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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 NOTICE OF MOTION AND MOTION TO ENFORCE PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES

Date: TBD

Time: TBD

Before: Honorable Judge Araceli Martinez Olguin

Immigration Habeas Case

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, on a date and time ordered by this Court, before the Honorable Araceli Martinez Olguin, Petitioner will move the Court to enforce its October 31, 2025 Preliminary Injunction Order, and further, to order Respondents to immediately release Petitioner from immigration custody.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Ilyce Shugall with Accompanying Exhibits in Support of Petitioner's Motion to Enforce Preliminary Injunction. As set forth in the Points and Authorities in support of this Motion, Petitioner seeks that this Court enforce its Order because Respondents have no lawful basis to re-detain Petitioner after Respondents previously released him on an Order of Supervision. , Petitioner respectfully submits that he is entitled to immediate release.

WHEREFORE, Petitioner prays that this Court grant his Motion to Enforce the Preliminary Injunction issued by this Court on October 31, 2025, and order his immediate release from unlawful detention.

Dated: November 7, 2025

Respectfully submitted,

/s/Ilyce Shugall
Ilyce Shugall

INTRODUCTION

2 Petitioner Jorge Rivera Larios (Mr. Rivera Larios) moves the Court to enforce its October 31, 2025
3 Order Granting Preliminary Injunction. The Court enjoined Respondents from re-detaining Mr. Rivera Larios
4 “without notice and a pre-deprivation hearing before an Immigration Judge to evaluate whether his re-
5 detention is warranted based on flight risk or a danger to the community.” Dkt. 22 at 18. Respondents
6 purported to provide Mr. Rivera Larios with a pre-deprivation hearing before the Immigration Judge (IJ),
7 which took place on Monday, November 3, 2025. Following that hearing, Respondents unlawfully re-
8 detained Mr. Rivera Larios, in violation of this Court’s preliminary injunction. First, the IJ found that Mr.
9 Rivera Larios did not violate the terms of his order of supervision. Thus, the government had no statutory
10 authority to re-detain Mr. Rivera Larios. Second, the IJ erroneously found Mr. Rivera Larios to be a danger
11 to the community and a flight risk in the alternative based on information that was known to Immigration and
12 Customs Enforcement (ICE) when it released him from custody in January of 2022. This finding by the IJ is
13 erroneous and cannot separately justify Mr. Rivera Larios’s re-detention by ICE.

14 Moreover, the IJ specifically refrained from opining on whether or not ICE has the authority to re-
15 detain Mr. Rivera Larios, stating she would “defer” to the agency. That the IJ declined to make a finding
16 regarding Mr. Rivera Larios’s re-detention does not provide justification for Respondents to re-detain him.
17 Further, the IJ’s deference to ICE as to whether it could detain Mr. Rivera Larios undermines the IJ’s role as
18 the neutral arbiter in Mr. Rivera Larios’s pre-deprivation hearing.

19 Mr. Rivera Larios now moves this Court to enforce its preliminary injunction order. This Court can
20 directly review the findings made by the IJ at the conclusion of his November 3, 2025 pre-deprivation
21 hearing. As the Court has already noted in its decision issuing the injunction in his case, Mr. Rivera Larios
22 has not violated the terms of his order of supervision, a finding which the IJ also made. On this basis alone,
23 the Court should find that Respondents have no present justification for re-detaining Mr. Rivera Larios.
24 Regarding the IJ's finding that Mr. Rivera Larios is a danger to the community and a flight risk based on
25 evidence pre-existing his release by ICE on supervision, the Court should review this erroneous conclusion,
26 and likewise, find that Respondents cannot justify Mr. Rivera Larios's detention on this basis. In either case,
27 the Court should order that Respondents immediately release Mr. Rivera Larios and find that he cannot be re-

1 detained without a showing of a material change in circumstances establishing a violation of Mr. Rivera
 2 Larios's order of supervision.

