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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

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO MOTION TO ENFORCE

Date: TBD
Time: TBD
Before: Honorable Judge Araceli Martinez Olguin

Immigration Habeas Case

INTRODUCTION

Petitioner, Jorge Rivera Larios (Mr. Rivera Larios) files the instant reply to Respondents' opposition to his motion to enforce. Respondents argue that they fully complied with this Court's preliminary injunction because Respondents provided notice and a hearing wherein the immigration judge (IJ) found Mr. Rivera Larios to be a flight risk and danger. Dkt. 30 at 1. Respondents also allege that the government provided him the process this Court ordered before detaining him. *Id.* Respondents are incorrect. Respondents re-detained Petitioner without an order from any adjudicator authorizing his detention. Dkt. 27 at ¶ 20; *see also* Dkt. 30 at 3. Moreover, like this Court, the IJ who presided over the pre-deprivation hearing determined that Mr. Rivera Larios did not violate his order of supervision. Nevertheless, the IJ found Mr. Rivera Larios to be a flight risk and danger to the community, a decision which is erroneous. As Respondents failed to comply with this Court's preliminary injunction, the Court should grant Petitioner's motion to enforce, and order Petitioner's immediate release.[1]

ARGUMENT

I. THE COURT SHOULD FIND THAT RESPONDENTS VIOLATED THE PRELIMINARY INJUNCTION ORDER.

This Court's preliminary injunction was clear that Respondents violated the statute at 8 U.S.C. § 1231 and the regulation at 8 C.F.R. § 241.4(l) in re-detaining Mr. Rivera Larios, as Mr. Rivera Larios did not violate the terms of his release. Dkt. 22 at 9. Moreover, the Court's preliminary injunction ordered that Respondents are "ENJOINED AND RESTRAINED from re-detaining Rivera Larios without notice and a pre-deprivation hearing before an Immigration Judge to evaluate *whether his re-detention is warranted* based on flight risk or danger to the community." Dkt. 22 at 18 (emphasis added). While Petitioner had a hearing before IJ, the IJ did not make a finding that Mr. Rivera Larios's re-detention was warranted. Dkt. 27 ¶ 20. In fact, the

[1] Counsel for Respondents suggests that undersigned counsel refused to engage in a discussion with him about the basis for the motion to enforce the preliminary injunction. Dkt. 30 at 4, n.3. However, counsel chose to provide the Court only a portion of the discussion. Undersigned counsel provided counsel for Respondents the reasons on which the motion to enforce was based via email and offered to speak by telephone to clear up any confusion.

IJ issued no order at all. *Id.*[2] Rather than issuing an order, the IJ deferred to the Department of Homeland Security (DHS) as to whether Mr. Rivera Larios should be detained. *Id.* The "neutral adjudicator" deferring to the prosecutor as to whether the prosecutor should detain Mr. Rivera Larios not only fails to "comply with the injunction's spirit" (Dkt. 30 at 4), it violates the plain language of the preliminary injunction.

A. A Finding that Mr. Rivera Larios Did Not Violate His Order of Supervision Is Central to The Custody Determination Question, Where Flight Risk and Danger Were Considered at the Time of Release

Respondents suggest this Court's finding as well as the IJ's finding that Mr. Rivera Larios did not violate his order of supervision are irrelevant to an assessment of whether the government's re-detention of him is justified. Dkt. 30 at 4. Respondents cite to 8 U.S.C. § 1231(a)(6) to justify the current re-detention of Mr. Rivera Larios, despite the fact that he was already released under that very provision, and this Court, as well as the immigration judge concurred that he did not violate the terms of his release. *See* 8 C.F.R. § 241.4(l); Dkt. 22 at 9; Dkt. 27 ¶ 19. To support their assertion, Respondents allege that Mr. Rivera Larios was released exclusively because of COVID-19 health conditions and that flight risk and dangerousness were not factors in custody determinations under *Fraihat*. Therefore, according to Respondents, the IJ's assessment at the pre-deprivation hearing properly relied on Mr. Rivera Larios's criminal and immigration history that pre-dated his release because such factor were not considered when he was released in January 2022. Dkt. 30 at 5. Respondents' contention is incorrect and ignores the finding of the *Fraihat* court.

