

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Cecilia H.O.) Case No.:
Petitioner,)
vs.) ORDER ON PETITIONER'S PETITION FOR
) WRIT OF HABEAS CORPUS
POLLY KAISER, Acting Field Office Director)
of the San Francisco Immigration and Customs)
Enforcement Office; TODD M. LYONS, Acting)
Director of United States Immigration and)
Customs Enforcement; KRISTI NOEM,)
Secretary of the United States Department of)
Homeland Security; PAMELA BONDI,)
Attorney General of the United States; and)
Christopher CHESTNUT, California City)
Correctional Facility Administrator (*de facto*)
Warden),)
Respondents.

Petitioner, Cecilia H.O. is a 46-year-old Withholding of Removal and Convention Against Torture seeker from Mexico. She has now lived in the United States for over 32 years. Prior to her detention, Petitioner lived in Chico, California with her husband (Withholding of Removal granted to husband) and children (U.S. Citizen and Lawful Permanent Resident of the U.S.). On May 17, 2018, Immigration Customs Enforcement ("ICE") issued Petitioner an Order of Supervision, requiring her to report in person until 2020 when the Sacramento ICE office closed to the public due to COVID-19.

Thereafter, Petitioner filed an application for asylum with United States Citizenship and on June 29, 2018, Petitioner completed biometrics at the Application Support Center, USCIS Sacramento, for Form I-589 Application for Asylum and Withholding of Removal. On November 7, 2025 Petitioner attended a reasonable fear interview in San Francisco, California. Upon completion,

- 1 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

an asylum officer made her negative Reasonable Fear, and she was arrested. That reasonable fear determination was reversed by an Immigration Judge.

On December 10, 2025, petitioner filed a petition for writ of habeas corpus, Doc. 1, arguing that her re-arrest violates the Due Process Clause of the Fifth Amendment and Fourth Amendment, and that ICE failed to follow its regulations governing the termination of her order of supervision. In Petitioner has also filed a request for a temporary restraining order that seeks: (1) her immediate release from unlawful custody; (2) and injunction barring Respondent's from re-arresting her unless and until she is afforded a hearing before a neutral adjudicator on whether a change in custody is justified by clear and convincing evidence that she is a danger to the community or a flight risk; and (3) refrain from sending her to any place outside of the United States.

For the reasons set forth below, the Court _____ the motion for a temporary restraining order _____ as to Petitioner.

I. Background

Petitioner first entered the United States in February of 1991, then only 12 years old. Petitioner voluntarily returned to Mexico in October of 1999. On February 5, 2000, Petitioner was issued an Expedited Order of Removal after attempting to re-enter the United States. In September 2001, Petitioner re-entered the United States without inspection and has remained present in the United States since that time. In May 2018, Petitioner was ordered to present herself before Sacramento Immigration Custom Enforcement ("ICE") Office. She complied and in May 18, 2018 ICE granted Petitioner an Order of Supervision. Petitioner filed for asylum on June 29, 2018. She complied with her Order of Supervision for over 7 years.

By regulation, immigration officials may parole a noncitizen pursuant to 8 U.S.C § 1182(d)(5)(A) "for 'urgent humanitarian reasons' or 'significant public benefit,' provided the [noncitizen] present[s] neither a security risk nor risk of absconding." 8 C.F.R. § 212.5(b) (quoting 8 U.S.C. § 1182(d)(5)(A)). "Release [therefore] reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.

- 2 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

1 2018). Immigration officials released petitioner and granted her an Order of Supervision. Petitioner
 2 followed immigration officials' instructions, checking in with them until the COVID-19 pandemic
 3 hit and the ICE office was closed to the public.

4 Petitioner has lived in the United States with her family for 32 years. She filed an application
 5 for asylum shortly after and they issued an Order of Supervision in May 17, 2018. Petitioner
 6 complied with taking her fingerprints and appearing at her reasonable fear interview. It has been
 7 over seven years since she was granted her Order of Supervision. In these seven years, she has
 8 established ties in the community while pursuing relief in the form of Withholding of Removal. In
 9 that time, she was able to assist her husband in running their family-owned business in supporting
 10 their family. She and her husband raised their children and attended church.