3 **RELEVANT STATEMENT OF FACTS AND PROCEDURAL HISTORY¹**

4 On October 16, 2025, this Court issued a Temporary Restraining Order, ordering Mr. Rivera Larios's
 5 immediate release from ICE custody. Dkt. 7. Mr. Rivera Larios was released from ICE custody on October
 6 16, 2025. Dkt. 9. On October 22, 2025, at the request of the Department of Homeland Security (DHS), the
 7 immigration court scheduled a pre-deprivation hearing for Mr. Rivera Larios. Dkt. 15-1 ¶15, Ex. H; ¶ 17
 8 Exh. I. Initially the immigration court scheduled Mr. Rivera Larios's hearing for November 5, 2025, and
 9 subsequently advanced the hearing to November 3, 2025. *Id.*

10 On October 31, 2025, the Court issued a preliminary injunction, enjoining Respondents from re-
 11 detaining Mr. Rivera Larios without notice and a pre-deprivation hearing before an Immigration Judge to
 12 evaluate whether his detention was warranted based on flight risk and danger to the community. Dkt. 22 at
 13 18.

14 Mr. Rivera Larios, through counsel, filed a motion to permit him and counsel to appear at his pre-
 15 deprivation hearing via WebEx, as Mr. Rivera Larios lives approximately 120 miles from the immigration
 16 court. Shugall Decl. ¶ 4. The immigration court issued an order allowing counsel to appear via WebEx, but
 17 requiring Mr. Rivera Larios to appear in person. *Id.* On November 3, 2025, Mr. Rivera Larios appeared with
 18 counsel in person at the immigration court for the pre-deprivation hearing. *Id.* at ¶ 7.² The immigration judge
 19 appeared via WebEx, and counsel for DHS appeared in person. *Id.* The immigration judge asked the parties
 20 about her statutory authority to conduct a bond hearing in Mr. Rivera Larios's case. *Id.* at ¶ 8. Counsel for
 21 DHS stated that the authority stemmed from this Court's October 31, 2025 Preliminary Injunction order and
 22 argued that the immigration court should conduct the hearing as governed by 8 U.S.C. § 1226(a). *Id.* Counsel for
 23 Mr. Rivera Larios agreed that the immigration court had authority to conduct a pre-deprivation hearing

24
 25 ¹ Mr. Rivera Larios has previously recounted the facts and procedural history relevant to his challenge to
 26 Respondents' unjustified detention in his case and incorporates that history in his present motion. *See* Dkt. 1;
 5-3; 15.

27 ² After granting DHS's motion to recalendar Mr. Rivera Larios's previously administratively closed removal
 28 proceedings over Mr. Rivera Larios's objection, the IJ separately scheduled a status hearing regarding Mr.
 Rivera Larios's withholding-only proceedings for the same day. Dkt. 15-1 ¶ 16.

1 pursuant to this Court's preliminary injunction order. *Id.* at ¶ 9. Counsel for Mr. Rivera Larios also noted that
 2 this Court's preliminary injunction concluded that the evidence did not support a finding that Mr. Rivera
 3 Larios violated the terms of his order of supervision, and urged that the immigration court should find the
 4 same. *Id.* Counsel also argued that DHS should bear the burden of proof. *Id.*

5 The immigration judge conducted the hearing addressing factors under 8 U.S.C. § 1226(a). *Id.* at ¶
 6 10.

7 The immigration judge asked the parties' position on a bond amount. *Id.* at ¶ 13. Counsel for DHS
 8 asked that the immigration judge find Mr. Rivera Larios to be a danger and flight risk and find that he should
 9 be held without bond. *Id.* Counsel for Mr. Rivera Larios argued that the immigration judge should follow this
 10 Court's order finding that Mr. Rivera Larios did not violate the terms of his release and order that he remain
 11 at liberty. *Id.*

