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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

CHRISTIAN RODRIGUEZ-ZIESE,  
Plaintiff,  
v.  
VICKI HENNESSY,  
Defendant.

Case No. [17-cv-06473-BLF](#)

**ORDER GRANTING PETITION FOR  
WRIT OF HABEAS CORPUS;  
VACATING HEARING ON PETITION  
SET FOR DECEMBER 7, 2017 AT 2:00  
P.M.**

Petitioner Christian Rodriguez-Ziese (“Petitioner”) has filed an Emergency Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241. *See* ECF 10 (“Amended Petition”). Petitioner argues that his pre-trial detention in jail in San Francisco is unconstitutional because the state trial court required an unattainable \$200,000 secured financial condition of release without making any inquiry into his ability to pay or considering any alternative, non-financial conditions of release. *Id.* ¶ 13; ECF 10-1 (“Mem.”) at 4. Petitioner has exhausted his state court remedies and requests that this Court issue an emergency writ of habeas corpus unless the state procures a constitutionally valid order of pretrial detention. *See* Mem. at 23.

The Court set an expedited briefing schedule, ECF 11, and Respondent Vicki Hennessy (“Respondent”), represented by the Office of the Attorney General of California, agreed that

1 Petitioner did not receive constitutionally adequate process during the setting of bail, and that this  
2 petition for writ of habeas corpus should be granted. *See* ECF 14 (“Answer”). Petitioner filed a  
3 traverse only to “urge this Court to issue an opinion on the merits of his case” to provide guidance  
4 concerning the constitutional requirements of pretrial detention. *See* ECF 15 (“Traverse”).

5 For the reasons that follow, the Court GRANTS the petition for a writ of habeas corpus but  
6 STAYS this Order **until and including December 8, 2017** to allow the state superior court to  
7 conduct a constitutionally adequate bail hearing. The hearing on the petition in this Court set for  
8 December 7, 2017 at 2:00 P.M. is hereby VACATED.

9 **I. BACKGROUND**

10 Petitioner was arrested in San Francisco on April 16, 2017, and charged with two counts of  
11 carjacking with a firearm in violation of California Penal Code § 215(a), two counts of unlawful  
12 driving or taking of a vehicle under California Vehicle Code § 10851(a), and one count of  
13 receiving stolen property, motor vehicle, under California Penal Code § 469d(a). Amended  
14 Petition ¶ 11. At arraignment, the state court determined that Petitioner was unable to afford his  
15 own counsel and appointed the public defender. *Id.* ¶ 12. Petitioner requested release without  
16 financial conditions, or, in the alternative \$100,000 money bail. *Id.* ¶ 12. The superior court  
17 denied Petitioner’s request and required a \$200,000 secured financial condition of release. *Id.*  
18 ¶ 13. Petitioner argues that the court’s statement that it was not willing to release Petitioner  
19 “based on the facts of this case,” and the imposition of money bail at \$200,000, was a de facto  
20 detention order because it had the intent and effect of detaining Petitioner due to his inability to  
21 pay the amount required for his release. *Id.* Petitioner renewed his motion for release, and the  
22 state court held a hearing on July 24, 2017. *Id.* ¶ 15. Petitioner’s motion was again denied. The  
23 court stated that it would not disturb bail, which was appropriate “based upon community safety”  
24 and because the amount is a “scheduled bail for the City and County of San Francisco.” *Id.* ¶ 16.

25 Petitioner unsuccessfully appealed this condition of his release to the California Court of  
26 Appeal, which summarily denied his petition on August 24, 2017. *Id.* ¶ 17. Petitioner then filed a  
27 petition for review in the Supreme Court of California raising the same claims. *Id.* ¶ 18. The  
28 Attorney General of California, representing Respondent, filed an Answer to the petition in the

1 Supreme Court of California stating that Respondent “does not defend the magistrate’s decision in  
2 this case.” ECF 1-4 at 6. Nevertheless, on November 1, 2017 the Supreme Court of California  
3 summarily denied review of the petition. *See* ECF 1-5.

4 On November 7, 2017, Petitioner filed an Emergency Petition for a Writ of Habeas Corpus  
5 pursuant to 28 U.S.C. § 2241, which was reassigned to this Court. After this Court issued an  
6 Order to Show Cause, ECF 9, Petitioner submitted an Amended Petition and requested an  
7 expedited briefing schedule. The petition is fully briefed, and the Court now GRANTS the  
8 petition.

9 **II. LEGAL STANDARD**

10 Because Petitioner has not been convicted of a crime and is not in custody “pursuant to the  
11 judgment of a state court,” Petitioner correctly brings this Petition under 28 U.S.C. § 2241 and not  
12 § 2254 which governs challenges to criminal convictions in state court. Pursuant to § 2241(c)(1),  
13 the writ of habeas corpus extends to a prisoner who is “in custody under or by color of the  
14 authority of the United States.” It is § 2241 that provides generally for the granting of writs of  
15 habeas corpus by federal courts, implementing “the general grant of habeas authority provided by  
16 the Constitution.” *Frantz v. Hazy*, 533 F.3d 724, 735 (9th Cir. 2008) (citing *White v.*  
17 *Lambert*, 370 F.3d 1002, 1006 (9th Cir.), *cert. denied*, 543 U.S. 991 (2004)).

18 **III. DISCUSSION**

19 Petitioner challenges the constitutionality of his pre-trial detention on the grounds that the  
20 state trial court required an unattainable secured financial condition of pretrial release without  
21 making any inquiry into his ability to pay or considering alternative, non-financial conditions of  
22 release. *See* Mem. at 4. Respondent concedes that Petitioner did not receive constitutionally  
23 adequate process at his bail hearing, as bail was set without any factual finding that the financial  
24 condition was one that Petitioner could afford, or any consideration of alternative, non-financial  
25 conditions of release. Answer at 2.