11 During her time on release, petitioner maintained a clean criminal record, appeared for all
 12 in-person check-ins, and kept ICE updated on her address. On November 7, 2025, Petitioner was
 13 ordered to appear at a reasonable fear interview, and she reported as instructed. Upon completion of
 14 her reasonable fear interview, she was issued a negative fear finding, and arrested without incident.
 15 Counsel for Petitioner and Petitioner herself requested an alternative to detention such as an ankle
 16 monitor or self-reporting check-ins as she was previously allowed from 2018-2025. Those requests
 17 were denied by the arresting officers. The arresting officer (female officer, Colombian heritage)
 18 assured Counsel that if an Immigration Judge reversed the negative Reasonable Fear finding, that
 19 ICE would then release Petitioner. Thereafter, Petitioner was transferred to California City
 20 Correctional Facility and later issued a hearing on November 20, 2025, where the Immigration
 21 Court found that Petitioner did, in fact, have a Reasonable Fear, thereby vacating the determination
 22 made by the Asylum Officer on November 07, 2025. *Immigration Court Order vacating the*
 23 *decision of the DHS immigration Officer.* Pursuant to 8 C.F.R. Section 1208.31(g)(2), Petitioner
 24 was placed in "withholding-only" proceedings on 11/20/2025. Petitioner remains detained at the
 25 California City Correctional Facility. Counsel for Petitioner made written requests to both the San
 26 Francisco ICE (main office) and Bakersfield ICE sub-office regarding the same, after the
 27 Immigration Judge vacated the negative Reasonable Fear Finding, however, ICE has not released
 28

- 3 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

1 Petitioner as they claimed that they would (on November 07, 2025, at the time of Petitioner's
 2 arrest), nor have they issued a formal response to this line of inquiry.

3 II. Procedural History

4 On December 11, 2025, Petitioner filed a petition for writ of habeas corpus, Doc. 1. On
 5 December 12, 2025, Petitioner filed a motion for a temporary restraining order, Doc. 3. She argues
 6 in both of those filings that the Due Due Process Clause required that he be provided a hearing prior
 7 to any re-detention, that his re-arrest violates the Fourth Amendment, and that his re-arrest was
 8 contrary to the Immigration and Nationality Act and its implementing regulations. *See* Docs. 1,3.

9 III. Legal Standard

10 The Constitution guarantees the availability of the writ of habeas corpus "to every individual
 11 detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S.
 12 Const., Art I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon the
 13 legality of that custody, and . . . the traditional function of the writ is to secure release from illegal
 14 custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A writ of habeas corpus may be granted
 15 to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law.
 16 28 U.S.C. § 2241(c)(3). Historically, "the writ of habeas corpus has served as a means of reviewing
 17 the legality of Executive detention, and it is in that context that its protections have been strongest."
 18 *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Accordingly, a district court's habeas jurisdiction
 19 includes challenges to immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

20 IV. Discussion

21 Petitioner argues that her re-detention violates that Due Process Clause of the Fifth
 22 Amendment, the Fourth Amendment, and ICE's regulations governing the revocation the Order of
 23 Supervision. *See* Doc. 1. The Court addresses petitioner's due process claim below.

24 Because civil immigration detention is typically justified only when a noncitizen presents a
 25 risk of flight or danger to the community, *see Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), *Padilla*
 26 *v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023), Petitioner argues that the Due Process
 27
 28

- 4 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

1 Clause bars the government from re-detaining her without first providing a hearing where it must
2 prove she is a flight risk or danger. Doc. 1.

3 a. Liberty Interest

4 A protected liberty interest may arise from a conditional release from physical restraint.
5 *Young v. Harper*, 520 U.S. 143, 147–49 (1997). Even when a statute allows the government to arrest
6 and detain an individual, a protected liberty interest under the Due Process Clause may entitle the
7 individual to procedural protections not found in the statute. *See id.* (due process requires pre-
8 deprivation hearing before revocation of parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
9 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole
10 context). To determine whether a specific conditional release rises to the level of a protected liberty
11 interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case
12 before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v.*
13 *Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted).

