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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Juan Sanchez-Hernandez

Petitioner,

v.

Fred Figueroa, et al.,

Respondents.

No. 2:25-cv-02351-PHX-DWL-MTM

REPLY TO RESPONSE IN OPPOSITION TO EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION (Doc. 22)

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

I. INTRODUCTION

Petitioner Angel Sanchez-Hernandez, whose legal name is Juan Sanchez-Hernandez, (hereinafter "Ms. Sanchez" or "Petitioner") was unlawfully detained on June 19, 2025, and her detention will continue to be unlawfully indefinite and without any meaningful recourse absent intervention by this Court. Respondents state in their Reply that she is detained for the purpose of removal to a third country but have not indicated any country that has accepted her, nor any proposed timeline that would make her detention anything less than indefinite. They merely state that Mexico was at one point accepting third country removals prior to her detention, but that it ceased doing so by the time the government reached out to Mexico about her case specifically, and that they are also attempting to effectuate removal to other possible third countries. Additionally, while Respondents state that have complied with relevant regulations to provide Ms. Sanchez with an initial informal interview regarding her detention status and a revocation of the supervision order, they merely submit a blank pro forma document restating what they already knew at the time that they released Ms. Sanchez in 2022: she has been ordered removed to Honduras, but her removal to that country is barred by granted protection under the Convention Against Torture. They have provided no evidence to show that they have complied with the substance of the procedures required to revoke Ms. Sanchez's order of supervision as delineated by, among others, 8 C.F.R. § 241.13(i)(2), § 241.13(f), § 241.13(l), § 241.14, and § 241.4. Thus, because of these serious errors and the lack of any reasonably foreseeable removal, this Court should enjoin Respondents from continuing to unlawfully detain her and order that she be afforded a hearing before a

neutral adjudicator before any re-detention could occur. Finally, Ms. Sanchez's request that that this Court order Constitutionally-compliant procedures of notice and opportunity to challenge a third country removal is not barred by section 1252(g).

II. ARGUMENT

a. Ms. Hernandez merits an injunction from this Court.

To obtain injunctive relief, Ms. Sanchez must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3) that the balance of equities tips in favor of the moving party; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

The government suggests that Ms. Sanchez seeks a mandatory injunction, which is "subject to a higher degree of scrutiny because such relief is particularly disfavored under the law of this circuit." Doc. 27 at 6 (*citing Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994)). That suggestion is incorrect; Ms. Sanchez asks to be returned to her prior status before the case arose through a prohibitory injunction. The status quo ante litem is "the last uncontested status which preceded the pending controversy[.]" *GoTo.com, Inc. v. Walt Disney, Co.,* 202 F.3d 1199, 1210 (9th Cir, 2000); *see Ariz. 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").

Here, Petitioner had been on supervised release for two and a half years until she was re-detained by the government. Doc 1. Because Petitioner challenges her re-detainment, the last uncontested status of Petitioner was before she was re-detained on

June 10, 2025. *See Doe*, 2025 WL 691664, at *2 ("It is questionable whether that status quo is properly considered to be detention when the Government suddenly took an allegedly unconstitutional action in rearresting Petitioner without a hearing."); *Domingo-Ros v. Archambeault*, No. 25-cv-01208-DMS-DEB, 2025 WL 1425558, at * (S.D. Cal. May 18, 2025) (granting an injunction for petitioners that sought a "probationary injunction" to "preserve the status quo preceding this litigation—their physical presence in the United States free from detention"); *Abrego Garcia v. Noem*, No. 25-cv-00951-PX, 2025 WL 1014261, at *9 (D. Md. Apr. 6, 2025) (finding that the petitioner "request[ed] relief designed to re[s]tore the status quo ante ... to return him to where he was on March 12, 2025, before he was apprehended by ICE and spirited away to [the Terrorism Confinement Center in El Salvador]").

b. Ms. Sanchez has shown that her detention is unlawful because removal is not reasonably foreseeable and because ICE failed to comply with the required procedure necessary to revoke an order of supervision.

