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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

Lissa Mel Hatanaka a/k/a Lissa Melissa Mel-
Turdiev,

Petitioner,

v.

Fred Figueroa, in his official capacity, Warden of
Eloy Detention Center;

John Cantu, in his official capacity, ICE
Enforcement and Removal Operations Phoenix
Field Office Director;

Todd M. Lyons, in his official capacity, Acting
Director, Immigration and Customs Enforcement,
U.S. Department of Homeland Security;

Kristi Noem, in her official capacity, Secretary,
U.S. Department of Homeland Security;

Pamela Bondi, in her official capacity, Attorney
General of the United States;

U.S. Immigration and Customs Enforcement; and

U.S. Department of Homeland Security,

Respondents-Defendants.

Case No. _____

Agency No. 

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

**ORAL ARGUMENT
REQUESTED**

Expedited Hearing Requested

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1
2 1. Petitioner Lissa Mel Hatanaka (“Ms. Hatanaka”)¹, by and through
3 undersigned counsel, hereby files this petition for writ of habeas corpus to compel her
4 immediate release from the immigration detention center where she has been held by the
5 Department of Homeland Security (“DHS”) since being unlawfully re-detained on May
6 15, 2025, without first being provided a due process hearing to determine whether her
7 incarceration is justified. Ms. Hatanaka must be released from custody unless and until
8 DHS proves to a neutral adjudicator, by clear and convincing evidence, that she presents
9 a current danger and unmitigable flight risk. DHS will be unable to do so.
10
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12 2. On May 8, 2020, Ms. Hatanaka was released from federal custody, having
13 successfully motioned for Compassionate Release. That day, DHS issued an Order of
14 Supervision and permitted Ms. Hatanaka to travel to California, where she has resided
15 ever since.
16

17 3. On May 17, 2021, Ms. Hatanaka was arrested by ICE and, apparently,
18 issued an administrative order of removal. She was not detained; instead, DHS issued a
19 second Order of Supervision and placed Ms. Hatanaka in the Alternatives to Detention
20 program. Ms. Hatanaka complied with every request, demand, and requirement imposed
21 by DHS, including GPS tracking.
22

23 4. In 2022, DHS removed the GPS tracking device and informed Ms.
24 Hatanaka that she did not need to report again. U.S. Citizenship and Immigration
25
26

27
28 ¹ Ms. Hatanaka is known to Respondents as Lissa Melissa Mel-Turdiv. Her legal name is Lissa Mel Hatanaka.

1 Services (“USCIS”) never re-scheduled Ms. Hatanaka’s postponed reasonable fear
2 interview, and she did not hear from DHS again until May 15, 2025, when masked
3 Immigration and Customs Enforcement (“ICE”) officers arrested her during her
4 Adjustment of Status interview.
5

6 5. Ms. Hatanaka was transferred to Eloy, Arizona, where DHS filed a Notice
7 to Appear (“NTA”) with the Eloy Immigration Court. Nearly one month later, DHS
8 abruptly moved to dismiss the NTA. Ms. Hatanaka’s appeal of the Immigration Judge’s
9 order granting DHS’s motion—over counsel’s opposition—is pending with the Board
10 of Immigration Appeals. Ms. Hatanaka does not have a final order of removal.
11

12 6. It is well-established that individuals released from incarceration have a
13 liberty interest in their freedom. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 482-483
14 (1972); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D.
15 Cal. Mar. 3, 2025). In turn, to protect that interest on the particular facts of Ms.
16 Hatanaka’s case, due process required notice and a hearing, *prior* to any re-detention, at
17 which she would be afforded the opportunity to advance her arguments as to why re-
18 detention is unwarranted.
19
20

21 7. That basic principle—that individuals placed at liberty are entitled to
22 process before the government imprisons them—has particular force here, where Ms.
23 Hatanaka’s conviction has been known to DHS since at least May 8, 2020, where DHS
24 previously released her from an Order of Supervision, and where Ms. Hatanaka has no
25 prior violations. Moreover, ICE did not seek to re-detain Ms. Hatanaka until May 2025,
26 by which point she had applied for multiple forms of relief with USCIS, attended
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28

1 multiple biometrics appointments, and been granted work authorization. If nothing else,
2 DHS's decision to detain her after all this time lacked urgency and is indicative of the
3 needlessness to protect the public on this basis.

4
5 8. Given her clear liberty interest, due process requires that any re-detention
6 of Ms. Hatanaka happen only *after* a neutral adjudicator has determined that she poses
7 a present danger and unmitigable flight risk. Therefore, the Court should order Ms.
8 Hatanaka's immediate release until a neutral decisionmaker determines that DHS has
9 justified her incarceration by clear and convincing evidence. During any custody
10 redetermination hearing that occurs, the neutral adjudicator must consider alternatives
11 to detention and Ms. Hatanaka's ability to pay.
12

13 CUSTODY

14
15 9. Ms. Hatanaka is currently detained by DHS at the Eloy Detention Center
16 in Eloy, Arizona, where she was transferred after being arrested by ICE officers in Los
17 Angeles. Since her arrest, Ms. Hatanaka has not received a constitutionally compliant
18 hearing to determine whether her re-detention is justified.
19

20 JURISDICTION

21
22 10. This action arises under the Constitution of the United States, the INA, 8
23 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 500
24 et seq.
25

26 11. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C.
27 § 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus),
28 28 U.S.C. § 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of

1 Article 1 of the U.S. Constitution. The United States has waived its sovereign immunity
2 pursuant to 5 U.S.C. § 702.

3 12. This Court may grant declaratory and injunctive relief pursuant to 28
4 U.S.C. § 2241, 1651, 2201-02, and 5 U.S.C. § 702. This Court also has broad equitable
5 powers to grant relief to remedy a constitutional violation. *See Roman v. Wolf*, 977 F.3d
6 935, 941 (9th Cir. 2020).

