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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 OBJECTIONS TO REPORT AND RECOMMENDATION

Honorable Michael W. Fitzgerald
United States District Court Judge

Diana Carolina Rivera Mendoza ("Petitioner"), by and through her undersigned counsel, respectfully submits these objections to the Magistrate Judge's Report and Recommendation in this matter (Dkt. No. 11, the "Report").

I. Petitioner objects to the denial of her immediate release

Petitioner's re-detention without a pre-deprivation hearing violates the Due Process Clause. The Report acknowledges that a restraining order should issue in this case, but recommends a post-deprivation bond hearing (Report at 14) to address the violation of Petitioner's Fifth Amendment due process rights—after Petitioner already sought and was denied a bond hearing by the immigration court. Petitioner has been re-detained since August 25, 2025—and the record in this case is devoid of any evidence of a lawful basis for such re-detention. Indeed, Respondents have not even suggested that there were changed circumstances in her case that justified her re-arrest and re-detention. This is because that arrest was arbitrary and without any valid basis at all.

II. Petitioner objects to a second attempted bond hearing to remedy an egregious due process violation

The Report acknowledges that Petitioner requested and was denied a bond hearing in immigration court. (Report at 4:22-25). But the issue of the availability of a bond hearing is secondary to the question of whether Petitioner's re-arrest and re-detention on August 25, 2025 was lawful in the first place such that she should now be required to request bond and plead for her release.

The Report acknowledges the specific permissible grounds for re-detaining

an individual subject to 8 U.S.C. § 1226(a). These include a "material change of circumstances" (Report at 8:8-11, citing *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)), and "[a]s 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.'" (Report at 11:14-20).

The Report also correctly points to the following permissible grounds for re-detaining a parolee:

> 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). (Report at 13:5-10).

The record in this case makes it clear that none of the foregoing permissible grounds for re-detaining a parolee pursuant to 8 U.S.C. § 1226(a) applied to Petitioner when she was re-arrested in August 2025. Like thousands of similarly-situated refugees in the current political climate, Petitioner was simply arrested for

attending her routine ICE check-in appointment. (*See* Petition for Writ of Habeas Corpus, Dkt. No. 1, ¶¶ 47-49). Moreover, revocation of parole pursuant to 8 U.S.C. § 1226(b) requires that a warrant be issued by the Attorney General. There is no record of any such warrant and Respondents have not even alleged the existence of such warrant in this case.

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); *See also, Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process.").

The Report does not address the constitutionality of re-arresting Petitioner for simply showing up at a routine ICE check-in appointment and serving her with a Notice to Appear that states that she is now charged with being an "arriving alien" who does not have a "valid unexpired immigrant visa." (Declaration of Carrie LeRoy "LeRoy Decl.," Ex J, Dkt. No. 1). This is on its face not a "material change of circumstances"—it describes Petitioner's *exact* status when she crossed the U.S. border three years ago. Nothing has changed. Respondents have not even suggested in their opposition papers that there are changed circumstances. (*See* Dkt. No. 7, generally). Although never communicated to Petitioner, Respondents point to an alleged ICE check-in non-compliance issue over two years ago. (Report at 3:21-25). An alleged non-compliance issue over two years ago never before raised or cited by Respondents in connection with her August 25, 2025 re-arrest and re-detention or corresponding Notice To Appear (LeRoy Decl., Ex J) is not evidence of a "material change of circumstances." (Report at 8:8-11).

A bond hearing is indeed appropriate where there is an *initial* arrest and detention under 8 U.S.C. § 1226(a). *See e.g., Cortes Alonzo v. Noem*, --- F. Supp. 3d ---, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025) (petitioner had never been encountered, let alone processed, by immigration officials, and had not been released on recognizance pending completion of Section 240 removal proceedings). For Petitioner, that arrest occurred on December 15, 2022. (LeRoy Decl. ¶ 4). Petitioner was released by ICE at that time. As explained by the court in *Pinchi v.*

Noem, No. 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), "... even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody"; *See also*, *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other 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.") (emphasis added).

Parolees released on their own recognizance are entitled to notice and an opportunity to contest their re-detention *prior* to any 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).

Petitioner objects to the recommendation that ordering yet another post-deprivation bond hearing is an appropriate remedy where Petitioner was detained in violation of the Due Process Clause. Since Petitioner was released by Respondents three years ago, applied for and received work authorization from Respondents and there were no changed circumstances to justify her re-detention years after her initial detention and release, her current detention is unlawful.