In *Fraihat*, the district court concluded that one of the most serious deficiencies in U.S. Immigration and Customs Enforcement's (ICE) COVID-19 policies was "lack of any requirement, to the Court's knowledge, that Field Offices make *individualized custody determinations* for at risk detainees," *Fraihat v. U.S. Immigr. & Customs Enf't*, 445 F. Supp. 3d

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[2] Respondents assert that an immigration court need not issue a written order. Dkt. 30 at 3, n. 2. However, pursuant to 8 C.F.R. § 1003.37(a), "A decision of the immigration judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the immigration judge in the presence of the parties and a memorandum summarizing the oral decision shall be served on the parties. If the decision is in writing, it shall be served on the parties by personal service, mail, or electronic notification."

709, 750 (C.D. Cal. 2020), *order clarified*, No. EDCV 19-1546 JGB (SHKX), 2020 WL 6541994 (C.D. Cal. Oct. 7, 2020), *rev'd and remanded,* 16 F.4th 613 (9th Cir. 2021) (emphasis added). Moreover, the preliminary injunction in *Fraihat* ordered, in part, "[d]efendants shall make timely *custody determinations* for detainees with Risk Factors, per the latest Docket Review Guidance." *Id.* at 751 (emphasis added). The preliminary injunction also ordered, "[d]efendants shall promptly issue a performance standard or a supplement to their Pandemic Response Requirements…defining the minimum acceptable detention conditions for detainees with the Risk Factors, regardless of the statutory authority for their detention, to reduce their risk of COVID-19 infection *pending individualized determinations or the end of the pandemic*." *Id.* (emphasis added). These portions of the *Fraihat* preliminary injunction are clear that the court did not require release for all individuals with risk factors but rather, required a custody determination for at risk individuals. In ordering ICE to define acceptable detention conditions for those with risk factors, the district court contemplated the denial of release for individuals who possessed risk factors. Thus, in deciding to release Mr. Rivera Larios, ICE was required to consider his COVID-19 risk factors as *a* factor, but not the sole factor. Moreover, 8 U.S.C. § 1231(a)(6) is the statutory provision under which Mr. Rivera Larios was released, and therefore, danger and flight risk were necessarily considered at the time of release. Respondents' suggestion to the contrary has no support in law or in the record. *See Singh v. Andrews*, No. 1:25-cv-801, 2025 WL 1918679, at *2 n. 1, (E.D. Cal. July 11, 2025) ("DHS, at least implicitly, made a finding that petitioner was not a flight risk when it released him."); *see also Saravia v. Sessions*, 280 F.Supp.3d 1168, 1176 (N.D. Cal. Nov. 20, 2017).

Because ICE was still required to consider Mr. Rivera Larios's flight risk and danger at the time of his release in January 2022, the IJ's reassessment of facts that pre-dated his release, to the exclusion of the facts subsequent to his release, cannot sustain a legally sound finding that Mr. Rivera Larios is a danger to the community or a flight risk, and thus the finding failed to comply with this Court's order to consider his current flight risk and danger, particularly where, as here, the IJ agreed with this Court that Mr. Rivera Larios did not violate the order of supervision.

B. The IJ's Finding that Mr. Rivera Larios is a Flight Risk and Danger Was Not Reasonable

Contrary to Respondents' argument, the IJ's finding that Mr. Rivera Larios is a flight risk and danger is not supported by the record. Respondents assert that immigration judges are presumed to have reviewed all the evidence before them and that the IJ is not required "to write an exegesis on every contention…" Dkt. 30 at 5 *citing Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010). However, that presumption is rebutted where there is any indication that the agency did not consider all the evidence before it, such as when the agency misstates the record or fails to mention highly probative or potentially dispositive evidence. *Cole v. Holder*, 659 F.3d 762, 771-72 (9th Cir. 2011).

