael W. Fitzgerald, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order No. 05-07 of the United States District Court for the Central District of California. For the reasons set forth below, the court recommends the disposition at the end of this Report.

I.

SUMMARY OF PROCEEDINGS

Petitioner, who is represented by counsel, filed a Petition for Writ of Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2241. (Dkt. No. 1.)

On December 2, 2025, Petitioner filed an ex parte application for temporary restraining order ("TRO"). (Dkt. No. 2.) On December 3, 2025, Respondent filed an opposition. (Dkt. No. 7.) Petitioner filed a reply and a certificate of compliance with Local Rule 7-19.1.[1] (Dkt. Nos. 8-9.) The matter was referred to this court for report and recommendation (Dkt. No. 5) and taken under submission.

II.

DISCUSSION

Petitioner is a native and citizen of Nicaragua. Petitioner was detained on December 14, 2022 "for unlawfully entering the United States from Mexico, at a time and place other than as designated by the Secretary of the Department of Homeland Security of the United States." (LeRoy Decl. ¶ 4, Dkt. No. 1.)

The parties agree that Petitioner was released from custody on December 15, 2022. (*Id.* ¶¶ 4-5.) Respondent states that Petitioner's release was "[d]ue to lack of detention capacity and a lack of processing resources." (Ramos Decl. ¶ 6, Dkt. No. 7-1; *see also* LeRoy Decl. ¶ 5.)

[1] The certificate of compliance is incorrectly docketed as an ex parte application.

Respondent attaches Petitioner's Form I-831 dated December 15, 2022 that states: "As a condition of your parole, you are to report to the immigration and customs enforcement (ICE) office near your final destination within 60 days or face removal from the United States." (Exh. A at 2 to Ramos Decl.) The form identifies the website for locating ICE field offices. (*Id.*) Respondent also attaches Petitioner's Form G-56 dated December 15, 2022, which sets forth Petitioner's reported home address, provides a phone number for assistance in locating or reporting to a local ICE field office, and states that it attaches a list of ICE field offices.[2] (Exh. B to Ramos Decl.) Form G-56 reiterates that "[y]ou must report to your local ICE office within 60 days of release" and contains two warnings, the second of which is in bold and capital letters: "Failure to contact the local ICE office may lead to you being taken into custody or placed on additional forms of supervision or monitoring." "Failure to contact the local ICE office as instructed may resulted in your arrest and/or a loss of the right to any possible relief." (*Id.*) Petitioner attaches the same documents. (Exh. D to LeRoy Decl., Dkt. No. 1-2.)

According to Respondent, there is no evidence in the Department of Homeland Security (DHS) databases that Petitioner reported to an ICE field office within 60 days after her release from custody on December 15, 2022. (Ramos Decl. ¶ 8.)

[2] Exhibit B does not contain the actual attachment.

On February 5, 2024, Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal. On September 10, 2024, Petitioner obtained a DHS-issued class C08 work authorization and social security number that permits her to work in the United States pending her asylum proceedings. Since November 12, 2024, Petitioner works at a fast-food restaurant and participates in her community and church. She has two minor children. (LeRoy Decl. ¶¶ 1, 6.)

On August 25, 2025, Petitioner attended a routine check-in at the ICE/ERO Los Angeles Field Office and was re-detained. (*Id.* ¶ 3.) According to Respondent, ICE issued a Notice to Appear, conducted a custody re-determination, and took Petitioner into ICE custody. The Notice to Appear was served upon Petitioner on August 29, 2025 and alleges that she is subject to removal pursuant to Section 212(a)(7)(A)(i)(I) of the Immigration & Nationality Act ("INA"). (Ramos Decl. ¶¶ 9-10; *see also* Exhs. A, J to LeRoy Decl. (Form I-213 dated August 25, 2025).) On November 14, 2025, Respondent filed a motion to pretermit Petitioner's protection applications for asylum and withholding of removal, and argued she is subject to the Asylum Cooperative Agreement with Honduras. (Exh. E to LeRoy Decl.)

