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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANA LESIC & NIKICA LESIC Petitioners v. CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; JOSEPH FREDEN, Acting Field Office Director, U.S. Immigration & Customs Enforcement (ICE); TODD LYONS, Acting Director, U.S. ICE; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, Attorney General of the United States Respondents.	Case No. 25-cv-02746-LL-BJW Agency Nos. A[redacted] & A[redacted] **PETITIONERS' TRAVERSE IN SUPPORT OF THEIR PETITION FOR WRIT OF HABEAS CORPUS** JUDGE: Hon. Linda Lopez

ARGUMENT

In their Return, the Respondents assert that they have sweeping and unfettered discretion to revoke bond and re-detain Petitioner Ana Lesic and to revoke Petitioner Nikica Lesic's voluntary departure bond and detain him for the first time. In doing so, they cite inapplicable law and regulations that apply only to those with final orders of removal, ignore the duty under the applicable law and regulations that they have to make individual determinations regarding materially changed circumstances, and assert that an Executive Order now overrides that long-standing requirement. They also maintain that the Lesics have no liberty interest in their freedom from the Respondents' arbitrary and capricious violation of the law. The Petitioners disagree.

A. Neither 8 CFR § 241.4 nor 8 CFR § 241.13 Apply to the Petitioners

When Petitioners filed their petition for writ of habeas corpus, they assumed that they had been detained based on the Respondents' failure to follow the correct procedures under 8 U.S.C. § 1226(a), which governs custody during the pendency of removal proceedings. The Respondents' Return and the documents in support of it make clear that Respondents' violation of the Petitioner's due process rights is orders of magnitude worse. The two regulations cited by the Respondents as giving them the authority to detain the Petitioners, 8 CFR § 241.4 and 8 CFR §

241.13, only apply to noncitizens with final orders of removal. Every section of 8 CFR § 241, Subpart A (§§ 241.1 to 241.15), is written to instruct the government on how to remove those noncitizens with final removal orders. As relevant to this case, a final order of removal occurs when the BIA dismisses an appeal; or upon overstay of a voluntary departure period or failure to post a voluntary departure bond within 5 days of the grant of voluntary departure. 8 CFR § 1241.1.

Neither of the Petitioners has a final removal order. Mrs. Lesic's case is on appeal with the BIA and awaits a decision. Mr. Lesic was granted voluntary departure by the immigration judge, timely paid his bond, and his period of voluntary departure is stayed while the case is pending with the BIA. Mr. Lesic was never even ordered removed.

8 CFR § 241.4, cited by the government as giving it authority to detain the Petitioners, is entitled: "Continued detention of inadmissible, criminal, and other aliens *beyond the removal period*."(emphasis added). The INA defines the "removal period" as beginning on the date that the removal order becomes administratively final (i.e., a "final order of removal") and ends after 90 days. 8 U.S.C. § 1231(a)(1).

Petitioner Ana Lesic's removal order has not yet entered her "removal period" because the BIA has not yet entered a decision.

Petitioner Nikica Lesic was never ordered removed in the first place. He was granted a period of voluntary departure that is stayed while the case is under appeal. The only way that Mr. Lesic would even enter a "removal period" is if he failed to depart within the allotted time set for his voluntary departure. Only then would the voluntary departure order convert into a removal order. Unless and until such time arrives, Mr. Lesic has no removal order. Because neither Petitioner is in or beyond their 90-day removal period, 8 CFR § 241.4 does not apply to them.

8 CFR § 241.13, the other section cited by the government as giving it authority to detain the Petitioners, only concerns those noncitizens "who are subject to a final order of removal and are detained under the custody review procedures provided at § 241.4 after the expiration of the [90-day] removal period." It is not applicable to the Petitioners either.