Here, the IJ found Mr. Rivera Larios to be a danger to the community based *exclusively* on the criminal history that predated his release from ICE custody, including arrests and charges that did not result in convictions. Dkt. 27 ¶ 17. Likewise, she found Mr. Rivera Larios to be a flight risk based exclusively on his immigration history that predated his release. *Id.* at ¶ 18. Respondents suggest that the IJ must have considered the other factors because counsel for Mr. Rivera Larios was provided the opportunity to make arguments. Dkt. 30 at 5. However, in making findings regarding danger and flight risk, the IJ failed to cite to Mr. Rivera Larios's three years and nine months of freedom, wherein he appeared at all required check-ins pursuant to his order of supervision, appeared at the pre-deprivation hearing in person, continued to pursue immigration relief, and maintained a law-abiding record, which the immigration courts are required to consider in assessing dangerousness and flight risk. *Matter of Guerra,* 24 I. & N. Dec. 37, 40 (BIA 2006); *see also Singh v. Holder*, 638 F.3d 1196, 1205 (9th Cir. 2011) (abrogated on other grounds by *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022); Dkt. 27 ¶¶ 17-18. Respondents' contention that the IJ must have considered all the evidence and arguments is without merit, as the question before the immigration court was Mr. Rivera Larios's current dangerousness and flight risk. Mr. Rivera Larios's nearly four years of law-abiding freedom constitutes highly relevant evidence in the issue that was before the IJ. Her failure to consider relevant and dispositive evidence, including that Mr. Rivera Larios committed no immigration violations or crimes, reflects her failure to properly consider the full record before her. *See Y.S.G. v. Andrews,* No. 2:25-cv-1884, 2025 WL 2979309, *10 (E.D. Cal. Oct. 22, 2025)

(finding the IJ erred in failing to consider the petitioner's post release evidence of rehabilitation); *Cole*, 659 F.3d at 771-72.

Furthermore, like the IJ, Respondents in their opposition highlight Mr. Rivera Larios's arrest history in an attempt to justify the IJ's decision. But as this Court and the IJ both found, an arrest alone does not prove Mr. Rivera Larios committed a crime. Dkt. 22 at 8; Dkt 27 ¶ 19. In addition, Respondents' mischaracterization of Mr. Rivera Larios's forced work for the Sinaloa cartel, under threat of death and resulting in life-threatening physical injuries to him, constituting torture, reflects the lengths at which they will go to justify his detention. *Compare* Dkt. 30 at 6 *to* Dkt 27 ¶ 5 Ex. B (ECF pages 88-91, 97-115). Further, the evidence Respondents point to in their opposition regarding Mr. Rivera Larios's forced work for the cartel was in the record and known to ICE before his release and is the basis for his protection-based claim. *See id.*

Finally, Respondents' argument that the cases Mr. Rivera Larios cited in the motion to enforce do not support his argument because those cases involved less serious criminal and immigration history misses the mark. Dkt. 30 at 6. The comparison to the criminal and immigration history in those cases is not the determinative factor here, where Mr. Rivera Larios was at liberty for three years and nine months without incident, showing that he is neither a danger nor a flight risk.

C. Contrary to Respondents' Argument, the Pre-Deprivation Hearing was not Fundamentally Fair

The IJ's deference to DHS reflects a lack of neutrality for purposes of procedural due process. This Court ordered the immigration judge to determine whether Mr. Rivera Larios's detention was justified. In response to counsel for Mr. Rivera Larios asking for clarity about the IJ's decision as to DHS' authority to detain, instead of issuing a written or oral decision as to whether DHS could re-detain Mr. Rivera Larios, the IJ stated, "that is up to DHS." Dkt. 27 ¶ 20. Such clear deference to the prosecuting agency undermines neutrality. *Elias v. Gonzales*, 490 F.3d 444, 451 (6th Cir. 2007) ("An immigration judge has a responsibility to function as a neutral, impartial arbiter and must refrain from taking on the role of advocate for either party"); *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 for either party); *see also* 8 C.F.R. § 1003.10(b) ("In all cases, immigration judges

shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.").

Respondents' efforts to justify the IJ's actions in light of the unusual procedural posture of the hearing is unpersuasive. This Court issued an order requiring the IJ to issue a decision. The IJ did not and instead, deferred to DHS.