14 In *Morrissey*, the Supreme Court explained that parole from a criminal conviction “enables
15 [the parolee] to do a wide range of things open to persons” who have never been in custody or
16 convicted of any crime, including to live at home, work, and “be with family and friends and to form
17 the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. “Though the
18 [government] properly subjects [the parolee] to many restrictions not applicable to other citizens,”
19 such as monitoring and seeking authorization to work and travel, his “condition is very different
20 from that of confinement in a prison.” *Id.* “The parolee has relied on at least an implicit promise
21 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The revocation of
22 parole undoubtedly “inflicts a grievous loss on the parolee.” *Id.* (quotations omitted). Therefore, a
23 parolee possesses a protected interest in his “continued liberty.” *Id.* at 481–84.

24 Petitioner’s grant of an ICE Order of Supervision is similar. For over seven years, it allowed her
25 to establish ties in the community while pursuing relief in the form of Withholding of Removal. She
26 helped raise her children and support her family by assisting her husband in running their family
27
28

- 5 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

1 business. She attended church. These actions were made possible by petitioner’s freedom, which is “the
2 most elemental of liberty interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

3 While immigration officials may have had discretion over the initial decision to
4 detain or release petitioner, their decision to release an individual from custody creates “an implicit
5 promise” upon which an individual may rely: that her liberty “will be revoked only if [he] fails to
6 live up to the . . . conditions [of release].” *Morrissey*, 408 U.S. at 482. As other courts have found
7 in similar circumstances, “even when ICE has the initial discretion to detain or release a noncitizen
8 pending removal proceedings, after that individual is released from custody, she has a protected
9 liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D.
10 Cal. 2025); *see also Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s
11 discretion to incarcerate non-citizens is always constrained by the requirements of due process”).
12 The Court finds that petitioner _____ a protected liberty interest in her release. *See*
13 *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1029 (N.D. Cal. 2025) (recognizing that “the
14 liberty interest that arises upon release [from immigration detention] is *inherent* in the Due Process
15 Clause”); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26,
16 2025) (collecting cases finding that noncitizens who have been released have a strong liberty
17 interest). The Court must therefore determine what process is due before the government may
18 terminate her liberty interest.

19 b. Mathews Factors

20 Due process “is a flexible concept that varies with the particular situation.” *Zimmerman v.*
21 *Burch*, 494 U.S. 113, 127 (1990). The procedural protections required in a given situation are
22 evaluated using the *Mathews v. Eldridge* factors:

23 First, the private interest that will be affected by the official action;
24 second, the risk of an erroneous deprivation of such interest through
25 the procedures used, and the probable value, if any, of additional or
26 substitute procedural safeguards; and finally, the government’s
27 interest, including the function involved and the fiscal and
28 administrative burdens that the additional or substitute procedural
requirement would entail.

- 6 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

Id. (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)); see *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

Turning to the first factor, petitioner has a significant private interest in remaining free from detention. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner had been out of custody for over seven years, and she established ties in the community, contributed to a family-owned business, and helped to support her family. Her detention denies her that freedom.

Second, “the risk of an erroneous deprivation [of liberty] is high” where, as here, “[t]he petitioner” has not received any bond or custody redetermination hearing.” *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). In the instant case, Petitioner was informed by the Immigration Court that it has no jurisdiction to conduct a bond hearing because she is under INA Section 241(a) proceedings. Civil immigration detention, which is “nonpunitive in purpose and effect[.]” is justified when a noncitizen presents a risk of flight or danger to the community. See *Zadvydas*, 533 U.S. at 690; *Padilla*, 704 F. Supp. 3d at 1172. It does not “necessarily follow that Petitioner can be detained for violations without a hearing. That the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.” *E.A. T.B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025). Similarly, here, as there were no procedural safeguards to determine if petitioner’s re-detention was justified, “the probable value of additional procedural safeguards, i.e., a bond hearing, is high.” *A.E.*, 2025 WL 1424382, at *5

Third, although the government has a strong interest in enforcing the immigration laws, the government’s interest in detaining petitioner without a hearing is “low.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal. March 3, 2025); see also *Morrissey*, 408 U.S. at 483 (noting that “the State has an overwhelming interest in being able to return the individual to imprisonment without the

- 7 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

burden of a new adversary criminal trial[.] . . . [y]et, the State has *no interest* in revoking parole without some informal procedural guarantees.”). In immigration court, custody hearings are routine and impose a “minimal” cost. *Doe*, 2025 WL 691664, at *6. “If the government wishes to re-arrest [petitioner] at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low.” *Ortega*, 415 F. Supp. 3d at 970.