Petitioner requested a bond hearing through her immigration counsel on November 20, 2025. (LeRoy Decl. ¶ 9.) On December 3, 2025, the immigration judge denied the request for lack of jurisdiction. (Dkt. No. 8 at 3.)

The Petition alleges grounds for relief based on (1) violation of substantive due process under the Fifth Amendment; (2) violation of procedural due process

under the Fifth Amendment; (3) unlawful arrest under the Fourth Amendment; (4) violation of the Administrative Procedure Act ("APA"); and (5) violation of the INA, 8 U.S.C. § 1226(a). (Petition ¶¶ 58-82.)

Petitioner contends that she is entitled to a TRO because she is likely to succeed on the merits of her substantive and procedural due process claims, she continues to suffer "immense irreparable injury" absent a TRO, and the public interest weighs strongly in her favor. (Dkt. No. 2.) Petitioner seeks a TRO that orders Respondent to release her from custody immediately without any release conditions and enjoins Respondent from re-detaining her unless they obtain an order of the court or, alternatively, unless they demonstrate by clear and convincing evidence at a pre-deprivation bond hearing within seven days after this court's order that Petitioner is a flight risk or danger to the community. Petitioner also seeks a TRO prohibiting Respondent from transferring Petitioner out of the district or removing her outside the United States pending resolution of this case. (Ex Parte App. at 18-19 & Proposed Order, Dkt. No. 2-2.)

To determine whether a noncitizen's detention violates the Due Process Clause, a court applies the test in *Mathews v. Elridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider (1) "the private interest that will be affected by the official action," (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) "the Government's interest, including

the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

A. Legal Standards[3]

The legal standard for issuing a temporary restraining order (TRO) is essentially the same as the legal standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

"A party seeking a preliminary injunction must meet one of two variants of the same standard. Under the original *Winter* standard, a party must show 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.'" *Alliance for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017) (quoting *Winter v. NRDC*, 555 U.S. 7, 20 (2008)). "Under the 'sliding scale' variant of the *Winter* standard, 'if a plaintiff can only show that there are "serious questions going to the merits" – a lesser showing than likelihood of success on the merits – then a preliminary injunction may still issue if the "balance of hardships tips *sharply* in the plaintiff's favor," and the other two *Winter* factors are satisfied.'" *Id.* (emphasis in original; citation omitted); *see also Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024).

[3] Respondent does not dispute that Petitioner satisfies the legal standard for filing an ex parte application for relief. The court finds that the legal standard has been satisfied.

A district court has discretion "as to the amount of security required, if any[,]" for a TRO or preliminary injunction. *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). The court "may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the [respondents] from enjoining his or her conduct." *Id.*

B. Likelihood of Success

The Petition challenges the propriety of Petitioner's re-detention on August 25, 2025. *See Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014) ("the 'status quo' refers to the legally relevant relationship between the parties before the controversy arose" (emphasis omitted)); *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963) (status quo is "the last uncontested status which preceded the pending controversy").

With respect to the first *Matthews* factor, "[f]reedom from imprisonment – from government custody, detention, or other forms physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). When the Government exercises its discretion to release an individual from custody, such a decision creates "at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Although *Morrissey* arose in the criminal context, courts have applied *Morrissey* to the release of a noncitizen in the immigration context. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969-70 (N.D. Cal. 2019) (holding noncitizen has "liberty interest in remaining

out of custody on bond" under first *Matthews* factor); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1025, 2025 U.S. Dist. LEXIS 142213, *8 (N.D. Cal. July 24, 2025) (collecting cases).

As the Government argues, a noncitizen released on bond is subject to future detention based upon changed circumstances. *See Panosyan v. Mayorkas*, 854 Fed. Appx. 787, 787 (9th Cir. 2021); *Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991); *Duong v. Kaiser*, 2025 U.S. Dist. LEXIS 185024, *22 (N.D. Cal. Sept. 19, 2025) (requiring "'material change of circumstances' before bond can be revoked or modified" (citations omitted)).