Furthermore, Respondents revive their argument about the agency's discretion to detain pursuant to 8 U.S.C. § 1231(a)(3) and (a)(6) to justify the IJ's deference to DHS. Dkt. 30 at 7. However, this Court already determined that it had jurisdiction over DHS' authority to revoke release under 8 C.F.R. § 241.4(l). Dkt. 22 at 5-6. This Court subsequently issued a preliminary injunction enjoining Respondents from re-detaining Mr. Rivera Larios without an IJ finding that re-detention is warranted. *Id.* at 18. The IJ was bound by this Court's order and was not permitted to defer to DHS as Respondents suggest.

Finally, Respondents suggestion that it is "ironic" that Mr. Rivera Larios moved this Court for a bond hearing before an immigration judge on an emergency basis and then argued that he received a hearing too quickly is inaccurate and misses the point.[3] Mr. Rivera Larios's reference to the immigration court's actions in his case is not exclusive to the calendaring of the pre-deprivation hearing, but rather, highlights the rapid pace at which the immigration court moved forward on his case, undermining the immigration court's neutrality. Dkt. 24 at 11.

II. Exhaustion is Not Required and is Impossible Due to the IJ's Failure to Issue an Order

Respondents contend that the Court should require Mr. Rivera Larios exhaust his administrative remedies and appeal to the Board of Immigration Appeals (BIA). Dkt. 30 at 7-8. Courts may require exhaustion as a prudential matter when "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3)

[3] Mr. Rivera Larios never requested a hearing before an "immigration judge" as Respondents allege. In his petition, Mr. Rivera Larios requested the Court to enjoin Respondents from re-detaining him unless his re-detention was ordered at a custody hearing "before a neutral arbiter." Dkt. 1 at 18. Similarly, Mr. Rivera Larios referenced a hearing before "a neutral decisionmaker" in the balance of equities section in his memorandum in support of the motion for a temporary restraining order. Dkt. 5-3 at 20.

administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review." *Noriega-Lopez v. Ashcroft,* 335 F.3d 874, 881 (9th Cir. 2003) (citation omitted). The exhaustion requirement may be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

First, Respondents offer no authority for the argument that Petitioner must exhaust administrative remedies before the Court can enforce its own judgement. In contrast, numerous courts have determined that administrative exhaustion is *not* required to enforce a prior order. *See Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1114 (S.D. Cal. 2008) ("This request for relief relates directly to this Court's prior order and, as such, there are no administrative remedies to exhaust."); *Judulang v. Chertoff*, 562 F. Supp. 2d 1119, 1126 (S.D. Cal. 2008); *Sales v. Johnson*, No. 16-CV-01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017).

Second, Respondents rely on *Leonardo v. Crawford*, 646 F.3d 1157 (9th Cir. 2011) to support their argument that Mr. Rivera Larios needed to exhaust administrative remedies. Dkt. 30 at 8-9. Respondents assert that *Leonardo* is "on all fours with this case." *Id.* at 8. They are wrong. Unlike in Mr. Rivera Larios's case, in *Leonardo*, the IJ issued a conclusive decision that was appealable to the BIA. *Leonardo*, 646 F.3d at 1159 ("the IJ denied bond…"). As discussed *infra*, here, the IJ did not issue a conclusive order but rather, made a finding as to flight risk and danger and then deferred to DHS to decide whether or not to detain Mr. Rivera Larios. Dkt. 27 ¶ 20. The IJ issued no final ruling or order that is appealable to the BIA. *Id.*

Furthermore, *Leonardo* affirms that this Court has jurisdiction to review whether Respondents complied with its preliminary injunction and that exhaustion is not required prior to doing so. *Leonardo*, 646 F.3d at 1161 ("Leonardo is correct that the district court had authority to review compliance with its earlier order conditionally granting habeas relief.") *citing Gentry v. Deuth,* 456 F.3d 687, 692 (6th Cir.2006) (holding that a federal district court retains jurisdiction to determine whether a party has complied with the terms of a conditional order in a habeas case); *Phifer v. Warden, U.S. Penitentiary,* 53 F.3d 859, 865 (7th Cir.1995) ("When a habeas

petitioner alleges noncompliance with a conditional order, jurisdiction exists for the purpose of determining whether the [government] acted in accordance with the court's mandate.").