26 In *United States v. Salerno*, the Supreme Court recognized that although an individual has  
27 a “strong interest in liberty” that is important and fundamental in nature, “this right may, in  
28 circumstances where the government’s interest is sufficiently weighty, be subordinated to the

1 greater needs of society.” 481 U.S. 739, 750-51 (1987). *Salerno* upheld the constitutionality of the  
2 Bail Reform Act under the Fifth Amendment’s Due Process Clause and the Eighth Amendment’s  
3 Excessive Bail Clause. *Id.* at 752. The Court applied heightened scrutiny due to the statute’s  
4 implication of a fundamental right. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780 (9th Cir.  
5 2014) (“If there was any doubt about the level of scrutiny applied in *Salerno*, it has been resolved  
6 in subsequent Supreme Court decisions, which have confirmed that *Salerno* involved a  
7 fundamental liberty interest and applied heightened scrutiny.”) Thus, any deprivation of that  
8 fundamental liberty interest must be narrowly tailored to advance a compelling government  
9 interest. Although liberty is the norm in our society, the Supreme Court explained that “detention  
10 prior to trial or without trial is the carefully limited exception” and the Bail Reform Act’s  
11 provisions regarding pretrial detention fall within that exception due to its numerous procedural  
12 safeguards. 481 U.S. at 755.

13 California law, too, provides for certain procedural safeguards governing the setting of bail  
14 that Petitioner was entitled to at his bail hearing. Specifically, Penal Code section 1270.1(c)  
15 mandates that the court making the bail determination consider “any evidence offered by the  
16 detained person regarding his or her ties to the community and his or her ability to post bond.”  
17 The magistrate must also make a record of the reasons for decision if bail is set “in an amount that  
18 is either more or less than the amount contained in the schedule of bail for the offense.” Penal  
19 Code section 1270.1(d).

20 The record in this case clearly shows that the magistrate failed to consider Petitioner’s  
21 ability to pay the bail amount, and the magistrate did not consider whether nonmonetary  
22 alternatives could serve the same purposes as the financial condition of release. Therefore, this  
23 Court finds that as conducted, the hearing was inconsistent with section 1270.1(c), and further it  
24 does not withstand the heightened scrutiny required by *Salerno* in order to deprive Petitioner of his  
25 liberty. Respondent agrees that the setting of bail in this case was constitutionally inadequate, and  
26 that “the federal Constitution does not permit detaining a defendant before trial solely because that  
27 defendant cannot afford to post a set amount of money bail.” *See Answer at 2-3.*

28 Although the Parties agree that Petitioner’s bail hearing was constitutionally inadequate in

1 this case, they appear to disagree as to the appropriate procedural safeguards required to obtain a  
2 constitutionally valid pre-trial detention order. According to Petitioner, *Salerno* and subsequent  
3 cases make clear that before detaining an individual, the government must provide a full-blown  
4 adversarial hearing with counsel, notice and an opportunity to be heard concerning the legal and  
5 factual questions involving danger, a heightened evidentiary standard, and findings on the record  
6 by a neutral decision-maker. *See* Mem. at 22. Respondent does not address these requirements,  
7 but expresses her view that (1) California law permits pretrial detention if a court determines,  
8 subject to appropriate procedural safeguards, that no reasonably available conditions of release  
9 will be sufficient to satisfy the public interests in protecting public safety and ensuring appearance  
10 (citing California Constitution Article I, §§ 12, 28(f)(3)); and (2) under the federal Constitution, a  
11 defendant may not be detained before trial solely because that defendant cannot afford a set  
12 amount of money bail. *See* Answer at 2-3.

13 Petitioner asks this Court to expressly describe the procedural safeguards required for a  
14 constitutionally permissible bail hearing, but the Court declines Petitioner’s invitation to issue an  
15 advisory opinion to the state trial court. In order to grant the writ requested in this instance, the  
16 Court need only determine that the procedures received by Petitioner at the challenged bail hearing  
17 were constitutionally inadequate. As Respondent concedes the constitutional inadequacy of the  
18 state court’s procedures at that hearing, the Court’s inquiry is straightforward.

19 As explained above, the Court finds that the state court did not provide a constitutionally  
20 adequate basis on which to detain Petitioner because it failed to consider Petitioner’s ability to pay  
21 in conjunction with non-monetary alternative conditions of release. Therefore, a writ of habeas  
22 corpus shall issue ordering Petitioner’s release unless the state procures a valid order of pretrial  
23 detention that is “narrowly tailored to serve a compelling state interest.” *Lopez-Valenzuela*, 770  
24 F.3d at 780. At a minimum, the state court’s determination shall consider alternatives to  
25 detention, including release on constitutionally permissible conditions, that could reasonably  
26 satisfy the state’s interest in ensuring public safety and Petitioner’s presence at trial. *See Reem v.*  
27 *Hennessy*, Case No. 17-cv-6628, Order Denying Motion to Dismiss and Granting Petition for  
28 Habeas Corpus, ECF 13-1.

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The Petition for Writ of Habeas Corpus is GRANTED. However, this Order is STAYED **until and including December 8, 2017** to allow for the superior court to conduct an evidentiary hearing to consider appropriate bail, detention, or release under the circumstances of Petitioner’s case as outlined above, and to make a determination as to whether its detention of Rodriguez-Ziese is “narrowly tailored to serve a compelling state interest.” *Lopez-Valenzuela*, 770 F.3d at 780.

**IT IS SO ORDERED.**

Dated: December 6, 2017

  
BETH LABSON FREEMAN  
United States District Judge