

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Karolaine Monteiro De Souza v. Timothy S. Robbins, et al.

Robbins · No. 1:25-cv-01597-DJC-JDP · Decided November 23, 2025

OPINION

Robbins

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 KAROLAINA MONTEIRO DE SOUZA, No. 1:25-cv-01597-DJC-JDP

12 Petitioner, 13 v. ORDER 14 TIMOTHY S. ROBBINS, et al., 15 Respondents. 16 17 18
Petitioner Karolaine Monteiro De Souza is presently in the custody of the United 19 States
Immigration and Customs Enforcement (“ICE”) at the California City Corrections 20 Center.
Petitioner entered the United States in 2024, was detained by immigration 21 officials, and then
released from custody. She has since resided in the United States 22 with her spouse. Petitioner
was recently re-detained after she attended her annual 23 check-in with ICE. Petitioner has filed a
Petition for Writ of Habeas Corpus along with 24 a Motion for Temporary Restraining Order,
arguing that her present detention violates 25 the Due Process Clause of the Fifth Amendment. For
the reasons stated below, the 26 Court GRANTS Petitioner’s Motion for Temporary Restraining
Order. 27 /// 28 ///

1 BACKGROUND

2 Petitioner is a citizen and national of Brazil who entered the United States 3 around October 12,
2024. (Pet. (ECF No. 1) ¶¶ 1, 19.) That same day, federal agents 4 arrested and detained Petitioner
and provided her with a Notice and Order of 5 Expedited Removal, stating that pursuant to
Section 235(b)(1) of the Immigration and 6 Nationality Act (“INA”) (8 U.S.C. § 1225(b)(1)) she
was inadmissible and subject to 7 removal. (Pet. ¶ 21; Barros Decl. (ECF No. 2-3) Ex. 2.) Around
November 4, 2024, 8 Plaintiff’s spouse, with whom she entered the United States, completed a
credible fear 9 interview, and Petitioner was released by DHS from custody via an Order of
Release 10 on Recognizance (I-220A). (Pet. ¶ 22; Barros Decl., Ex. 4.) The Order stated Petitioner
11 was being released pursuant to Section 236 of the INA (8 U.S.C. § 1226). (Barros Decl. 12 ¶ 1
citing Ex. 4.) Petitioner was also served with a Notice to Appear, which stated that 13 the previous
Notice and Order of Expedited Removal provided to her in October 14 2024 was vacated pursuant
to 8 C.F.R. § 208.30.1 (Pet. ¶ 22; Barros Decl., Ex. 5.) The 15 next day, Respondents commenced

removal proceedings against Petitioner under 8 16 U.S.C. § 1229a. (Pet. ¶ 23.) Following the commencement of removal proceedings, 17 Petitioner asserts that she “actively worked on her case,” which included requesting a 18 change of venue from the San Antonio Immigration Court to the San Francisco 19 Immigration Court.² (Id. ¶ 24.) The change of venue was granted, and a Master 20 Calendar Hearing was scheduled for July 15, 2027. (Id.; Barros Decl., Ex. 8.) 21 Petitioner asserts that upon her release, she complied with all immigration 22 requirements, including following all the terms of the Intensive Supervision 23 Appearance Program (“ISAP”) and attending in-person visits to the ICE field office. 24 1 8 C.F.R. § 208.30(b) allows asylum officers in certain circumstances to refer a noncitizen subject to 25 removal proceedings under Section 235(b)(1) (8 U.S.C. § 1225(b)(1)) to removal proceedings under section 240 of the INA (8 U.S.C. § 1229a) without making a credible fear determination. Additionally, a 26 spouse of a principal alien shall be included in a noncitizen’s credible fear evaluation and determination. See 8 C.F.R. § 208.30(c)(1). 27 2 Following Petitioner’s detention and transfer to the California City Corrections Center, Petitioner’s 28 case is now pending with the Adelanto Immigration Court. (Pet. ¶ 1.) 1 (Pet. ¶¶ 22, 25; Barros Decl. ¶ 3.) Petitioner has no criminal history. (Pet. ¶ 1.) On 2 April 17, 2025, Petitioner filed an application for asylum. (Pet. ¶ 24; Barros Decl., Ex. 3 7.) 4 On October 30, 2025, Petitioner appeared, as instructed, at her annual check-in 5 with ICE. (Pet. ¶ 26.) However, ICE agents arrested and detained her, accusing her of 6 not attending her Master Calendar Hearing. (Id.) Petitioner attempted to explain that 7 her master calendar hearing had been scheduled for July 15, 2027, but the agents 8 ignored her explanations. (Id.) Petitioner was then transferred to the California City 9 Corrections Center. (Id. ¶ 4.) Petitioner did not receive any written notice explaining 10 the basis of the revocation of her release, nor did she receive a hearing before a 11 neutral decisionmaker. (Id. ¶¶ 29–31.) Petitioner has now filed a Petition for Writ of 12 Habeas Corpus along with a Motion for Temporary Restraining Order (Mot. TRO (ECF

