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UNITED STATES DISTRICT COURT

Southern District of California

CELIA NOEMI MERLOS DE MENDEZ,

Petitioner,

v.

CHRISTOPHER J. LaROSE ; *et al.*,

Respondents.

Case Number: 3:25-cv-2941-JES-MSB

PETITIONER'S TRAVERSE AND MEMORANDUM IN SUPPORT OF PETITION

Petitioner submits this Traverse and Memorandum to comply with the Court's order and the habeas corpus procedure and to expedite the process.

As a threshold matter, it does not appear any of the material facts are in dispute. However, the Respondent's Return for some reason leapfrogs over and omits some of the important facts. For instance, in September 2024, petitioner did present herself at the Port of Entry as per her invitation via the CBP-One application. The border officials initially detained her but then released her on her own recognizance and paroled her into the United States with a Form I-94. (A truc and correct copy of her Form I-94 is attached). Petitioner was issued a work authorization and found a job. After she attended a master calendar court hearing in August 2025, she was detained by masked men in the hall after leaving the courtroom. The DHS officials apparently generated the Warrant for Arrest after they re-detained petitioner without explanation after her court hearing. Petitioner remains at the Otay Mesa Detention Center while fighting her removal case.

So, there do not appear to be any factual issues in dispute. Therefore, what is left is to simply apply the legal principles to these undisputed facts and decide the petition. The court should immediately grant the petition because none of the arguments in the Return have any merit.

Petitioner (and her attorney) are baffled and dismayed as to why the Respondent's are investing so much time and scarce resources to keep a mother in the immigration jail who has no criminal record, who attended her court hearing, and otherwise complied with the terms of her OR release. But that is obviously respondents' prerogative. Still, petitioner's time detained at the CoreCivic private prison has been extremely trying and distressing to her. So, she hopes for a rapid resolution of this petition, especially since her removal case is moving along.

Respondent's Return urges the court to deny the petition and refuse any relief for three reasons. First, it says the court has no jurisdiction to ever consider the petition. Second, it says that petitioner should be compelled to exhaust her administrative remedies. Third, it says that the DHS may lawfully re-detain petitioner under 8 U.S.C. § 1225 for any or no reason. None of these arguments have any merit. Let us briefly examine each one of them.

Jurisdiction

Respondents first argue that 8 U.S.C. § 1252(g) prohibits this court from even considering whether petitioner's detention because it lacks jurisdiction. This argument is belied by both the statute and case law.

8 U.S.C. § 1252(g) divests the court of jurisdiction to review actions that the Attorney General may take to *commence* proceedings, *adjudicate* cases, or *execute* removal orders. (emphasis added). Here, petitioner is not asking the court to review any actions related to the *commencement* of proceedings, the *adjudication* of cases, or the *execution* of a removal order. Petitioner challenges the purely legal question of whether she is subject to revocation of her parole and mandatory re-detention without any change in circumstances or explanation after the DHS released her on her own recognizance. So, the statute does not apply to this habeas corpus petition by its own words.

Moreover, the case law reached the same conclusion. Section 1252(g) should be ready narrowly to apply "only to three discrete actions that the Attorney General may take: her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.' " *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (holding that constitutional challenge to prolonged detention without bond-hearing requirement is not barred by 8 U.S.C. § 1226(e)). "It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings." *Reno*, 525 U.S. at 482. Thus, Section 1252(g) does not "sweep in any claim that can technically be said to 'arise from' the three listed actions of the Attorney General." *Jennings*, 583 U.S. at 294. *See Vasquez Perdomo v. Noem*, 790 F. Supp. 3d 850, 884-85 (C.D. Cal. 2025). Therefore, § 1252(g) does not strip the Court of jurisdiction. *See, e.g., Navarro Sanchez v. Larose et al.*, 25-cv-2396 JES (MMP), 2025 WL 2770629, at *2 (S.D. Cal. Sept. 26, 2025) (finding the Court had jurisdiction in a similar matter); *Noori v. Larose et al.*, 25-cv-1824 GPC (MSB), 2025 WL 2800149, at *7–8 (S.D. Cal. Oct. 1, 2025) (same).

Exhaustion of Administrative Remedies

Second, respondents argue that we must ensure that petitioner has exhausted her administrative remedies. Petitioner did, to the extent necessary. The exhaustion requirement for

habeas claims under Section 2241 is prudential, rather than jurisdictional. *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (citing *Arango Marquez v. I.N.S.*, 346 F.3d 892, 897 (9th Cir. 2003)). Petitioner requested a bond re-determination hearing with the immigration judge. The judge denied the request concluding he had no jurisdiction because petitioner was classified as an arriving alien. It is pointless to appeal this decision to the Board of Immigration Appeals (BIA) because it would be futile. The BIA would reach the same conclusion. Or, Respondents and the BIA would argue that petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A), based on the BIA's recent decision in *Yajure Hurtado,* 29 I & N Dec. 216 (BIA 2025). The immigration judge and BIA will not consider the primary basis of this habeas corpus petition: that petitioner was unlawfully re-detained and is not subject to mandatory detention. So, petitioner had exhausted her administrative remedies to the extent needed for a decision on the petition.