The government argues that "ICE properly provided notice of the revocation of release under 8 C.F.R. § 241.13(i)(2)" of Ms. Sanchez's order of supervision (OSUP) and that there is a "significant likelihood Petitioner can be removed in the reasonably foreseeable future." Doc. 27 at 13-14. In support of these contentions, they cite a Notice of Revocation of Release signed by Assistant Field Office Director Brian Ortega. *Id.* (citing Doc. 20-1 at 4-5). Contrary to Respondent's claim that "ICE has complied with the regulations for revoking release under this section," this document provides no information to substantiate the revocation. It merely restates that information that ICE knew at the time that it released Ms. Sanchez: she has a removal

order from 2022 to Honduras. Doc. 20-1 at 4. Officer Ortega states that basis for the ICE's revocation Ms. Sanchez's OSUP is that she can be "expeditiously removed from the United States pursuant to the outstanding removal order..." *Id.* This statement is not supported by the record; under the outstanding removal she cannot be removed to Honduras because she has protection under the Convention Against Torture. *See* Doc. 27 at 2. Further, Respondents have provided no indication that any third country has accepted Ms. Sanchez. While Ms. Sanchez did have a reasonable fear interview on August 1 to determine whether she has a risk of torture in Mexico, that determination relates to whether the U.S. can return to her to Mexico. It has no impact on Mexico's willingness to accept her.

Finally, as an Assistant Field Office Director, Officer Ortega lacks the authority to revoke Ms. Sanchez's OSUP status. In *Ceesay v. Kurzdorfer,* No. 25-CV-267-LJV, 2025 WL 1284720 (W.D.N.Y. May 2, 2025) the court rejected as invalid an OSUP revocation signed by an Assistant Field Office Director like Officer Ortega. 8 C.F.R. § 241.4(l)(2), entitled "Determination by the Service," provides that

> [t]he Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody a [noncitizen] previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. 8 C.F.R. § 241.4(l)(2).

That subsection also states that:

> [r]elease may be revoked in the exercise of discretion when, in the opinion of the revoking official:
> (i) The purposes of release have been served;
> (ii) The [noncitizen] violates any condition of release;
> (iii) It is appropriate to enforce a removal order or to commence removal proceedings against a [noncitizen]; or

> (iv) The conduct of the [noncitizen], or any other circumstance, indicates that release would no longer be appropriate. *Id.*

After examining the definition of each title and its corresponding rank in the Department of Homeland Security (because the regulation was promulgated before DHS existed, the definitions pertained to the former Immigration and Naturalization Service), the *Ceesay* court concluded that "[a]s relevant here, the order specifically delegates to assistant field officer directors the "[a]uthority under . . . 8 C.F.R. Part 241[] relating to warrants of removal, reinstatement of removal, self-removal, and release of [noncitizens] from detention. That authority **does not** include the authority to detain noncitizens or to revoke orders releasing them." *Ceesay v. Kurzdorfer,* No. 25-CV-267-LJV, 2025 WL 1284720, at *16 (W.D.N.Y. May 2, 2025) (emphasis added). And even if Officer Ortega had the authority to revoke the OSUP, his decision lacked the substance and explanation required by 8 C.F.R. § 241.4(l)(2).

By statute and regulation, ICE has the authority to re-detain a noncitizen previously ordered removed only in specific circumstances, including where an individual violates any condition of release or the individual's conduct demonstrates that release is no longer appropriate. 8 U.S.C. § 1231; 8 C.F.R. § 241.4(l)(1)-(2). That authority, however, is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). By failing to provide any factual basis to support their claim that Ms. Sanchez's removal is reasonably foreseeable, by revoking the OSUP without the substance required by the regulations, and by delegating that duty to an officer without authority, Respondents have placed

Ms. Sanchez in unlawful detention. For these reasons, she is likely to prevail on the merits of her claim of illegal detention.

c. As a transgender woman housed with men in a remote detention center, Ms. Sanchez is experiencing irreparable harm.