Third, and most importantly, the IJ did not issue an order and therefore, there are no remedies to exhaust as there is no decision to appeal to the BIA. A court may waive the prudential exhaustion requirement, even if the case weighs in favor of prudential exhaustion, if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); *Noriega-Lopez,* 335 F.3d at 881. Here, administrative remedies are inadequate, and exhaustion would be futile, as the IJ did not issue a proper decision or order that can be appealed pursuant to the regulations. Thus, there is no decision to appeal to the BIA.

Respondents allege that the IJ was not required to issue an order and that Mr. Rivera Larios should have requested an order from the IJ. Dkt. 30 at 3, n. 2. However, Mr. Rivera Larios, through counsel, asked the IJ to clarify whether she was ordering that DHS had the authority to re-detain him. Dkt. 27 ¶ 20. The IJ refused to clarify or render an order, instead leaving the decision up to DHS, reflecting that she did not make a decision or issue an order *Id*; *see also* 8 C.F.R. § 1003.37(a) ("A decision of the immigration judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the immigration judge in the presence of the parties and *a memorandum summarizing the oral decision shall be served on the parties*. If the decision is in writing, it shall be served on the parties by personal service, mail, or electronic notification." (emphasis added)).

The IJ's failure to render a clear decision or issue an order renders it impossible to appeal the decision to the BIA. The regulation at 8 C.F.R. § 1003.10(c) states, "[d]ecisions of immigration judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction." Appellate jurisdiction over custody decisions at the BIA is defined in 8 C.F.R. § 1003.1(b)(7), "[d]eterminations relating to bond, parole, or detention of an alien as provided in 8 CFR part 1236, Subpart A." Here, the IJ made no "determination" as to detention. Instead, she deferred to DHS.

Because the IJ did not render a conclusive decision or issue an order, her findings cannot be appealed to the BIA. Accordingly, there are no administrative remedies to exhaust.

III. PETITIONER'S RELEASE IS THE PROPER REMEDY.

The only remedy for Respondents' violation of the Court's order is Mr. Rivera Larios's immediate release from custody. Mr. Rivera Larios was previously released by order of this Court, which further ordered that he could not be re-detained by the government absent notice and process sufficient to safeguard his significant liberty interest. Dkt. 7 at 6; Dkt. 22 at 18. Mr. Rivera Larios's present detention is in violation of the preliminary injunction for all the reasons set forth in Mr. Rivera Larios's motion to enforce and in the instant reply. Petitioner's release would place him in the same place as if the government had not violated the Court's order and Petitioner's constitutional rights. *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963) ("The status quo is the last uncontested status which preceded the pending controversy.").

Respondents argue that the proper remedy, should the Court find that the pre-deprivation hearing was deficient, is a new bond hearing. Dkt. 30 at 9. However, Respondents had an opportunity to comply with the Court's order, and they failed to do so. They do not offer any reason for why they should get a second chance to comply, particularly where they have shown they will do as they choose. This Court has the authority to review the agency's actions and render its own decision regarding detention. *Martinez v. Clark*, 124 F.4th 775, 785-86 (9th Cir. 2024); *see also Doe v. Becerra*, 732 F.Supp. 3d 1071, 1090 (N.D. Cal. May 2, 2024); *Mau*, 562 F. Supp. 2d at 1118-19; *Judulang*, 562 F. Supp. 2d at 1126-27. Therefore, this Court should either order Mr. Rivera Larios's immediate release or, should any questions remain, conduct its own evidentiary hearing.

CONCLUSION

For the foregoing reasons and those stated in Mr. Rivera Larios's motion to enforce, the Court should grant his motion to enforce, and order Petitioner's immediate release from custody during the pendency of his habeas petition.

Dated: November 12, 2025

/s/ Ilyce Shugall
Ilyce Shugall

Attorney for Petitioner