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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANA LESIC, *et al.*,

Petitioners,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center, *et al.*,

Respondents.

Case No.: 25-cv-2746-LL-BJW

RESPONSE IN OPPOSITION TO PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER

JUDGE: Hon. Linda Lopez

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INTRODUCTION

Respondents Christopher J. LaRose, Senior Warden of the Otay Mesa Detention Center; Joseph Freden, Acting Field Office Director of U.S. Immigration and Customs Enforcement; Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement; Kristi Noem, Secretary of U.S. Department of Homeland Security; and Pamela Bondi, Attorney General of the United States, hereby file a response in opposition to Petitioners' Motion for Temporary Retraining Order ("Motion") in accordance with civil chambers rule regarding ex parte motions for temporary restraining orders. Petitioner filed a Petition for a Writ of Habeas Corpus ("Petition") filed on October 15, 2025, alleging their release was arbitrarily revoked and their re-detention in civil immigration custody is a violation of their Fifth Amendment Due Process rights. *See* Pet. ¶¶ 61–65, ECF No. 1. They now seek the injunctive relief of immediate release and reinstatement of their respective bonds because of alleged Fifth Amendment violations. Mot. at 11, ECF No. 8.

STANDARD OF REVIEW

The standard for issuing a temporary restraining order is identical to the preliminary injunction standard. *See Stuhlbarg Intern. Sales Co., Inc. v. John D Brushyand Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). "A preliminary injunction is an 'extraordinary and drastic remedy'" that "is never awarded as a matter of right." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (citation omitted). For this Court to grant Petitioner the extraordinary remedy of injunctive relief, he must establish: "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor and that an injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

ARGUMENT

A. Petitioners are unlikely to succeed on the merits of their claims.

In a motion for preliminary injunction, "[l]ikelihood of success on the merits is 'the most important factor; if a movant fails to meet this 'threshold inquiry,' we need not consider the other factors." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018); *see also Assurance Wireless USA, L.P. v. Reynolds*, 100 F.4th 1024, 1031 (9th Cir. 2024) (ending the analysis after concluding movants failed to show a likelihood of success on the merits or serious questions on the merits). This holds especially true "where a [movant] seeks a preliminary injunction because of an alleged constitutional violation." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

Here, Petitioners fail to meet this threshold inquiry because U.S. Immigration and Customs Enforcement's ("ICE") decision to revoke Petitioners' release on bond was lawful.

1. ICE re-detained Petitioners due to a changed circumstance.

To begin, under § 1226(b), ICE's decision to revoke Petitioners' respective bonds is lawful. The plain language of § 1226(b) provides ICE broad authority to revoke an alien's bond "at any time," even if that individual has previously been released. *See* 8 U.S.C. § 1226(b). Likewise, the implementing regulations provide that, when a noncitizen has been released, "such release may be revoked at any time in the discretion of the district director [and certain other officials], in which event the alien may be taken into physical custody and detained." 8 C.F.R. § 236.1(c)(9), 1236.1(c)(9).

The Board of Immigration Appeals ("BIA") has placed the following limitation on this authority: "where a previous bond determination has been made by an immigration judge, no change should be made by [ICE] absent a change of circumstance." *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981). In practice, ICE re-detains individuals only after a "material" change in circumstances. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H.*,

905 F.3d 1137. As discussed in Respondents' Return in Opposition to Petition for Writ of Habeas Corpus ("Return"), there has been a change in circumstance by way of Executive Order 14165. *See* Return at 8–9. Pursuant to Executive Order 14165, ICE Enforcement and Removal Operations ("ERO") is authorized to apprehend and detain Petitioners until their successful removal from the United States because "the policy of the United States [is] to take all appropriate action to secure the borders of our Nation through…[r]emoving promptly all aliens who enter or remain in violation of Federal law." Exec. Order No. 14165 Sec. 2(d), 90 Fed. Reg. 8467 (Jan. 20, 2025).