To the extent the Government argues that a noncitizen who is re-detained is not entitled to a bond hearing on revocation of release, courts have rejected the Government's argument. The Due Process Clause applies to all persons within the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. A "statute permitting indefinite detention of [a noncitizen] would raise a serious constitutional problem." *Id.* at 690; *see Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) ("We have grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional.").[4]

Here, Petitioner has a substantial private interest in remaining free from detention. Petitioner was released over 2½ years ago, is employed full time, and

[4] This view is not universally held under a different statute, 8 U.S.C. § 1226(c). *See Martinez v. Clark*, 124 F.4th 775, 788 (9th Cir. 2024) (Bumatay, J., concurring) ("Due process doesn't require bond hearings for criminal aliens mandatorily detained under § 1226(c) – even for prolonged periods.")

has become an active member of her community and church. *See Singh v. Andrews*, 2025 U.S. Dist. LEXIS 132500, *17-*18 (E.D. Cal. July 11, 2025) (finding substantial private interest when petitioner was out of custody for close to 1½ years, worked full time, and volunteered at his temple).

The Government also asserts that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2), which applies to applicants for admission. The Government acknowledges, however, that virtually every court has rejected the § 1225(b)(2) argument when, as here, Petitioner was released in the United States and has been in the country for an extended period. An applicant for admission is a noncitizen "who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted.'" *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (citation omitted). Applicants for admission "may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" *Id.* at 288 (quoting 8 U.S.C. § 1182(d)(5)(A)). Such parole "'shall not be regarded as an admission of the alien.'" *Id.* (quoting 8 U.S.C. § 1182(d)(5)(A)). There is no indication in the record that Petitioner was released pursuant to 8 U.S.C. § 1225 for urgent humanitarian reasons or significant public benefit, and the Government does not contend otherwise. Rather, the Government concedes that Petitioner was released "[d]ue to lack of detention capacity and a lack of processing resources" on or about December 15, 2022, over 2½ years before she was re-detained. (Ramos Decl. ¶ 6.) The court therefore follows the weight of authority and finds that Petitioner, who has no criminal history, was released under 8

U.S.C. § 1226(a). *See Faizyan v. Casey*, 2025 U.S. Dist. LEXIS 225957, *12-*13, *15 (S.D. Cal. Nov. 17, 2025).

C. Irreparable Injury

Courts have concluded that the second factor, the risk of an erroneous deprivation is high when, as here, parole is revoked without an opportunity to be heard at a bond hearing. *Faizyan*, 2025 U.S. Dist. LEXIS 225957, at *17-*18; *Salazar v. Casey*, 2025 U.S. Dist. LEXIS 216353, *12-*13 (S.D. Cal. Nov. 3, 2025) (finding high risk of erroneous deprivation when immigration parole was summarily revoked without opportunity to be heard); *Singh*, 2025 U.S. Dist. LEXIS 132500, at *18 (same). This factor favors Petitioner, who has not had an opportunity to present her evidence that she does not present a danger to the community or a flight risk and suffers from a medical condition that is not being treated in immigration detention.

D. Public Interest

Although the Government certainly has an interest in enforcing immigration laws, that interest does not encompass detaining Petitioner without a bond hearing. The Government suggests that Petitioner failed to report to the ICE field office within 60 days after her release on December 15, 2022 and appeared only after she filed an Application for Asylum and for Withholding of Removal one year later on February 5, 2024. Whether that is sufficient evidence for a finding that Petitioner is a flight risk would be a determination for the immigration judge at a bond hearing. *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025) ("At

a hearing, a neutral decisionmaker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness."). As for fiscal and administrative burdens, the cost of detention likely substantially outweighs the minimal cost of a bond hearing. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("The costs to the public of immigration detention are 'staggering.'"); *Doe*, 787 F. Supp. 3d at 1094 (finding third *Matthews* factor favored petitioner because "effort and cost required to provide Petitioner with procedural safeguards is minimal"). This factor also favors Petitioner on balance.

E. Relief

As succinctly stated by another court: "Once a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances – namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal. And if the noncitizen disputes the notion that changed circumstances justify his rearrest, he is entitled to a prompt hearing before an immigration judge." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176-77 (N.D. Cal. 2017).