Thus, the Respondents' "Warrant of Removal/Deportation" for Ana Lesic is both factually and legally incorrect when it states that she is "subject to removal/deportation from the United States *based on a final order by an immigration judge."* Respondents' Exhibit G, at 2 (Document 6-8) (emphasis added). Her case is on appeal; the removal order is not yet final. Likewise, Mrs. Lesic's "Notice of Revocation of Release" (Respondents' Exhibit F, at 1 (Document 6-7)) is both factually and legally incorrect. It states that Mrs. Lesic's "order of supervision" has been revoked and that she is to remain in ICE custody

"pursuant to 8 CFR § 214.4 / 8 CFR§ 241.13." An "order of supervision" can only be given to someone who has a final order of removal and whose 90-day removal period has passed without her removal. 8 U.S.C. § 1231(a)(3)(If the non-citizen is not removed during the removal period, she "shall be subject to [an order of] supervision under regulations prescribed by the Attorney General."). Mrs. Lesic has never been under an order of supervision.

The government cannot apply either 8 CFR § 241.4 or 8 CFR § 241.13 to the Petitioners unless and until the Petitioners have final orders of removal and then have reached the end of their 90-day removal period without having been removed. This has not yet occurred (and in the case of Mr. Lesic, will never occur unless and until he fails to comply with his period of voluntary departure). Exhibit B: Voluntary Departure Documents of Nikica Lesic.

The government is violating the law because the regulations it cites to justify its detention of the Petitioners do not apply to them. This violates the Petitioners' substantive and procedural due process rights.

B. The Respondent's Discretion to Revoke a Bond and Re-Detain a Noncitizen Pursuant to 8 U.S.C. § 1226(b) Must Be Based on Material and Individual Changed Circumstances, Not a Blanket Policy

Based on the Respondents' exhibits, Mr. and Mrs. Lesic were not detained/re-detained under 8 U.S.C. § 1226(b) at all, but rather under the

inapplicable provisions of 8 CFR § 241.4 and/or 8 CFR § 241.13. The Return, however, also argues for the Respondents' right to revoke bond and release pursuant to 8 U.S.C. § 1226(b), making it unclear which section of law is being asserted to give them the right to revoke the petitioners' bonds and detain them. Even assuming, however, that the Respondents' acted under 8 U.S.C. § 1226(a), the correct provision of law, they abused their discretion.

"Where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change in circumstance[.]" Matter of Sugay, 17 I&N Dec. 637, 640 (BIA 1981. The change in circumstance must be material and individual. Tran v. Noem, No. 25cv2334-JES-MSB, at *6-7 (S.D. Cal. Sep. 29, 2025)(citing Ying Fong v. Ashcroft, 317 F.Supp. 2d 398, 403 (S.D.N.Y. 2004). "In practice, the DHS re-arrests individuals only after a 'material' change in circumstances. To satisfy due process, those changed circumstances must represent individualized legal justification for detention." Sanchez v. Larose, No. 25cv2396-JES-MMP (S.D. Cal. Sep. 26, 2025)(internal citations omitted). "This standard prevent[s] arbitrary revocations and ensure[s] that detention decisions rest[] on individualized assessments of changed circumstances rather than categorical assumptions. Gonzalez v. Bostock, No. 2:25cv01404-JNW-GJL at *13 (W.D. Wash. Oct. 7, 2025)(discussing Vargas v. Jennings, No. 20-cv-5785, 2020 WL 5074312, at *2 (N.D. Cal. Aug. 23, 2020)

(quoting Ortega v. Bonnar, 415 F.Supp.3d 963, 968 (N.D. Cal. 2019) (quoting Matter of Sugay, 17 I.&N. Dec. 637, 640 (B.I.A. 1981))); Saravia v. Sessions, 280 F.Supp.3d 1168, 1197 (N.D. Cal. 2017). Thus, the change in circumstances may not be based, as in the Petitioners' cases, on a sweeping new policy that mandates that "ICE ERO no longer has priority categories and each individual is deemed an immigration priority[.]" Return, at 8-9. That is the very antithesis of an individualized determination.

The Respondents did not revoke Mrs. Lesic's custody bond and re-detain her based on any material and individualized change in circumstances, but only on a blanket policy mandated by unidentified officials in Washington. This is a violation of her right to due process.