13 No. 2)). The Motion for Temporary Restraining Order is fully briefed (Opp’n (ECF No. 14 8); Reply (ECF No. 9)). The Court ordered this matter submitted without oral 15 argument.

16 LEGAL STANDARD

17 The standards for issuing a temporary restraining order and a preliminary 18 injunction are “substantially similar.” See *Stuhlbarg Int’l Sales Co. v. John D. Brush & 19 Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain preliminary injunctive relief, 20 Plaintiff must show (1) likelihood of success on the merits; (2) likelihood of irreparable 21 harm in the absence of preliminary relief; (3) that the balance of equities tips in his 22 favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. 23 Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted).

24 DISCUSSION

25 I. Likelihood of Success on the Merits 26 Petitioner argues she is likely to succeed on the merits of her Due Process 27 Claim. (See Mot. TRO at 5.) She contends that she is entitled to a hearing in front of a 28 neutral decisionmaker where ICE is required to justify re-detention before

it occurs. 1 (Id.) Respondents state that Petitioner’s claim will fail because she is considered an 2 “applicant for admission” subject to mandatory detention by ICE under 8 U.S.C. 3 § 1225(b)(2) (A) and thus is not entitled to a bond hearing. (Opp’n at 1.) However, 4 Respondents also concede that Petitioner appears to have been released earlier by 5 ICE under Section 1226. (Id. at 2 n.1.) This Court has previously rejected the 6 Respondents’ expansive view of Section 1225 and discussed the differences between

7 Section 1225 and Section 1226. See *Lopez v. Lyons*, No. 2:25-cv-03174-DJC-CSD, 8 2025 WL 3124116, at *2 (E.D. Cal. Nov. 7, 2025); *Morillo v. Albarran*, No. 1:25-cv- 9 01533-DJC-AC, 2025 WL 3190899, at *2–4 (E.D. Cal. Nov. 15, 2025). What is relevant 10 here is that Section 1225(b)(2) subjects noncitizens to mandatory detention whereas

11 Section 1226(a) involves a discretionary scheme. See *Morillo*, 2025 WL 3190899, at 12 *2. Notably, a detained noncitizen may not be released on conditional parole unless 13 she is not a flight risk or danger to the community. See 8 U.S.C. § 1226(a)(4); see also 14 8 C.F.R. § 1236.1(c)(8). 15 The Court agrees that the facts presented indicate Petitioner was released 16 under Section 1226(a). Although Petitioner initially received a Notice and Order of 17 Expedited Removal pursuant to Section 1225(b)(1), she was subsequently released 18 from detention via an Order of Release on Recognizance, which states that her release 19 is pursuant to Section 1226. (Barros Decl., Ex. 4 “In accordance with section 236 of the 20 Immigration and Nationality Act 3 and the applicable provisions of Title 8 of the Code 21 of Federal Regulations, you are being released on your own recognizance provided 22 you comply with the following conditions[]”); see *Ortega-Cervantes v. Gonzales*, 501 23 F.3d 1111, 1115 (9th Cir. 2007) (noting that “release on recognizance” can be used as 24 another name for “conditional parole” under Section 1226). Petitioner also received a 25 Notice to Appear stating that she was no longer subject to expedited removal as the