Further, ICE ERO may "take all appropriate actions to detain. . .aliens apprehended for violations of immigration law until their successful removal[,]" notwithstanding a final order of removal. *Id.* Sec. 5. To execute this objective, ICE has been directed to "issue new policy guidance or propose regulations." *Id.* Because of the issuance of new policy guidance, Petitioners' release was revoked, and each was re-detained as "an immigration priority to secure borders under Executive Order 14165." *See* Decl. Denise Barroga ¶¶ 14–15, ECF No. 6-3. Therefore, because there has been a change in circumstances in the form of a policy shift in how ICE exercises its discretion in supervising aliens since Petitioners' respective bonds in 2018 and 2022, ICE has lawfully revoked release and re-detained Petitioners. Exec. Order No. 14165 Sec. 5, 90 Fed. Reg. 8467 (Jan. 20, 2025).

Petitioners contend that this change in circumstance is not material or individualized. Petitioners point to *Tran v. Noem*, No. 25-cv-2334-JES-MSB, 2025 WL 2770623 (S.D. Cal. Sept. 29, 2025), and *Sanchez v. LaRose*, No. 25-cv-2396-JES-MMD, 2025 WL 2770626 (S.D. Cal. Sept. 25, 2025), in support of this contention. Neither case presents facts analogous to the matter presently before the Court. *First*, in *Tran v. Noem*, the respondents did not offer a materially changed circumstance justifying ICE's decision to revoke bond. *See* 2025 WL 2770623, at *3. Here, the government contends that there is a materially changed circumstance in the

implementation of new policy guidance under Executive Order 14165. Again, in *Sanchez v. LaRose*, the respondents did not offer a materially changed circumstance in support of ICE's decision. *See* 2025 WL 2770626, at *3.

Regardless, courts have recently found that ICE is not required to establish the existence of a materially changed circumstance before it can exercise its authority to re-detain under 8 U.S.C. § 1226(b). *See Salvador F.-G. v. Noem*, No. 25-cv-0243-CVE-MTS, 2025 WL 1669356 (N.D. Okla. June 12, 2025) ("[T]he Court finds nothing in the plain language of subsection (b) imposing a requirement of changed or materially changed circumstances."). Nothing in the plain language of § 1226(b), nor in its implementing regulations, imposes a requirement of materially changed circumstances. *Id.* at *9 ("Nothing in the statute or the regulation even hints at a change in circumstances requirement."); *see also* 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9).

Further, the court found that, even though the BIA in *Sugay* imposed a materially changed circumstance requirement, courts have no authority to read that requirement into the clear and unambiguous language of the statute. *Id.* at *9 (citing *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 582 (2022) (explaining that federal agencies "are free to grant additional procedural rights in the exercise of their discretion" whereas reviewing courts "are generally not free to impose them if the agencies have not chosen to grant them")). Thus, even though ICE offered a material change here, ICE also is not required to demonstrate a change in circumstance before revoking bond under § 1226(b).

2. <u>Petitioners have not exhausted administrative remedies.</u>

Even if the Court were to find that § 1226(b) contains a materially changed circumstance requirement, whether Executive Order 14165 is a materially changed circumstance is not a determination to be made by this Court. Should Petitioners disagree with whether materially changed circumstances justify their re-detention, this

Court is not the correct venue to raise such disagreement. *See Saravia*, 280 F. Supp. 3d at 1176–77.

When a habeas petitioner "does not exhaust administrative remedies, a district court ordinarily should either dismiss the petition without prejudice or stay the proceedings until the petitioner has exhausted remedies, unless exhaustion is excused." *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011). The Ninth Circuit "requires, as a prudential matter, that habeas petitioners exhaust available judicial and administrative remedies before seeking [habeas relief]. *Ortega-Rangel v. Sessions*, 313 F.Supp.3d 993, 1003 (N.D. Cal. 2018). In some circumstances, none of which apply here, "[c]ourts may nonetheless waive the prudential exhaustion requirement." *Id.*

Here, Petitioners have the opportunity to raise their claims before an immigration judge. *See Saravia*, 280 F. Supp. 3d at 1176–77 ("And if the noncitizen disputes the notion that changed circumstances justify his rearrest, he is entitled to a prompt hearing before an immigration judge."); *see also* 8 C.F.R. § 236.1(c)(9). To date, Petitioners remain eligible for bond hearings before an immigration judge. *See* ECF Nos. 6-8 and 6-10.