On balance, the *Mathew* factors show that petitioner _____ entitled to a hearing before a neutral decision maker to discern whether she is a flight risk or danger to the community. Petitioner _____ be released.

c. Bond Hearing and Burden of Proof

The Court finds that a post-deprivation bond hearing is _____ in the circumstances of this case. The burden of proof for a bond hearing should be placed on the government.

In *Singh v. Holder*, the Ninth Circuit held, in the context of hearings provided for those detained under § 1226(c), that “the substantial liberty interest at stake” warranted placing the burden on the government to “prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018); see also *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1199 (9th Cir. 2022) (explaining that *Singh* was based on general principles of due process). “Because it is improper to ask the individual to ‘share equally with society the risk of error when the possible injury to the individual’—deprivation of liberty—is so significant, a clear and convincing evidence standard of proof provides the appropriate level of procedural protection.” *Id.* at 1203–04 (quoting *Addington v. Texas*, 441 U.S. 418, 427 (1979)). These same concerns are present here.

The Ninth Circuit later extended these principles to bond hearings for those detained under § 1225(b) and § 1231(a). See *Diouf v. Napolitano*, 634 F.3d 1081, 1082 (9th Cir. 2011); *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) (“*Rodriguez*”). Although the Supreme Court subsequently held in *Jennings* that the constitutional avoidance canon could not be used to read a bond hearing requirement into the statute, it did not address an as-applied constitutional due process

- 8 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

1 challenge. *Jennings*, 583 U.S. at 304–06, 312 (“Because the Court of Appeals . . . had no occasion
2 to consider respondents’ constitutional arguments on their merits[.], . . . we do not reach those
3 arguments.”). *Singh* “relied on the Due Process Clause in determining” who should bear the burden
4 of proof at those bond hearings. *Rodriguez Diaz*, 53 F.4th at 1202; *see Singh*, 638 F.3d at 1203–06.
5 The issue of the burden of proof at a hearing required by due process therefore appears to remain
6 governed by *Rodriguez* and its extension of *Singh*’s requirements to bond hearings for § 1225(b)
7 detainees. *See Maliwat v. Scott*, No. 2:25-CV-00788-TMC, 2025 WL 2256711, at *10 (W.D. Wash.
8 Aug. 7, 2025) (applying *Singh* in § 1225(b) case); *Banda*, 385 F. Supp. 3d at 1107 (same); *Abdul-*
9 *Samed*, No. 1:25-CV-00098-SAB-HC, 2025 WL 2099343, at *8 (same).

10 **V. Conclusion and Order**

11 For the foregoing reasons, the Court ORDERS:

- 12 1. Petitioner’s Motion for Temporary Restraining Order is _____.
- 13 2. Petitioner _____, be _____ from Respondent’s custody. DHS _____
14 impose any additional restrictions on her, such as electronic monitoring, unless that is determined
15 to be necessary at a future pre-deprivation/custody hearing.
- 16 3. Respondents _____ re-arrest or re-detain Petitioner absent compliance with
17 constitutional protections, which include at minimum, pre-deprivation notice describing the
18 change in circumstances necessitating her arrest and detention, and a timely hearing before a
19 neutral arbitrator. At such hearing, the Government _____ bear the burden of establishing, by
20 clear and convincing evidence, that Petitioner poses as danger to the community or a flight risk,
21 and the Petitioner _____ be allowed to have counsel present.
- 22 4. The Motion for Temporary Restraining Order is _____, no later than _____, Petitioner
23 _____ be provided a post-deprivation hearing at which an Immigration Judge SHALL
24 determine whether the government has demonstrated by clear and convincing evidence that
25 Petitioner poses as danger to the community or a flight risk.
- 26 5. Respondents shall file a status report within _____ days of the date of this Order, confirming
27 whether a hearing was held, and if so, the outcome of the hearing. If no such hearing occurs,
28

- 9 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER

1 Petitioner is ordered to be released from Respondents’ custody.

2 IT IS SO ORDERED.

3
4 Dated: _____

UNITED STATES DISTRICT JUDGE

- 10 -

ORDER ON PETITIONERS TEMPORARY RESTRAINING ORDER