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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Jorge RIVERA LARIOS,

Petitioner,

v.

SERGIO ALBARRAN, in his official capacity, San Francisco Field Office Director, U.S. Immigration and Customs Enforcement;

KRISTI NOEM, in her official capacity, Secretary of the U.S. Department of Homeland Security; and

PAMELA BONDI, in her official capacity, Attorney General of the United States,

Respondents.

Case No. 3:25-cv-8799-AMO

PETITIONER'S MEMORANDUM ON JURISDICTION

INTRODUCTION

On October 28, 2025, this Court held a hearing regarding Petitioner, Jorge Rivera Larios's (Mr. Rivera Larios) motion for a preliminary injunction. During the hearing, the Court inquired as to its jurisdiction over Mr. Rivera Larios's argument that the United States Immigration and Customs Enforcement (ICE) officer's decision to revoke Mr. Rivera Larios's release failed to adhere to the regulatory procedures set forth at 8 C.F.R. § 241.4(l). Counsel for Respondent asserted that the ICE officer's determination is unreviewable under 8 U.S.C. § 1252(a)(2)(B)(ii). Mr. Rivera Larios argued to the contrary. The Court ordered briefing. For the reasons outlined below, this Court retains jurisdiction to review all matters before the Court in these proceedings notwithstanding 8 U.S.C. § 1252(a)(2)(B)(ii).

ARGUMENT

The statute provides that federal courts lack jurisdiction to review "any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified *under this subchapter* to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. § 1252(a)(2)(B)(ii) (emphasis added). During the October 28, 2025 hearing, counsel for Respondents argued that Congress gave the agency the authority over detention of noncitizens subject to final removal orders, directed the agency to promulgate regulations, and therefore, any discretionary determination under 8 C.F.R. § 241.4(l) is unreviewable pursuant to 8 U.S.C. § 1252(a)(2)(B)(ii). Respondents' argument is unfounded for two reasons. First, the Supreme Court addressed the question regarding review of a discretionary agency decision under a regulation and found directly contrary to Respondents' argument. *See Kucana v. Holder*, 558 U.S. 233, 237 (2010) ("We hold that the key words 'specified under this subchapter' refer to statutory, but not to regulatory, specifications."). Second, an ICE decision pursuant to 8 U.S.C. § 1231(a)(2) and (a)(3), and 8 C.F.R. § 241.4(l) is a mixed question of law

and fact that is reviewable by this Court. *Wilkinson v. Garland*, 601 U.S. 209, 217 (2024); *Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024).

First, *Kucana* clearly resolves the question at issue. In *Kucana*, the Supreme Court considered federal court jurisdiction to review an agency decision denying a motion to reopen, where the agency's regulation declares that a decision to grant a motion to reopen is within that agency's discretion. *Kucana*, 558 U.S. at 239 (citing 8 C.F.R. § 1003.2(a) (2009)). The Court found that 8 U.S.C. § 1252(a)(2)(B)(ii) did not strip the federal courts of review stating, "[i]f Congress wanted the jurisdictional bar to encompass decisions specified as discretionary by regulation along with those made discretionary by statute, moreover, Congress could easily have said so." *Kucana*, 558 U.S. at 248. The Court further stated that,

> To read § 1252(a)(2)(B)(ii) to apply to matters where discretion is conferred on the Board by regulation, rather than on the Attorney General by statute, would ignore that congressional design. If the Seventh Circuit's construction of § 1252(a)(2)(B)(ii) were to prevail, the Executive would have a free hand to shelter its own decisions from abuse-of-discretion appellate court review simply by issuing a regulation declaring those decisions 'discretionary.' Such an extraordinary delegation of authority cannot be extracted from the statute Congress enacted.

Kucana, 558 U.S. at 252.

As in the motion to reopen context, Congress afforded the Executive Branch the authority to issue regulations regarding release of a noncitizen after the ninety-day removal period. 8 U.S.C. § 1231(a)(3). The Department of Homeland Security (DHS) promulgated such regulations at 8 C.F.R. § 241.4, wherein subsection (l) sets forth procedures for the revocation of release. Thus, as in the motion to reopen context, a decision by the administrative agency pursuant to 8 C.F.R. § 241.4(l) is not a decision "under this title" and is therefore reviewable notwithstanding 8 U.S.C. § 1252(a)(2)(B)(ii).

Second, a decision to revoke release under 8 C.F.R. § 241.4(l) is a mixed question of law and fact and is therefore subject to review, particularly in this case, where the ICE officer relied

on a mere detention without charges, to conclude that Mr. Rivera Larios committed a crime in violation of the terms of his release. *Wilkinson*, 601 U.S. at 217 (finding "exceptional and extremely unusual hardship" to be a legal standard to which an IJ must apply a set of facts, thereby concluding it to be a question of law over which § 1252(a)(2)(D) provides judicial review.); *see also Martinez*, 124 F.4th at 779 ("the determination whether an alien is 'dangerous' for immigration-detention purposes is a mixed question of law and fact and is reviewable as a "question of law.").

Whether an arrest or detention is sufficient to prove a crime was committed is a legal question. For example, California Penal Code Section 1204.5 directs that in a criminal case, prior to a verdict, a judge shall not read or consider the written report of a law enforcement officer or information about the arrest record of the defendant. The statute reflects the limited evidentiary value an arrest without more.

The Board of Immigration Appeals (BIA) has also found that an arrest is insufficient to prove a crime was committed. Matter of Arreguin De Rodriguez, 21 I. & N. Dec. 38, 42 (BIA 1995) ("Just as we will not go behind a record of conviction to determine the guilt or innocence of an alien, so we are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein."); *see also* Avila-Ramirez v. Holder, 764 F.3d 717, 723-725 (7th Cir. 2014) (concluding that uncorroborated arrest reports should not be given significant weight, particularly when the noncitizen admits no wrongdoing).

Whether the ICE officer erred in applying the facts of Mr. Rivera Larios's case to the legal query of whether the elements of a crime were met is a mixed question of law and fact. Thus, as in *Wilkinson* and *Martinez*, this Court has jurisdiction.

CONCLUSION

For the above-mentioned reasons, Mr. Rivera Larios asks that this Court find it has jurisdictions over all issues set forth in the petition and motion for preliminary injunction.

Dated: October 30, 2025

By: */s/ Ilyce Shugall*

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