12 The immigration judge questioned Mr. Rivera Larios about the August 2025 incident in which he was
 13 detained by the Lake County Sheriff's Office. *Id.* at ¶ 14. Mr. Rivera Larios testified that he called 911
 14 because his wife was intoxicated and angry. *Id.* He also testified that he was caring for the couple's son while
 15 his wife was out drinking. *Id.* The immigration judge provided the parties the opportunity to present closing
 16 arguments. *Id.* at ¶ 15. Counsel for Mr. Rivera Larios argued he was not a flight risk and danger and stressed
 17 that his criminal and immigration history pre-dated his release from ICE custody and that he complied with
 18 all terms of release, including travel between Lakeport and San Francisco to meet obligations. *Id.*

19 Counsel for DHS argued that Mr. Rivera Larios is a danger because of his criminal history and a
 20 flight risk because of his immigration history, including multiple deportations and returns to the United
 21 States. *Id.* at ¶ 16. She also asserted that ICE did not make a specific finding as to flight risk or danger when
 22 Mr. Rivera Larios was released in 2022, as he was released because of COVID. *Id.* She further argued that
 23 his detention by the Lake County Sheriff's Office constituted a violation of his order of supervision. *Id.*

24 In reaching her decision, the immigration judge made alternate findings. She first found that she did
 25 not have jurisdiction to conduct a custody redetermination. *Id.* at ¶ 17. In the alternative, she found that based
 26 on Mr. Rivera Larios's criminal history, relying primarily on arrests that did not result in convictions, all of
 27
 28

1 which pre-dated his release by ICE in January of 2022, he is a danger to the community.³ *Id.* The IJ stated
 2 that she was not considering Mr. Rivera Larios's August 2025 detention by the Lake County police
 3 department in assessing whether he is a danger to the community.

4 Likewise, the immigration judge found Mr. Rivera Larios to be a flight risk, relying exclusively on
 5 his prior removal orders, known to ICE at the time it released him on supervision. The IJ did not
 6 acknowledge or credit Mr. Rivera Larios's diligent compliance with his order of supervision for over three
 7 years and nine months. *Id.* at ¶ 18. The immigration judge also indicated that regardless of who bore the
 8 burden of proof, the outcome would be the same. *Id.*

9 Crucially, the immigration judge found that the record did not support a finding that Mr. Rivera
 10 Larios violated the conditions of his release. *Id.* at ¶ 19. However, the immigration judge did not issue a
 11 finding as to whether DHS could re-detain Mr. Rivera Larios. When counsel for Mr. Rivera Larios asked for
 12 clarity on whether the immigration judge was ordering Mr. Rivera Larios's re-detention, the immigration
 13 judge responded, "that is up to DHS." *Id.* When counsel for Mr. Rivera Larios asked counsel for DHS
 14 whether DHS would detain him, counsel for DHS indicated that she could not comment on DHS' operations.
 15 *Id.*

16 After the hearing, Mr. Rivera Larios and counsel exited the building with three community observers.
 17 *Id.* at ¶ 22. While Mr. Rivera Larios, his counsel, and observers waited for the traffic light to change at a
 18 crosswalk, three plainclothes individuals surrounded Mr. Rivera Larios, grabbed his arms, and swiftly moved
 19 him to the side of a building near the street corner where they pushed him against the building and
 20 handcuffed him. *Id.* One of the three individuals eventually showed her ICE badge. *Id.* The officers quickly
 21 moved Mr. Rivera Larios across the street into an unmarked vehicle that sped away. *Id.*

22 The immigration court issued a notice of the January 9, 2026 merits hearing; however, it issued no
 23 orders regarding the outcome of the pre-deprivation hearing. *Id.* at ¶ 23. The hearing was recorded. *Id.* at ¶
 24 23.⁴ On the afternoon of November 3, 2025, DHS filed a Form I-830 reflecting that it was holding Mr.

25
 26 ³ This Court's Preliminary Injunction Order indicates that the dangerousness assessment should consider
 whether he is a present danger.

