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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 [redacted] **PETITIONERS' REPLY IN SUPPORT OF THEIR MOTION FOR A TEMPORARY RESTRAINING ORDER** JUDGE: Hon. Linda Lopez

ARGUMENT

The Respondents' opposition to the Petitioner's motion for a temporary restraining order doubles down on the arguments that inapplicable law and a broad executive order give them the right to violate the Petitioners' Constitutional right to due process by detaining them and canceling the bonds previously set by immigration judges, despite any material and individual change in their circumstances. They also argue that granting an injunction would "directly interfere" with their discretion and would amount to this Court "seiz[ing] control over the removal authority" and is thus not in the public interest.

The Petitioners respond that discretion is abused when an agency acts in violation of the law and that the public interest is best served when the laws are followed and rights are respected. The Petitioners are likely to prevail in their petition for writ of habeas corpus and this Court should order the Respondents to restore the *status quo ante* by releasing them and reinstating their bonds pending an ultimate decision on the habeas petition.

A. THE RESPONDENTS HAVE VIOLATED THE PETITIONERS' CONSTITUTIONAL RIGHT NOT TO BE DEPRIVED OF THEIR LIBERTY WITHOUT DUE PROCESS OF LAW

1. The Respondents Continue to Cite Their authority to Cancel Bond and Detain the Petitioners under 8 CFR § 241 et seq. Despite the Fact that the Petitioners Do Not Have Final Orders of Removal

The Respondents argue that ICE's bond revocation and detention of the Petitioners is a "lawful exercise of discretion" under 8 CFR § 241 *et seq*. Opposition, at 6 As discussed in detail in the Petitioner's Traverse, 8 CFR § 241 *et seq* apply only to those noncitizens with final orders of removal who have reached the end of their 90-day removal period. Traverse, at 2-5. Neither Petitioner has received a final order of removal, let alone reached the end of the 90-day removal period. The regulations at 8 CFR § 241 et seq simply do not apply to either one of them.

Moreover, neither Petitioner has ever been under an Order of Supervision,[1] as asserted by the Respondents. Opposition, at 6 ("Petitioners Ana Lesic and Nick Lesic's orders of supervision [...] were lawfully revoked"). ICE has either intentionally or carelessly misrepresented their legal status, going so far (with regard to Petitioner Ana Lesic) as to create a document revoking an order of

[1] An Order of Supervision is not, as the Respondents appear to believe, simply another name for any condition of release. It is a discrete category all its own: The 90-days after a non-citizen's removal order becomes administratively final is known as the "removal period." 8 U.S.C. § 1231(a)(1). If the non-citizen is not removed during this period, he "shall be subject to [an order of] supervision under regulations prescribed by the Attorney General." 8 U.S.C. § 1231(a)(3). Those regulations are found at 8 CFR § 241 et seq. and do not apply to the Petitioners.

supervision that never existed. ECF No. 6-7. Rather than "lawfully revoking the Petitioners' respective bonds," ICE has broken the law by misrepresenting their status to justify their detention and bond cancellation.

2. Executive Order 14165 Is Not A Materially Changed Circumstance and Even If It Were, It Does Not Apply to the Petitioners

The Respondents use of Executive Order No. 14165 as the basis for revoking the Petitioners' bonds and detaining/re-detaining them is not a material or individualized changed circumstance, as discussed in the Traverse. Traverse, at 7. Even if the Executive Order could be characterized as a material or individualized changed circumstance, the Respondents have failed to explain how any of it applies to make the Petitioners enforcement priorities. Executive Order No. 14165 is concerned with securing the physical borders of the United States and is focused on deterring the illegal entry and continued presence of "potential terrorists, foreign spies, members of cartels, gangs, and violent transnational criminal organizations, and other hostile actors with malicious intent." Exec. Order No. 14165 Sec. 1, 90 Fed. Reg. 8467 (Jan. 20, 2025). The only provision of the Executive Order that Respondents' point to as justifying their actions is Section 2(c), which states that they are directed to, "detain[] [...] aliens apprehended on suspicion of violating Federal or State law[.]" Opposition, at 3. The Petitioners have violated no Federal or State law. They entered the United States legally and have remained in the United States lawfully pursuing their asylum claim since

before their non-immigrant statuses expired. They have committed no violations of our immigration law, nor have they violated any of our criminal laws. This cited provision simply does not apply to them and as such does not provide any legal justification for their arrest and detention.

B. THE PETITIONERS ARE NOT REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES BECAUSE THOSE REMEDIES WOULD BE INADEQUATE, NOT EFFICACIOUS, AND A FUTILE GESTURE

With regard to habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. Hernandez v. Sessions, 872 F.3d 976, 988 (9th Cir. 2017). Prudential exhaustion may be required 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) administrative review is likely to allow the agency to correct its own mistakes and to preclude the need for judicial review.