On each Form I-286, there is a section for a detainee to "request a review of this custody determination by an immigration judge." *Id.* Petitioner Nikica Lesic has requested a bond hearing before an immigration judge, and Petitioner Ana Lesic did not indicate whether she intends to seek a bond hearing before an immigration judge. Because Petitioners have the right to a hearing before an immigration judge and have not yet been before an immigration judge to "put the government's evidence if changed circumstances to the test," Petitioners' claims are not appropriately brought before this Court. *See Leonardo*, 646 F.3d at 1160; *Saravia*, 280 F. Supp. 3d at 1177. Therefore, while § 1226(b) and its implementing regulation justify ICE's revocation of Petitioners' respective bonds, until they have exhausted their administrative remedies, this Court cannot hear their claim. The Court simply cannot grant habeas relief on possible future

outcomes, and certainly not the extraordinary relief of a temporary restraining order. *See Flaxman v. Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025) (holding a claim is unripe if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all.").

3. ICE's bond revocation is lawful exercise of discretion.

Under 8 C.F.R. §§ 241.4 and 241.13, ICE's decision to revoke Petitioners' respective bonds is lawful. As relevant here, these circumstances include: (1) when, "on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future; and (2) when, in the opinion of the of the [Executive Associate Commissioner for Field Operations or the district director,]...the conduct of the alien, or *any other circumstance*, indicates that release would no longer be appropriate." 8 C.F.R. § 241.13(i)(2), 8 C.F.R. § 241.4(l)(2)(iv) (emphasis added). Here, the material change in circumstances is the new policy guidance and procedure implemented by ICE pursuant to Executive Order 14165. Petitioners Ana Lesic and Nikica Lesic's orders of supervision—the $10,000 bond and the $500 voluntary departure bond, respectively—were lawfully revoked pursuant to 8 C.F.R. § 241.13(i)(2) and 8 C.F.R. § 241.4(l)(2)(iv) because there was a change in circumstances since the issuance of their bond via the implementation of new policy guidance for ICE ERO pursuant to Executive Order 14165. Therefore, under 8 C.F.R. §§ 241.4 and 241.13, ICE lawfully revoked Petitioners' respective bonds.

4. The *Mathews* factors do not warrant relief.

Finally, despite Petitioners' contention, their private interest does not outweigh the government's heightened interest in immigration detention. Under a *Mathews* analysis, the Court should consider three factors. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976). The three factors to be weighed by the Court include: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous

deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335. The *Mathews* factors are "a flexible test that can and must account for different circumstances, such as the heightened governmental interest in the immigration detention context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022) (citing *Pinnacle Armor, Inc. v. United States*, 648 F.3d 708, 716 (9th Cir. 2011) (stating that *Mathews* "is not a bright line test, but is flexible depending on the circumstances") (quoting *Foss v. Nat'l Marine Fisheries Serv.*, 161 F.3d 584, 589 (9th Cir. 1998)).

Under the *Mathews* balancing test, the government's interest weighs in favor of finding Petitioners cannot likely succeed on the merits. Relevant here, the government has a substantial interest in immigration enforcement, which involves considerations that do not apply to citizens. *Rodriguez Diaz*, 53 F.4th at 1205–06. It has been widely recognized that the governmental interest in the immigration context is heightening. *Id.* at 1206–07. Because the government clearly has a strong interest in preventing aliens from "remain[ing] in the United States in violation of our law[,]" the Supreme Court has specifically instructed that in a *Mathews* analysis, courts "must weigh heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of the executive and the legislature." *Demore v. Kim*, 538 U.S. 510, 518 (2003); *Landon v. Plasencia*, 459 U.S. 21, 34 (1982). This is especially true when it comes to determining whether removable aliens must be released on bond during the pendency of removal proceedings. *Rodriguez Diaz*, 53 F.4th at 1207. Petitioners have failed to demonstrate how their interests overcome this heightened and exceedingly important government interest.