27
 28 ⁴ The immigration court does not transcribe hearings unless an appeal is taken to the Board of Immigration
 Appeals. Mr. Rivera Larios, through counsel, is looking into the best way to obtain and file a transcript or
 recording of proceedings with this Court and will do so as soon as possible.

1 Rivera Larios in its custody at the Mesa Verde ICE Processing Center (Mesa Verde) in Bakersfield,
 2 California. *Id.* at ¶ 24, Ex. E. Counsel for Mr. Rivera Larios has since confirmed that Mr. Rivera Larios is at
 3 Mesa Verde. *Id.* at ¶ 24.

4 **LEGAL STANDARD**

5 A court has “inherent power to enforce its judgments[.]” *California Dep’t of Soc. Servs. v. Leavitt*,
 6 523 F.3d 1025, 1033 (9th Cir. 2008). “[H]abeas courts are empowered to make an assessment concerning
 7 compliance with their mandates.” *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126 (S.D. Cal. 2008). This
 8 includes continuing jurisdiction to enforce an injunction. *United States v. Bryan*, No. CIV. 2:04-2363 WBS,
 9 2010 WL 4312866, at *1 (E.D. Cal. Oct. 25, 2010) (quoting *Hangarter v. Paul Revere Life Ins. Co.*, 289 F.
 10 Supp. 2d 1105, 1107 (N.D. Cal. 2003)).

11 District courts in the Ninth Circuit and across the country regularly grant detained noncitizen habeas
 12 petitioners release under adequate conditions of supervision when the government fails to provide them with
 13 a hearing consistent with prior orders of the court. *See, e.g., Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1119
 14 (S.D. Cal. 2008) (ordering petitioner’s release when “the evidence before the IJ failed, as a matter of law, to
 15 prove flight risk or danger pursuant to the Court’s order”); *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017
 16 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017) (ordering petitioner’s release under appropriate conditions of
 17 supervision when IJ failed to correctly apply clear and convincing standard in violation of court order);
 18 *Ramos v. Sessions*, 293 F. Supp. 3d 1021, 1038 (N.D. Cal. 2018), *vacated and remanded sub nom. Ramos v.*
 19 *Garland*, No. 18-15884, 2024 WL 933654 (9th Cir. Mar. 1, 2024) (granting motion to enforce and ordering
 20 release under appropriate conditions of supervision when government failed to meet clear and convincing
 21 burden).

22 Federal courts have jurisdiction to review an immigration court’s “dangerousness” determination.
 23 *Martinez v. Clark*, 124 F.4th 775, 784 (9th Cir. 2024). This same rationale applies to “flight risk”
 24 determinations. *Id.* The immigration court abuses its discretion when it acts “arbitrarily, irrationally, or
 25 contrary to the law” and when it “fails to provide a reasoned explanation for its actions.” *Tadevosyan v.*
 26 *Holder*, 743 F.3d 1250, 1252–53 (9th Cir. 2014). The agency also abuses its discretion where it fails to
 27 consider probative evidence. *Franco-Rosendo v. Gonzales*, 454 F.3d 965, 966 (9th Cir. 2006). A “standard of

1 review which asks only whether the IJ announced the correct legal standard is insufficient.” *Ramos*, 293 F.
 2 Supp. 3d at 1030; *see Nat'l Res. Def. Council, Inc. v. Pritzker*, 828 F.3d 1125, 1135 (9th Cir. 2016) (“An
 3 agency acts contrary to the law when it gives mere lip service or verbal commendation of a standard but then
 4 fails to abide the standard in its reasoning and decision.”).