26 October 2024 Notice was vacated. (Pet. ¶ 22; Barros Decl., Ex. 5.) Other courts have 27 28 3 Section 236 of the INA is codified in Section 1226. 1 recognized that once immigration authorities elect “to proceed with full removal 2 proceedings under [section] 1226, [they] cannot [] reverse course and institute 3 [section] 1225 expedited removal proceedings.” *Ramirez Clavijo v. Kaiser*, No. 2:25- 4 cv-06248-BLF, 2025 WL 2419263, at *4 (N.D. Cal. Aug. 21, 2025). Nor can the 5 government “switch tracks” and subject a petitioner to mandatory detention under 6 section 1225(b)(2) where it has placed a petitioner in removal proceedings under 7 section 1229a and released her on her own recognizance under section 1226(a)). 8 *Valencia Zapata v. Kaiser*, ---- F. Supp. 3d ----, 2025 WL 2741654, at *9 (N.D. Cal. Sept. 9 26, 2025). 10 This Court, along with other courts in this Circuit, recognize a liberty interest for 11 individuals who have been released from ICE custody on their own recognizance. See 12 *Lopez*, 2025 WL 3124116, at *3. The Due Process Clause protects all persons in the 13 United States, including noncitizens, from deprivations “of life, liberty, or property” by 14 the federal government “without due process of law[.]” U.S. Const. amend V; see 15 also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). “Freedom

from imprisonment — 16 from government custody, detention, or other forms of physical restraint — lies at the 17 heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. Here, DHS 18 released on Petitioner own recognizance in November 2024. (Pet. ¶ 22; Barros Decl., 19 Ex. 4.) Since that time, Petitioner has lived with her spouse, established a community 20 and become an active member at a local church. (Mot. TRO at 3–4.) Petitioner has a 21 clear liberty interest in her continued freedom. 22 Because such a liberty interest has been established, the Court applies the 23 balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976). The Court finds that the 24 *Mathews* analysis conducted in *Lopez* is applicable here. See 2025 WL 3124116, at 25 *3. Specifically, Petitioner has a substantial private interest in maintaining her out-of- 26 custody status. See *Valencia Zapata*, 2025 WL 2741654, at *8 (noting that release 27 under section 1226 “implied a promise” that petitioners would not be re-detained so 28 long as they abide by the terms of their release.) The risk of erroneous deprivation 1 here is considerable as Petitioner has not received a bond hearing or a written 2 revocation of parole, (Pet. ¶¶ 29–31), has no criminal history (*id.* ¶ 1), and has 3 complied with her immigration requirements, (*id.* ¶¶ 22, 25; Barros Decl. ¶ 3). Lastly, 4 Respondents’ interest in detention is low as the effort and costs required to provide 5 Petitioner with procedural safeguards are minimal. 6 To conclude, Petitioner has a liberty interest, she is entitled to process, and that 7 process should have been immediately afforded to her prior to re-detention. Thus, 8 Petitioner has established a likelihood of success on the merits. 9

II. Irreparable Harm 10 Petitioner will suffer irreparable harm in the absence of preliminary injunctive 11 relief. “It is well established that the deprivation of constitutional rights 12 “unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 13 1002 (9th Cir. 2012) (citation omitted). Moreover, the Ninth Circuit has recognized the 14 “irreparable harms imposed on anyone subject to immigration detention” including 15 “the economic burdens imposed on detainees and their families as a result of 16 detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). The Petitioner 17 has thus established irreparable harm. 18