Puga v. Chertoff, 488 F.3d 812, 815 (9th Cir. 2007) (citations omitted). Nonetheless, even if the three Puga factors weigh in favor of prudential exhaustion, a court may waive the prudential exhaustion requirement 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) (citation and quotation marks omitted). Id. An action is futile if the agency's view

appears "already set" or the outcome is "very likely." El Rescate Legal Servs., Inc. v. Exec. Office of Immigration Review, 959 F.2d 742, 747-48 (9th Cir. 1991).

The Respondents argue that the Petitioners have recourse to a bond hearing before an IJ and should be made to exhaust that remedy prior to this court ruling on habeas relief. Opposition, at 5. As the Respondents point out, however, Mr. Lesic requested a bond hearing from the Respondents on October 6, 2025. ECF No. 6-10. Since that time, the Respondents have not scheduled a bond hearing for him. When counsel for the petitioners affirmatively requested that the immigration court schedule bond hearings for both petitioners on October 9, 2025, that request was immediately rejected by the court with jurisdiction over their place of detention because the Respondents had not served the court with Notices to Appear. ECF No. 10-1 (Motions for Bond with Rejection Notices). In its rejection of the motions, the immigration court suggested refiling the motion as a "pre-NTA" motion for bond. Id. Doing so, however, would have required counsel to misrepresent the petitioners' case posture because their NTAs had been issued in 2009. It was at this point that counsel determined that the immigration court was not an adequate forum for redress of the Petitioners' claims.

The Executive Office for Immigration Review, to which the immigration courts belong, is an Executive Branch Agency operating within the Department of Justice, which is run by the Attorney General. It is not independent. Any bond

hearing before the IJ—assuming one could be scheduled at all in this particular case—would be plagued by the same executive branch constraints by which the Respondents claim to be bound, namely the "new policy" put in place by Executive Order No. 14165. The Executive Order not only pertains to DHS and its component agencies, but to the Attorney General, who is also instructed to implement its policies. Exec. Order No. 14165, Secs. 4(b), 8, 10, and 11. If the Executive Order requires DHS to consider the Petitioners to be enforcement priorities, it requires EOIR to do the same. Even if an immigration judge did set a bond, the regulations allow DHS an effective veto over the IJ's order, providing that in cases such as this, "in which DHS has determined that an alien should not be released" any order of an IJ granting bond "shall be stayed" merely by DHS filing a notice of intent to appeal within one business day. 8 CFR §1003.20(i)(2). Thus, the agency's view is "already set" against the Petitioners and this also makes pursuing a bond hearing before an immigration judge a futile gesture.

Finally, exhaustion has been found to be a "futile exercise because the agency does not have jurisdiction to review constitutional claims" American-Arab Anti-Discrimination Comm. v. Reno, 70 F.l3d 1045, 1058 (9th Cir. 1995), In re Indefinite Det. Cases, 83 F.Supp. 2d 1098, 1099 (C.D.Cal 2000)(same). A bond hearing before an immigration judge would not address the main issue in this case: the violation of the petitioners' Constitutional due process rights. As this court is

no doubt seeing, the Respondents are violating the rights of noncitizens every day and claim unchecked power to do so. The immigration court is not the right venue for addressing this problem because it has no power over constitutional claims and, ultimately, as a fellow executive branch agency, it is in no position to correct the "mistakes" of DHS.

This Court should find that prudential exhaustion should be waived. Alternatively, the Court should find that the Petitioners have exhausted what administrative remedies they might have.

C. THE PUBLIC INTEREST IS NOT SERVED BY ALLOWING THE RESPONDENTS TO VIOLATE BASIC RIGHTS WITH IMPUNITY.

The Respondents argue that the government's interest in immigration enforcement effectively trumps any interest that it may have in ensuring that it complies with the laws and Constitution of the United States. Opposition, at 9. The laws and Constitution of the United States do not permit the Respondents to violate the liberty and due process interests of noncitizens by mischaracterizing their status, relying on inapplicable law, and tossing them in detention based solely on a blanket policy so broad that it characterizes all noncitizens as enforcement priorities. Allowing the Respondents to act in such a blatantly illegal manner is not at all in the public interest. Hernandez v. Sessions, 872 F.3d 976, 996 (9th Cir. 2017)("The public has a strong interest in upholding procedural protections against

unlawful detention"); Diaz v. Kaiser, 2025 WL 1676854, at *3 (citing e.g., Jorge M.F., 2021 WL 783561, at *3); Preminger v. Principi, 422 F.3d 815, 826 (9th Cir. 2005)("Generally public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

CONCLUSION

The Court should grant the Petitioners' Motion for Temporary Restraining Order pending a decision on their Petition for Writ of Habeas Corpus.

Respectfully submitted on this 11th day of November 2025

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed November 11, 2025 through the ECF system and that it will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

Dated: November 11, 2025

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