5 **ARGUMENT**

6 **I. Respondents Violated the Preliminary Injunction When They Detained Him Despite the Fact
 7 that the IJ Found He Did Not Violate the Terms of His Release**

8 In this Court’s preliminary injunction order, Respondents were enjoined and restrained from re-
 9 detaining Mr. Rivera Larios without a pre-deprivation hearing before an IJ to evaluate whether his re-
 10 detention was warranted. *See* Dkt. 22 at 18. Like this Court, during the pre-deprivation hearing, the IJ found
 11 that Mr. Rivera Larios did not violate the terms of release under the statute and regulation. *See* Shugall Decl.
 12 ¶ 19; Dkt. 22 at 9 (finding that “Rivera Larios has not violated the terms of his supervision, and Respondents
 13 lack legal or factual support to re-detain him Thus, Respondents’ actions contravene Title 8 U.S.C. §
 14 1236(a)(6) and 8 C.F.R. § 241.4(l)”). Thus, ICE had no authority to re-detain him. The IJ did not order or
 15 otherwise opine as to whether ICE could detain Mr. Rivera Larios despite her finding that Mr. Rivera Larios
 16 did not violate the terms of his supervision.

17 Yet, subsequently, after Mr. Rivera Larios left the building, ICE officers detained Mr. Rivera Larios
 18 on a public street in San Francisco. *Id.* at ¶ 22. Thus, Respondents have violated this Court’s injunction by
 19 re-detaining Mr. Rivera Larios without lawful basis, in the absence of an order by a court that he can be re-
 20 detained. Dkt. 22 at 18 (ordering that Respondents refrain from re-detaining Mr. Rivera Larios absent a
 21 hearing “to evaluate whether his re-detention is warranted”).

22 On this basis alone, Respondents have violated the Court’s preliminary injunction.

23 **II. Respondents Violated the Preliminary Injunction Because Mr. Rivera Larios is Neither a
 24 Danger to the Community or a Flight Risk**

25 **A. The Immigration Judge Failed to Consider the Record in Finding Mr. Rivera Larios a
 26 Danger to the Community**

27 In *Matter of Guerra*, the BIA established several factors the IJ should consider when assessing an
 28 individual’s risk of flight and dangerousness, including:

1 (1) whether the immigrant has a fixed address in the United States; (2) the immigrant's length
 2 of residence in the United States; (3) the immigrant's family ties in the United States, (4) the
 3 immigrant's employment history, (5) the immigrant's record of appearance in court, (6) the
 4 immigrant's criminal record, including the extensiveness of criminal activity, the recency of
 5 such activity, and the seriousness of the offenses, (7) the immigrant's history of immigration
 6 violations; (8) any attempts by the immigrant to flee prosecution or otherwise escape from
 7 authorities; and (9) the immigrant's manner of entry to the United States.

8 24 I. & N. Dec. 37, 40 (BIA 2006). The decision was made in the context of discretionary release under 8
 9 U.S.C. § 1226(a) and establishes the floor for factors to consider in immigration custody determinations.

10 More specifically regarding a dangerousness determination, even where an individual has been
 11 convicted of a criminal offense, criminal history "alone will not always be sufficient to justify denial of bond
 12 on the basis of dangerousness." *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (abrogated on other
 13 grounds by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022). The "extensiveness of criminal
 14 activity, the recency of such activity, and the seriousness of the offenses" are also contemplated. *Matter of*
 15 *Guerra*, 24 I. & N. Dec. at 40. Courts must also consider the "remoteness" of the criminal activity as well as
 16 "intervening events that might undermine a finding of dangerousness." *Obregon v. Sessions*, No. 17-cv-
 17 01463, 2017 WL 1407889, *7 (N.D. Cal. April 20, 2017).

18 Federal courts have jurisdiction to review whether the agency properly assessed dangerousness.
 19 *Martinez*, 124 F.4th at 783-85 (asserting jurisdiction over whether the Board of Immigration Appeals erred in
 20 finding dangerousness)). The Court in *Martinez* further noted that where the agency decision raises "red
 21 flags," it need not take the agency "at its word" that it applied the correct standard. *Id* at 785. A "red flag"
 22 indicates that something is "amiss," such as where the agency misstates the record, fails to mention probative
 23 and potentially dispositive evidence, or fails to mention or apply relevant case law in its decision. *Id.* (citing
 24 *Cole v. Holder*, 659 F.3d 762, 771 (9th Cir. 2011)). Where, "there is any indication that the agency did not
 25 consider all the evidence before it, a catchall phrase does not suffice, and the decision cannot stand." See
 26 *Cole*, 659 F.3d at 771-72.