Respondents argue that "Petitioner cannot establish irreparable harm if she is not released from detention and provided a pre-detention hearing," asserting that her detention has a legal basis and serves a legitimate government purpose. Doc. 27 at 18-19. These arguments ignore the daily challenges that Ms. Sanchez faces in detention. As a transgender woman, Ms. Sanchez is uniquely vulnerable. When she was first detained, her hormone treatment was delayed by a few weeks. Ex. A, Declaration of Angel Sanchez. After 12 years on hormone therapy, this lack of access to medication caused "headaches and hot flashes." *Id.*

Ms. Sanchez is housed in cells with men. *Id.* She has been forced to shower with men, who have made "homophobic and transphobic comments" to her. *Id.* Other detainees have asked her whether she has a penis. *Id.* She has been humiliated and verbally abused. *Id.* She feels "less than a human." *Id.* Instead of accommodating her needs, Ms. Sanchez was given a disciplinary write-up for objecting to having a male cell-mate. *Id.* Officers have threatened to put her in segregation, where her liberty would be severely restricted. *Id.* Multiple courts have ordered injunctive relief where conditions of immigration detention confinement posed significant risks to noncitizens' health and safety, as they do here. *See, e.g. Fraihat v. U.S. Immigration and Customs Enforcement,* 16 F.4th 613 (2021) (district court entered multiple injunctions ordering release of medically vulnerable detainees); *Zepeda Rivas v. Jennings,* 504 F.Supp.3d 1060 (2020).

d. Granting injunctive relief is in the public interest.

Respondents argue that "[g]iven Petitioner's undisputed and violent criminal history and the significant likelihood of removal to Mexico, Panama or Belize in the reasonably foreseeable future, the public and governmental interest in permitting her detention is significant. Doc. 27 at 20. These arguments are disingenuous. First, ICE released Ms. Sanchez in 2022 with full knowledge of her criminal history. Second, the record contains no evidence that Mexico, Panama, nor Belize have indicated *any* willingness to accept her. The public interest thus weighs in favor of granting injunctive relief. "Just as the public has an interest in the orderly and efficient administration of this country's immigration laws, [] the public has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020) (internal quotation omitted). Ms. Sanchez has demonstrated that she is likely unlawfully detained in violation of his due process rights and is suffering harm because of her detention. The government does not argue that releasing her would impede their ability to remove her if the necessary travel documents were obtained, nor do they claim that they cannot monitor Ms. Sanchez if she is released to the community. Further, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,'" and that "[s]upervised release programs cost much less by comparison. . . ." *Hernandez v. Sessions,* 872 F.3d 976, 995 (9th Cir. 2017). Government expenditure in this case is not in the public interest in light of Petitioner's

compliance with her OSUP, stable employment, and connections to the community. *See* Exh. A, Declaration of Angel Sanchez.

e. Section 1252(g) has no application to Ms. Hernandez's requests; she seeks release from unlawful detention, which is wholly separate from the execution of a removal order. Likewise, the procedural protections she requests in addition to release do not arise from the execution of a removal order.

The government asserts that Ms. Hernandez "challenges to the Government's ability to execute a valid final removal order with the only limit on execution being removal to Honduras"…which is "squarely prohibited by 8 U.S.C. § 1252(g)." Doc. 22 at 7-8. Section 1252(g) bars judicial review of "any cause or claim" arising from the execution of removal orders.

The government misunderstands the nature of Ms. Hernandez's case and seeks to portray it as an entirely different matter than what she brought before this Court: she seeks relief from unlawful detention by Respondents and asks the Court to enter an order of release because her detention is unlawful. This is the essence of a habeas action, which Congress specifically exempted from the reach of 1252(g). *See Dep't of Homeland Sec. v. Thuraissigiam,* 591 U.S. 103, 107, (2020) ("Habeas has traditionally been a means to secure release from unlawful detention"); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects.")

Further, Ms. Hernandez's requests that the Court enter orders ensuring that she has sufficient procedural protections against unlawful removal to a third country are not barred by 1252(g). The cases cited by the government in support of its position are