For these reasons and those set forth in the Return, Petitioners cannot demonstrate that they will succeed on the merits.

B. Even if the Court considers the other injunctive relief factors, Petitioners fail to satisfy them.

Because Petitioners fail to show that they are likely to succeed on the merits of their claims, the Court's inquiry into whether to grant injunctive relief should end. *See Azar*, 911 F.3d at 575. However, even if the Court decides to consider the remaining three factors, Petitioners fail to satisfy them.

First, Petitioners fail to show how they will face irreparable harm absent the grant of injunctive relief. "A plaintiff seeking preliminary relief must 'demonstrate that irreparable injury is likely in the absence of an injunction.'" *Azar*, 911 F.3d at 581. Although Petitioners claim they are subject to irreparable harm while in detention, Petitioners have failed to establish a violation of any constitutional rights. *See* Return at 8–13; *see supra* Sec. A; *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (holding that a violation of constitutional rights is an irreparable injury); *cf. Apartment Ass'n of Los Angeles Cnty., Inc. v. City of Los Angeles*, 500 F. Supp. 3d 1088, 1100–01 (C.D. Cal. 2020), *aff'd*, 10 F.4th 905 (9th Cir. 2021) (holding there was no irreparable harm where movement was unlikely to succeed on the merits of their constitutional claim). Detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom.*, *Diaz Reyes v. Mayorkas*, Fed. App'x. 191 (9th Cir. 2021). And Petitioners fail to show the need for independent injunctive relief because the habeas petition, as well bond hearings that both Petitioners are eligible for, have the potential to result in the same relief sought in the TRO motion: release from custody. *See Sires v. State of Wash.*, 314 F.2d 883, 884 (9th Cir. 1963) (denying a preliminary injunction motion because Petitioner failed to show how any relief he was entitled to could not be fully realized during habeas corpus proceedings without the grant of an injunction).

Next, Petitioners fail to show how the balance of equities and public interest weighs in his favor. These factors merge when the Government is a party. *Azar*, 911 F.3d at 575. Petitioners claim the equities require their immediate release; however, they fail to show that any constitutional right violations have occurred. Further, the requested injunction would impose a significant burden on government agencies as it directly interferes with their discretionary powers under the removal statutes. It would not be equitable to the government nor serve the public interest for this Court to seize control over the removal authority and decisions that Congress expressly commended to the Secretary's discretion in 8 U.S.C. § 1226(a). Further, it is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551–58 (1976); *Blackie's House of Beef v. Castillo*, 659 F.2d 1211, 1211 (D.D.C. 1981) ("The Supreme Court has recognized that the public interest in enforcement of immigration laws is significant.").

Therefore, Petitioners have failed to satisfy the remaining factors required for injunctive relief.

C. Finally, if the Court grants injunctive relief, Petitioner must comply with the Fed. R. Civ. P. 65(c).

Fed. R. Civ. P. 65(c) mandates that "[t]he court may issue a preliminary injunction...only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." To the extent that the Court grants relief to Petitioners, Respondents respectfully request that the Court require Petitioners to post security for any taxpayer fund expended during the pendency of the Court's order. Failure of Petitioner to comply with Fed. R. Civ. P. 65(c) should result in denial or dissolution of the requested injunctive relief.

CONCLUSION

For the reasons stated, the Court should deny Petitioners' Motion for Temporary Restraining Order.

DATED: November 7, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify the foregoing document was filed on November 7, 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: November 7, 2025

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