27 This Court ordered that Respondents were enjoined and restrained from re-detaining Mr. Rivera
 28 Larios without notice and a pre-deprivation hearing where an IJ was to evaluate whether his re-detention was
 warranted based on flight risk or danger to the community. Dkt. 22 at 18. In conducting Mr. Rivera Larios's

1 pre-deprivation hearing, the IJ relied exclusively on facts that were known to ICE prior to his release on an
 2 order of supervision in January 2022. In fact, the IJ was clear that her dangerousness finding did not take into
 3 account Mr. Rivera Larios's detention by the Lake County Sheriff's Office in August 2025. Rather, the IJ
 4 recited Mr. Rivera Larios's arrest and charge history, all of which pre-dated his release from ICE custody,
 5 without regard to the fact that most of the charges did not result in convictions. Moreover, the IJ failed to
 6 engage in any forward-looking analysis, instead focusing exclusively on Mr. Rivera Larios's arrest history.

7 Danger must be assessed on a current basis before the agency may order someone's continued
 8 detention. *See Singh*, 638 F.3d at 1206 ("[A] conviction could have occurred years ago, and the [noncitizen]
 9 could well have led an entirely law-abiding life since then. In such cases, denial of bond on the basis of
 10 criminal history alone may not be warranted."); *see also Ngo v. INS*, 192 F.3d 390, 398 (3d Cir. 1999) ("Due
 11 process is not satisfied...by rubberstamp denials based on temporally distant offenses. The process due even
 12 to excludable [noncitizens] requires an opportunity for an evaluation of the individual's current threat to the
 13 community and his risk of flight."). Due process also requires the agency to consider the "remoteness" of any
 14 criminal history, as well as "whether the immigrant's circumstances have changed such that criminal conduct
 15 is now less likely." *Ramos*, 293 F. Supp. 3d at 1029-30. This principle is also enshrined in agency case law.
 16 *See Matter of Guerra*, 24 I. & N. at 40 (requiring IJs to consider the "recency" of any criminal activity).

17 Here, in her dangerousness analysis, the IJ relied solely on Mr. Rivera Larios's prior criminal history,
 18 and failed to consider Mr. Rivera Larios's three years and nine months outside of ICE custody, wherein he
 19 did not violate the order of supervision and did not commit any crimes. The IJ therefore erred in relying
 20 exclusively on arrests and charges from prior to Mr. Rivera Larios's release, without regard for his conduct
 21 subsequent to his release. As such, pursuant to *Martinez*, this Court can review the IJ's dangerousness
 22 finding and find that it is erroneous.

23 **B. The Immigration Judge Failed to Consider the Record in Finding Mr. Rivera Larios to
 be a Flight Risk**

24 Since his release from ICE custody in January of 2022, over three years and nine months ago, Mr.
 25 Rivera Larios has complied with all the terms of his release, including appearances at both Intensive
 26 Supervision and Reporting Program (ISAP) and ICE in San Francisco, California a distance of approximately
 27 120 miles from his home in Lakeport, California. Mr. Rivera Larios has never failed to appear. In fact, his
 28

1 current detention stems from his attendance at what he believed to be a routine, annual appointment with
 2 ICE. Yet, the IJ, relying exclusively on Mr. Rivera Larios' prior immigration history, all of which was
 3 known to ICE when he was released on an order of supervision, found him to be a flight risk. The IJ failed to
 4 consider or mention Mr. Rivera Larios's dutiful compliance with the order of supervision, his appearances at
 5 ICE and ISAP, and his appearance at the pre-deprivation hearing in making such a finding. This is legal error
 6 and an abuse of discretion. *Cole*, 659 F.3d at 771-72. Mr. Rivera Larios's compliance with the terms of his
 7 release is probative and material to the question of flight risk. The IJ's failure to consider this evidence –
 8 material and probative to the issue of flight risk is reversible error.