Mr. Lesic has been detained for the first time and was not ordered removed by the immigration judge. His bond was set by the IJ to ensure his voluntary departure, not to secure his release from detention. His 60-day period of voluntary departure has been stayed during the pendency of the BIA appeal. He has complied with the requirements and has not overstayed his voluntary departure period. The Respondents have no right or discretion to detain a noncitizen who has been granted voluntary departure by an immigration judge, timely posts his bond, and has not yet failed to depart within the allotted time period. See, 8 CFR § 1240.26(c). ICE has no right to detain Mr. Lesic at all, let alone to detain him

under a blanket policy that every noncitizen is an immigration priority—apparently, regardless of the fact that they have done nothing wrong. This is a violation of his right to due process.

C. The Petitioners Have Not Asserted Claims for Injunctive or Other Relief Under the Administrative Procedure Act (APA)

The Respondents argue that the Petitioners have raised claims for injunctive relief under the APA and as such, that part of the petition must be dismissed and refiled with a higher fee. Return, at 6-7. Again, the Respondents have the facts wrong. The Petitioners have not made any claims for injunctive relief or any other civil remedy under the APA. The Petitioners seek their release from unlawful detention by the Respondents. They assert that the Respondents have violated their Fifth Amendment right to liberty by detaining them in violation of the law. The laws violated by the Respondents are the INA and the APA. These laws form the framework for arguing the unlawfulness of their detention and continued deprivation of liberty in a petition for writ of habeas corpus. Their plea to the court is simply to be released from unlawful detention. That is the whole purpose of a petition for writ of habeas corpus.

D. The Respondents' Actions Have Unlawfully Deprived the Petitioners of their Liberty Without Due Process of Law

"Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil detention, including that of a non-citizen, violates due process in the absence of a "special justification" sufficient to outweigh one's "'constitutionally protected interest in avoiding physical restraint.'" *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)) (internal quotation marks omitted).

This interest in freedom from detention is particularly keen for individuals whose release is subject to termination. In Morrissey v. Brewer, the Supreme Court held that an individual who is re-detained after being released- has a "valuable" liberty interest notwithstanding the "indeterminate" nature of his freedom. 408 U.S. 471, 482 (1972). Subject to the conditions of his release, a noncitizen released on bond "can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." Id. The noncitizen's liberty therefore "includes many of the core values of unqualified liberty and its termination inflicts a 'grievous loss' on the noncitizen and often others." Id. See, Carballo v. Andrews, No. 1:25-CV-00978- KES-EPG (HC), 2025 WL 2381464, at *4 (E.D. Cal. Aug. 15, 2025)(There is "a meaningful distinction between a challenge to an initial period of detention . . . and a challenge to *re-*

detention after a court has previously granted release on bond pending immigration proceedings.")

The Respondents' final argument is that the Petitioners have "no procedural due process claim to a continued order of release" because their authority to revoke release is "discretionary." Return, at 12-13. As discussed above, the authority the Respondents claim under 8 CFR § 241.4 and/or 8 CFR § 241.13 has been unlawfully applied to the petitioners because neither of them has a final order of removal. See, Section A, supra. There is no discretion to detain anyone under the wrong provision of law.

Moreover, during the course of removal proceedings (including during appeal to the BIA) any revocation of an order of release on bond set by an immigration judge, though discretionary, may only be made based upon a material and individualized change in circumstances. See, Section B, supra. The Respondents abused their discretion by failing to make any individualized findings of materially changed circumstances. By their own admission, the Respondents applied a blanket policy mandated by Washington that expressly replaces their discretion with a mandate to detain all noncitizens as "immigration priorities." Return, at 8-9, Exhibit C ¶ 15 (Document 6-4)(Declaration of Denise Baroga). The respondents did not exercise discretion at all.

Finally, the examples of discretionary relief given by the Respondents, such as the granting of asylum and cancellation of removal (Return, at 12-13), are inapposite to the relief sought by the Petitioners, which is simply for the Respondents to abide by the law and release them.

The Respondents' arrest and continued detention of Mr. and Mrs. Lesic has unlawfully deprived the petitioners of their liberty without due process of law.

CONCLUSION

For the foregoing reasons, the Court should find that the continued detention of Mr. and Mrs. Lesic is unlawful and order their immediate release from Respondents' custody and reinstatement of their bonds as previously set by the immigration judge.

Respectfully submitted on this 26th day of October 2025

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on October 26, 2025 through the ECF system and that it will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: October 26, 2025

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