Numerous courts have granted immediate release of unlawfully-detained individuals such as Petitioner to restore the parties to the status quo prior to the due process violation. 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 (November 17, 2025), (Dkt. No. 13, Order Re: Petition for Writ of Habeas Corpus) ("Jarquin Gadea Order"). The status quo refers to "the last uncontested status which preceded the pending controversy." *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963) (quoting *Westinghouse Elec. Corp. v. Free Sewing Mach. Co.*, 256 F.2d 806, 808 (7th Cir. 1958)). That is the status *before* Petitioner was unlawfully arrested. *See Kuzmenko v. Phillips*, No. 25-CV-00663, 2025 WL 779743, at *3 (E.D. Cal. Mar. 10, 2025) (granting a temporary restraining order requiring immediate release of the petitioner back to home confinement from custody, as a restoration of the status quo); *see also*, *Larios v. Albarran*, No. 25-CV-08799-AMO, 2025 WL 2939223, at *3 (N.D. Cal. Oct. 16, 2025) ("A TRO immediately releasing Petitioner is appropriate to return [her] to the status quo.... That is the moment prior to Petitioner's likely illegal detention.").

III. Petitioner objects to the Report to the extent that it does not place the burden of proof on Respondents to prove by clear and convincing evidence that Petitioner is a danger or flight risk

The Report requires an "individualized bond hearing," but does not specify the applicable burden of proof. (Report at 14:10).

Pinchi v. Noem, No. 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025) is instructive on this point. The court in *Pinchi* placed the burden at any such hearing on the government to demonstrate to a neutral decisionmaker by clear and convincing evidence that re-detention is necessary to prevent danger to the community or flight. *Id.* at *7. *See also*, Jarquin Gadea Order at 19:11-20. Doing so is logical even for a post-detention custody hearing for the reasons articulated in *Pinchi*–namely that the immigrant's initial release reflected a determination by the government that the noncitizen is not a danger to the community or a flight risk. Since it is the government that initiated re-detention, it follows that the government should be required to bear the burden of providing a justification for the re-detention.

IV. Petitioner objects to the Report to the extent that it does not recommend enjoining Respondents from re-detaining Petitioner in the future in violation of her constitutional rights

Respondents have demonstrated that the Due Process Clause takes a back seat to implementing the current administration's quota-driven mass deportation strategy. Petitioner seeks an order that would prevent Respondents from arbitrarily arresting and detaining her again in violation of her constitutional rights. Petitioner does not seek an order insulating her from lawful arrest and detention. Numerous courts have granted such relief on facts substantially similar to this case. For example, in *Polo v.*

Chestnut, 2025 WL 2959346 *14 (E.D. Cal. October 17, 2025), the following order was issued:

> Respondents are PERMANENTLY ENJOINED AND RESTRAINED from re-arresting or re-detaining Petitioner absent compliance with constitutional protections, which include at a minimum, predeprivation notice of at least seven days before a predeprivation hearing at which the government will bear the burden of demonstrating by clear and convincing evidence that she is likely to flee or pose a danger to the community if not arrested and at which Petitioner may be represented by her counsel.

Such an order is appropriate--and necessary to protect Petitioner's due process rights. The government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983).

When a petitioner requests future injunctive relief, courts must consider whether her "future injuries are now too conjectural or hypothetical to satisfy the injury-in-fact requirement allowing [the plaintiff] to pursue injunctive relief." *See Clark v. City of Lakewood*, 259 F.3d 996, 1012 (9th Cir. 2001), as amended (Aug. 15, 2001). Petitioner remains unlawfully detained and has every reason to believe that if she is released, she could again be detained in violation of her due process rights. For example, she could be re-arrested at her next ICE check-in appointment without

notice, cause or a warrant.[1] Respondents have little incentive to recognize Petitioner's due process rights. Petitioner clearly has an ongoing "legally cognizable" and "personal interest" in preventing "future injuries" resulting from conduct by Respondents that reasonably could be expected to recur absent an order of this Court enjoining such conduct.

Respectfully Submitted,

/s/CarrieLeRoy

Carrie LeRoy

Pro Bono Attorney for Petitioner

[1] *See* Laura Strickler and Julia Ainsley, *ICE has Arrested Nearly 75,000 People with no Criminal Records, Data Shows, NBC News,* Dec. 7, 2025, *https://www.nbcnews.com/politics/immigration/ice-arrested-nearly-75000-people-no-criminal-records-data-shows-rcna247377*