9 As with the IJ's dangerousness finding, the Court can review the finding on flight risk in considering
 10 whether Respondents violated the preliminary injunction.

11 **III. Mr. Rivera Larios's Pre-Deprivation Hearing Failed to Comport with Due Process**

12 This Court's Preliminary Injunction order was clear that Respondents needed to conduct a pre-
 13 deprivation hearing before a "neutral arbiter." Dkt. 22 at 10, 12, 16. However, the IJ's deference to DHS to
 14 make its own decision as to whether Mr. Rivera Larios could be re-detained, reflects the immigration court's
 15 lack of neutrality in administering this hearing.

16 It is a fundamental component of due process that immigration judges be neutral and impartial
 17 adjudicators. *See Reyes-Melendez v. INS*, 342 F.3d 1001, 1006-09 (9th Cir. 2003) (holding that "[a] neutral
 18 judge is one of the most basic due process protections" and the IJ erred by failing to act as a neutral fact
 19 finder); *Elias v. Gonzales*, 490 F.3d 444, 451 (6th Cir. 2007) ("An immigration judge has a responsibility to
 20 function as a neutral, impartial arbiter and must refrain from taking on the role of advocate for either party");
 21 *Islam v. Gonzales*, 469 F.3d 53, 55 (2d Cir. 2006) (noting the IJ's job is to be neutral and not be an advocate
 22 for either party); *see also* 8 C.F.R. § 1003.10(b) ("In all cases, immigration judges shall seek to resolve the
 23 questions before them in a timely and impartial manner consistent with the Act and regulations.").⁵

24

25 ⁵ The neutrality of the immigration courts, an agency within the Department of Justice, has been called into
 26 question. *See* Mary Holper, *Discretionary Immigration Detention*, 74 Duke L.J. 961, 972 (2025); *See* Karen
 27 Musalo et. al., *With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts*, 65
 28 B.C. L. Rev. 2743, 2755 (2024). Appellate judges "have suggested that the immigration courts are
 fundamentally incompetent, biased, or both." Adam B. Cox, *Deference, Delegation, and Immigration Law*,
 74 U. Chi. L. Rev. 1671, 1682 (2007); *see, e.g.*, *Benslimane v Gonzales*, 430 F3d 828, 830 (7th Cir 2005)

1 In Mr. Rivera Larios's case, Respondents' actions subsequent to this Court's TRO, including the
2 immigration court granting recalendaring over Mr. Rivera Larios's objection, granting DHS' motion to set a
3 pre-deprivation hearing without affording Mr. Rivera Larios time to respond, twice advancing the date of the
4 hearing, and denying Mr. Rivera Larios's request to appear via WebEx, in conjunction with the IJ's ultimate
5 statement of deference to DHS, reflects the IJ's lack of neutrality in this case. As Mr. Rivera Larios was not
6 afforded a pre-deprivation hearing before a neutral arbiter, Respondents violated the preliminary injunction,
7 and this Court should order Mr. Rivera Larios's immediate release. Alternatively, this Court should conduct
8 the pre-deprivation hearing.

9

10 **IV. The Court Should Order Petitioner's Immediate Release from Custody Because He Remains
11 Unlawfully Detained.**

12 Respondents have re-detained Mr. Rivera Larios in contravention of this Court's order. They re-
13 arrested Mr. Rivera Larios despite the IJ's finding that Mr. Rivera Larios has not violated the terms of his
14 supervision by ICE and the IJ's refusal to order Mr. Rivera Larios re-detained. Further, the pre-deprivation
15 hearing failed to comport with well-established legal precedent and due process.