III. Balance of the Equities/Public Interest 19 The final two Winter factors merge when the government is the nonmoving 20 party. *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (citations omitted). Public 21 interest concerns are also implicated as “it is always in the public interest to prevent 22 the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002 (internal 23 quotations and citations omitted). “The government also cannot reasonably assert 24 that it is harmed in any legally cognizable sense by being enjoined from constitutional 25 violations.” *Baird*, 81 F.4th at 1042 (internal quotations and citations omitted). 26 Moreover, the “public has a strong interest in upholding procedural protections 27 against unlawful detention, and the Ninth Circuit has recognized that the costs to the 28 1 public of immigration detention are staggering.” *Pinchi v. Noem*, 792 F. Supp. 3d 2 1025, 1037 (N.D. Cal. 2025). 3 Here, the harm to Petitioner is significant as she faces prolonged ICE detention, 4 which separates her from her friends and family. (Mot. TRO at 11–12.) The harm to 5 Respondents is minimal as the only potential hinderance the government may 6 experience is a short delay in re-detaining Petitioner.

The government “cannot 7 reasonably assert that it is harmed in any legally cognizable sense by being enjoined 8 from constitutional violations.” *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 9 (9th Cir. 1983). Further, there is no argument that Petitioner is now a risk of flight or a 10 danger to the community. For these reasons, the Court concludes that the equities 11 and public interest weigh in favor of Petitioner. 12 IV. Bond 13 “The court may issue a preliminary injunction or a temporary restraining order 14 only if the movant gives security in an amount that the court considers proper to pay 15 the costs and damages sustained by any party found to have been wrongfully 16 enjoined or restrained.” Fed. R. Civ. P. 65(c). The Court has “discretion as to the 17 amount of security required, if any,” and it “may dispense with the filing of a bond 18 when it concludes there is no realistic likelihood of harm to the defendant from 19 enjoining his or her conduct.” *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 20 2003) (citation modified). Because “the [Government] cannot reasonably assert that it 21 is harmed in any legally cognizable sense by being enjoined from constitutional 22 violations,” *Zepeda*, 753 F.2d at 727, the Court finds that no security is required here.

23 CONCLUSION

24 In accordance with the above, IT IS HEREBY ORDERED that: 25 1. Petitioner’s Motion for Temporary Restraining Order (ECF No. 2) is 26 GRANTED; 27 2. Petitioner Karolaine Monteiro De Souza shall be released immediately from 28 Respondents’ custody. Respondents shall not impose any additional 1 restrictions on her, such as electronic monitoring, unless that is determined 2 to be necessary at a future pre-deprivation/custody hearing. Respondents 3 shall provide a status report confirming Petitioner's release by 5:00 P.M. on 4 November 23, 2025.

5 3. Respondents are ENJOINED AND RESTRAINED from re-arresting or re- 6 detaining Petitioner absent compliance with constitutional protections, 7 which include, at a minimum, pre-deprivation notice — describing the 8 change of circumstances necessitating her arrest, and detention, and a 9 timely hearing. At any such hearing, the Government shall bear the burden 10 of establishing, by clear and convincing evidence, that Petitioner poses a 11 danger to the community or a risk of flight, and Petitioner shall be allowed 12 to have her counsel present. 13 4. Respondents are ORDERED TO SHOW CAUSE on or before December 2, 14 2025, as to why this Court should not issue a preliminary injunction on the 15 same terms as this Order. The Respondents’ failure to respond to the Order 16 to Show Cause shall be construed as its non-opposition to the Court 17 granting a Preliminary Injunction on the same terms and conditions imposed 18 in this Order. See L.R. 230(c). On or before December 4, 2025, Petitioner 19 may file a Reply, if any. The Preliminary Injunction is not currently set for a 20 hearing but the Court may subsequently order one. 21 99 IT IS SO ORDERED. 23 | Dated: _November 23, 2025 Donel J bnetto Hon. Daniel alabretta

24 UNITED STATES DISTRICT JUDGE

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27 28 °

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