Revocation of Parole/Re-Detention

Third, respondent's argue that petitioner is subject to mandatory detention under 8 U.S.C. § 1225 and her re-detention after the OR release was lawful. Once again, respondents are wrong. The mandatory re-detention actually has two facets: (1) did respondent's lawfully revoke petitioner's parole/I-94; and (2) was the re-detention without a change in circumstances or any explanation lawful? Given the somewhat new and drastic change in DHS policy, this is developing case law. However, multiple circuit courts have now been able to analyze and decide these issues.

In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10–12 (D. Or. July 9, 2025), the court explained the parole process in immigration cases and noted that before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons supporting the revocation decision.). *Y-Z-H-L* determined that under the Administrative Procedure Act, immigration parolees are entitled to determinations related to their parole revocations that are not arbitrary, capricious or an abuse of discretion. *Id.* at *10. Although the initial decision to detain or release an individual may be within the government's discretion, "the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[ ] to live

up to the ... conditions [of release].' " *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). "Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody." *Pinchi*, 2025 WL 2084921, at *3 (citing *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022)).

In *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, ___ F. Supp. 3d ___, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025), the court reached a similar conclusion relying on the Due Process Clause: **... even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody**. *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention."); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond."). *Id.* (emphasis added). Other courts, including this Court, have held similarly. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *see also Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.").

It seems that virtually all the District Courts across the country that have grappled with this legal issue have reached the same conclusion. In any event, attorney for petitioner is not aware of any District Court decision accepting Respondent's argument. The same reasoning applies here.

Petitioner followed the rules and reported for her CBP One appointment at the Port of Entry. She did not just illegally cross the border into the USA like many others. The DHS detained her for

processing, then paroled her into the USA with a Form I-94 and released her on her own recognizance pending a removal proceeding. Petitioner's OR release was obviously a conclusion that she was not a danger to the community or flight risk. Petitioner moved to New York and obtained a work permit. She got a job and started working. She moved to San Diego and changed the venue of the case to San Diego. She attended her master calendar court hearing. Petitioner was stunned when masked men detained her in the court hallway without any explanation and sent her to the immigration jail. She was given no warning or reason for her re-detention. Petitioner simply travelled downtown to attend her court hearing and never returned home.

Notably, the respondent's Return also provides no explanation or justification for the revocation of the parole and courthouse re-detention. This is because there is none. There was no change in circumstances or law to justify revocation and re-detention. This occurred based upon the whim of the respondents. The revocation and re-detention were an unlawful violation of both the APA and Due Process.

Finally, Respondents argue that petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the BIA's recent decision in *Yajure Hurtado,* 29 I & N Dec. 216 (BIA 2025), affirming the government's new interpretation of § 1225. Multiple Courts, including this one, have rejected this argument.

As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do").

Multiple District Courts across the entire United States have recently concluded that the government's proposed interpretation of the statute (a) disregards the plain meaning of section 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior statutory interpretation and practice. The following quote is a representative example:

> "The Court follows other decisions in this Circuit finding that "seeking admission requires an affirmative act such as entering the United States or applying for status, and that it does not apply to individuals who, like [Petitioner], have been residing in

> the United States and did not apply for admission or a change of status." *Mosqueda v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1 ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025) (finding that petitioner who was released on bond and rearrested was entitled to a bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)."

Esquivel-Pina v. LaRose, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24, 2025).

District Courts have found, once immigration authorities "elect to proceed with full removal proceedings under § 1226, [they] cannot [ ] reverse course and institute § 1225 expedited removal proceedings." *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025). Respondent is properly in full removal, not expedited removal proceedings.

So, to summarize: the court has jurisdiction to decide the petition and the administrative procedures have been exhausted enough to ripen the case. Respondent's violated the APA and Due Process by the summary revocation of parole and re-detention after the OR release. Petitioner was entitled to a pre-deprivation of liberty hearing and an explanation as to why she is being sent to the immigration jail. The court should order petitioner's immediate release from the jail; that she is not subject to re-detention without a hearing where respondents must prove by clear and convincing evidence that she is a danger or flight risk; and respondents to pay petitioner's attorney fees.

DATED: 6 November 2025

Respectfully submitted,
/s/ *William Baker*
William Baker (157 906)
MORENO & ASSOCIATES

For: **CELIA NOHEMI MERLOS DE MENDEZ**

U.S. Customs and Border Protection
Securing America's Borders

Most Recent I-94

Admission (I-94) Record Number [redacted]
Arrival/Issued Date : 2024 September 07
Class of Admission : DT
Admit Until Date : 09/06/2026
Details provided on the I-94 Information form:

Last/Surname :	**MERLOS DE MENDEZ**
First (Given) Name :	**CELIA NOHEMI**
Birth Date :	[redacted]
Document Number :	[redacted]
Country of Citizenship :	**El Salvador**

▶ **Effective April 26, 2013, DHS began automating the admission process. An alien lawfully admitted or paroled into the U.S. is no longer required to be in possession of a preprinted Form I-94. A record of admission printed from the CBP website constitutes a lawful record of admission. See 8 CFR § 1.4(d).**

▶ **If an employer, local, state or federal agency requests admission information, present your admission (I-94) number along with any additional required documents requested by that employer or agency.**

▶ **Note: For security reasons, we recommend that you close your browser after you have finished retrieving your I-94 number.**

OMB No. 1651-0111
Expiration Date: 09/30/2024