unavailing. *See* Doc. 22 at 7-8 (citing *Rauda v. Jennings*, 55 F.4th 773, 777-78 (9th Cir. 2022); then citing *Camarena v. Dir., ICE*, 988 F.3d 1268, 1274 (11th Cir. 2021); then citing *E.F.L. v. Prim*, 986 F.3d 959, 964-65 (7th Cir. 2021); then citing *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297, 300 (3d Cir. 2020); and then citing *Hamama v. Adducci,* 912 F.3d 869, 874-77 (6th Cir. 2018). Each of these cases involved a claim that ICE's authority to execute a removal order was hindered because some discretionary agency action had not yet taken place, not because of any mandatory obligation that either it or another immigration agency failed to fulfill like appropriate notice and the opportunity to object to an unlawful third country removal. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022). In *Rauda*, the purpose of the lawsuit was to stop the execution of the removal order. Here, Ms. Hernandez does not dispute that ICE could remove her to a third country where she would not face torture if she were provided with notice and an opportunity to seek protection. Likewise, her order of supervision could be revoked if ICE were to follow the appropriate procedural requirements, which they have not. She is not suing to prevent removal. She asks for release and for the Court to order that ICE must comply with basic procedural protections *prior to* execution of any third country removal order.

Like in *Rauda, Tazu*, *Camarena*, and *E.F.L.* were habeas cases seeking to halt the execution of removal orders to await discretionary relief. In *Tazu*, the plaintiff did not challenge the agency's authority to execute the order, but instead its discretionary decision to do so prior to adjudication of a motion to reopen. 975 F.3d at 297 ("The design of § 1252(g) shows that Tazu cannot challenge the timing of his removal here."). In *Camarena*, the plaintiffs sought to halt execution of final removal orders to

await adjudication of their pending applications for provisional unlawful presence waivers under governing regulations. 988 F.3d at 1270. Notably, even if granted, the waivers would not prevent deportation but rather make it easier for them to return to the United States. *Id.* Finally, in *E.F.L.*, the plaintiff filed a habeas petition to enjoin removal to await adjudication of her self-petition under the Violence Against Women Act, which, if granted, would permit her to remain in the country. 986 F.3d at 962-63. Ms. Hernandez's case stands in stark contrast. Unlike in *Rauda*, *Hamama*, *Camarena*, *Tazu*, and *E.F.L.*, the agency action here—providing notice and an opportunity to raise a fear claim is a mandatory obligation ICE is required to furnish prior to execution of a removal order to ensure that noncitizens are not deported to countries where they could face persecution or torture.

Likewise, the Government's claim that FARRA bars review of this claim are equally unavailing. Ms. Hernandez does not ask the Court to consider any part of her past protection under the Convention Against Torture granted by an Immigration Judge in 2022. Nor does she ask the Court to determine whether she has a risk of torture in a third country. Rather, she asks this Court to determine that her custody is in violation of the law and that she cannot be removed to a third country without the protection guaranteed to her under the applicable regulations and the Fifth Amendment of the Constitution.

f. Petitioner's membership in the D.V.D. class has no impact on injunctive relief.

Respondents ask the Court to dismiss Ms. Sanchez's request procedural protections prior to any third-country removal because the claims are "already being

adjudicated in the nationwide *D.V.D.* class action. *See D.V.D. v. DHS*, No. 25-cv-10676 (D. Mass.)" Doc. 27 at 9-10. In June, the Supreme Court vacated the *D.V.D.* preliminary injunction. No injunctive relief is available in *D.V.D.* because the Supreme Court decision, which keeps the stay in place through any subsequent petition for certiorari. *Dep't of Homeland Sec. v. D.V.D.*, 145 S. Ct. 2153 (2025). Further, Petitioner's claim for relief extends beyond the relief identified in the complaint in *D.V.D.* because her challenge of the specific circumstances of her re-detention in violation of both the regulations and of her Constitutional rights. Ms. Sanchez's liberty interest is particularly dependent on ICE's compliance with U.S. treaty obligations under the Convention Against Torture and its implementing regulations since she may be in the position of seeking protection under this treaty body for months or years. Whether she remains detained throughout such process, and whether the government has met its burden of showing that removal is in fact foreseeable to any country such that revocation of her release is justified, is a unique issue not at play in the *D.V.D.* case that merits Petitioner's individual habeas and the relief asserted in the instant TRO.

III. CONCLUSION

For these reasons, Petitioner requests that the Court direct Respondents to release Respondent from her current custody arising from her re-arrest and re-detention on June 19, 2025, enjoin Respondents from removing, refouling, or transferring Petitioner to any country outside the United States without adequate notice and an opportunity to contest removal; and provide a hearing before a neutral adjudicator before any re-detention can occur.

Dated: August 1, 2025

Respectfully Submitted

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/s/ Laura Belous
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