16 As a result, Mr. Rivera Larios continues to be held in violation of the statute, regulation, and the
17 Constitution, and should therefore be released. This Court has already determined that Mr. Rivera Larios has
18 not violated the terms of his supervision, a finding echoed by the IJ at Mr. Rivera Larios's pre-deprivation
19 hearing, and thus, ICE has no statutory or regulatory authority to re-detain Mr. Rivera Larios. Dkt. 22 at 9.
20 The IJ did not otherwise order Mr. Rivera Larios's re-detention under any separate authority. Under both this
21 Court's and the IJ's analysis, ICE is holding Mr. Rivera Larios without legal authority, and thus, Mr. Rivera
22 Larios should be released immediately. In the alternative, Mr. Rivera Larios asks this Court to find that the
23 IJ's separate analysis as to whether Mr. Rivera Larios is a danger to the community or a flight right is legally
24 erroneous and that Respondents' re-detention of Mr. Rivera Larios on this basis also violates this Court's
25 preliminary injunction order.

26

27 ("[T]he adjudication of [immigration] cases at the administrative level has fallen below the minimum
28 standards of legal justice.").

1 Where an IJ has failed to hold a hearing that comported with due process following a district court
 2 order, courts have ordered release. For example, in *Mau*, the court initially ordered the government to
 3 provide the petitioner with a bond hearing. After the IJ committed “an error of law” by improperly “rel[ying]
 4 on two misdemeanor DUI convictions and one felony DUI conviction to deny bond,” the court ordered the
 5 petitioner released. *Mau*, 562 F. Supp. 2d at 1118-19. The court in *Judulang* ordered the petitioner released
 6 after finding that “the government did not meet [the] burden imposed” by the court’s prior order requiring a
 7 hearing. *Judulang*, 562 F. Supp. 2d at 1126-27. *See Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1,
 8 15 (1971) (“Once a right and a violation have been shown, the scope of a district court’s equitable powers to
 9 remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”).

10 In fact, district courts in the Ninth Circuit and across the country regularly grant detained noncitizen
 11 habeas petitioners release under adequate conditions of supervision when the government fails to provide
 12 them with a hearing consistent with orders of the court. *See, e.g., Sales*, No. 16-CV-01745-EDL, 2017 WL
 13 6855827, at *7 (ordering petitioner’s release under appropriate conditions of supervision when IJ failed to
 14 correctly apply clear and convincing standard in violation of court order); *Ramos*, 293 F. Supp. 3d at 1038
 15 (granting motion to enforce and ordering release under appropriate conditions of supervision when
 16 government failed to meet clear and convincing burden); *Y.S.G. v. Andrews*, 2:25-cv-1884-SCR, 2025 WL
 17 2979309, *11 (Oct. 22, 2025) (granting the petitioner’s motion to enforce the preliminary injunction,
 18 returning the petitioner to the position he was in after the preliminary injunction order).

19 Respondents have had multiple opportunities to follow the law and afford Mr. Rivera Larios the due
 20 process to which he is entitled. They have failed to do so at every turn. For that reason, Mr. Rivera Larios
 21 seeks this Court’s intervention again. This Court should not permit Respondents to violate Mr. Rivera
 22 Larios’s statutory and due process rights and, in so doing, violate this Court’s order. The Court should
 23 instead enforce its preliminary injunction order and put an end to Mr. Rivera Larios’s unlawful incarceration
 24 by ordering his immediate release.

25 **CONCLUSION**

26 For all the above reasons, the Court should order Petitioner’s immediate release from custody and
 27 enjoin Respondents from detaining him during the pendency of these proceedings. Alternatively, this Court
 28

1 should hold a pre-deprivation hearing.

2
3 Dated: November 7, 2025

Respectfully submitted,

4
5 /s/Ilyce Shugall
6 Attorney for Petitioner