It is recommended that the District Court issue a temporary restraining order that enjoins Respondent from continuing to detain Petitioner unless she is provided with an individualized bond hearing before an immigration judge

pursuant to 8 U.S.C. § 1226(a) within seven days after the District Court's order. At least five district courts within the Central District of California have addressed one or more of the habeas issues presented in this case and have granted requests for TROs. *See Portillo v. Noem*, EDCV 25-02892 JFW, Dkt. No. 7 (C.D. Cal. Oct. 31, 2025); *Zaragoza Mosqueda v. Noem*, EDCV 25-02304 CAS, Dkt. No. 11 (C.D. Cal. Sept. 8, 2025); *Benitez v. Noem*, EDCV 25-02190 RGK, Dkt. No. 11 (C.D. Cal. Aug. 26, 2025); *Ceja Gonzalez v. Noem*, EDCV 25-02054 ODW, Dkt. No. 12 (C.D. Cal. Aug. 13, 2025); *Arrazola-Gonzalez v. Noem*, EDCV 25-01789 ODW, Dkt. No. 10 (C.D. Cal. Aug. 15, 2025). This court agrees with the reasoning and conclusions in these cases that the petitioners satisfy the standards for a TRO.

It is further recommended that Petitioner's request for immediate release without any conditions be denied. Petitioner argues that a bond hearing would be futile, but her argument is not borne out by the experience of the Central District of California. In each of the cases listed in the preceding paragraph, the petitioner(s) received a bond hearing (with most being released) and each case was dismissed voluntarily. Petitioner provides no basis for this court to usurp the immigration proceedings and decide the bond issue itself in the first instance.

It is further recommended that the District Court deny Petitioner's request for an order enjoining Respondent from re-detaining her unless they obtain an order of the court or, alternatively, unless they demonstrate by clear and convincing evidence at a pre-deprivation bond hearing within seven days after

this court's order that Petitioner is a flight risk or danger to the community. Assuming Petitioner is released on bond, a noncitizen released on immigration bond could conceivably be detained in the future based on changed circumstances. To name a few examples, a noncitizen released on immigration bond might be re-detained if (1) she violates a term or condition of her release, (2) she sustains a new criminal conviction; or (3) removal proceedings are concluded such that she is no longer subject to detention under § 1226(c) and instead is subject to detention under 8 U.S.C. § 1231(a). Determining the length of time that might constitutionally pass without a bond hearing would require an analysis of the specific changed circumstances applicable to Petitioner.[5] This portion of Petitioner's request for a TRO is not ripe for adjudication. *See J.P. v. Santacruz*, SACV 25-1640 FWS (JCx), 2025 U.S. Dist. LEXIS 210332, *11-*12 (C.D. Cal. Oct. 24, 2025) (holding Petitioner's sole claim based on future re-detention was not ripe). Petitioner is free to file a habeas challenge to such re-detention if it occurs in the future.

[5] For example, if Petitioner is subject to a future order of removal, the Government "shall detain the alien" during the removal period, which begins on "the date of the court's final order." 8 U.S.C. § 1231(a)(1)(B)(ii), (2)(A). The removal period is generally 90 days but "shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal." *Id.* § 1231(a)(1)(A), (C). "If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General" that "shall include" provisions described in the statute. *Id.* § 1231(a)(3).

III.

RECOMMENDATION

For the reasons discussed above, the court recommends that the District Court issue an order:

(1) accepting this Report's findings and recommendations;

(2) granting the Temporary Restraining Order in part;

(3) enjoining Respondent from continuing to detain Petitioner unless she is provided with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days after the District Court's issuance of the TRO; and

(4) enjoining Respondent from transferring, relocating, or removing Petitioner outside of the Central District of California pending final resolution of this case.

The Clerk is DIRECTED to remove the designation of Petitioner's certificate of compliance with Local Rule 7-19.1 as an ex parte application. (Dkt. No. 8.)

NOTICE TO PARTIES: Any objections to this Report and Recommendation must be filed and served no later than ***Friday, December 12, 2025*** due to the TRO proceedings.

DATED: December 8, 2025

Alicia G. Rosenberg

ALICIA G. ROSENBERG
United States Magistrate Judge