7 VENUE

8
9
10 13. Venue is proper pursuant to 28 U.S.C. because the Respondents are
11 employees or officers of the United States, acting in their official capacity; because a
12 substantial part of the events or omissions giving rise to the claim occurred in the District
13 of Arizona; because Ms. Hatanaka is in Respondent's physical custody in Eloy, Arizona,
14 which is in the jurisdiction of the District of Arizona; and because there is no real
15 property involved in this action.
16

17
18 14. Because Ms. Hatanaka is detained in Pinal County, assignment to the
19 Phoenix Division of this Court is proper under Local Rule 77.1.

20 REQUIREMENTS OF 28 U.S.C. § 2241, 2243

21
22 15. 28 U.S.C. § 2241 grants federal courts the authority to issue writs of habeas
23 corpus to individuals in custody if that custody is a "violation of the Constitution or laws
24 or treaties of the United States." 28 U.S.C. § 2241(c)(3). Section 2241 is the proper
25 vehicle through which to challenge the constitutionality of a non-citizen's detention
26 without bail. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003).
27

28 16. The Court must grant the petition for writ of habeas corpus or issue an order

1 to show cause (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled
2 to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to
3 file a return “within three days unless for good cause additional time, *not exceeding*
4 *twenty days*, is allowed.” *Id.* (emphasis added).
5

6 17. Courts have long recognized the significance of the habeas statute in
7 protecting individuals from unlawful detention. The Great Writ has been referred to as
8 “perhaps the most important writ known to the constitutional law of England, affording
9 as it does a swift and imperative remedy in all cases of illegal restraint or confinement.”
10 *Fay v. Noia*, 372 U.S. 391, 400 (1963), *overruled on other grounds* by *Wainwright v.*
11 *Sykes*, 433 U.S. 72 (1977).
12
13

14 18. Habeas corpus must remain a swift remedy. Importantly, “the statute itself
15 directs courts to give petitions for habeas corpus ‘special, preferential consideration to
16 insure expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th
17 Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action
18 creating the perception “that courts are more concerned with efficient trial management
19 than with the vindication of constitutional rights.” *Id.*
20
21

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23 19. For habeas claims, exhaustion of administrative remedies is prudential, not
24 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may
25 waive the prudential exhaustion requirement if “administrative remedies are inadequate
26 or not efficacious, pursuit of administrative remedies would be a futile gesture,
27 irreparable injury will result, or the administrative proceedings would be void.” *Id.*
28

1 (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation
2 marks omitted)). Ms. Hatanaka asserts that exhaustion should be waived because
3 administrative remedies are (1) futile and (2) her continued detention results in
4 irreparable harm.
5

6 20. No statutory exhaustion requirements apply to Ms. Hatanaka's claim of
7 unlawful custody in violation of her due process rights, and there are no administrative
8 remedies that she needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*,
9 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because
10 the agency does not have jurisdiction to review" constitutional claims); *In re Indefinite*
11 *Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
12
13

14 PARTIES

15 21. Lissa Mel Hatanaka ("Petitioner" or "Ms. Hatanaka") is a 36-year-old
16 citizen of Israel and resident of California. She is presently detained by Respondents at
17 Eloy Detention Center in Eloy, Arizona.
18

19 22. Respondent Fred Figueroa is the Warden of Eloy Detention Center, a
20 detention center located in Eloy, Arizona, run by CoreCivic, a private, for-profit
21 company. Respondent Figueroa the immediate custodian of Ms. Hatanaka. He is
22 responsible for the day-to-day operations of the detention center and he is sued in his
23 official capacity.²
24
25
26

27 ² Pursuant to the Ninth Circuit's recent decision in *Doe v. Garland*, 109 F.4th 1188,
28 1197 (9th Cir. 2024), Fred Figueroa is the proper respondent because he is the *de facto*
warden of the facility at which Ms. Hatanaka is detained. The mandate has yet to issue in

1 23. Respondent John Cantu is the Field Office Director for the Phoenix Field
2 Office, Immigration and Customs Enforcement and Removal Operations (“ICE/ERO”).
3 The Phoenix Field Office is responsible for local custody decisions relating to non-
4 citizens charged with being removable from the United States, including the arrest,
5 detention, and custody status of non- citizens. The Phoenix Field Office’s area of
6 responsibility includes the state of Arizona. Respondent Cantu is a legal custodian of
7 Petitioner. He is sued in his official capacity.
8
9

10 24. Respondent Todd M. Lyons is the acting director of U.S. Immigration and
11 Customs Enforcement, and he has authority over the actions of respondent John Cantu
12 and ICE in general. Respondent Lyons is a legal custodian of Petitioner and is named in
13 his official capacity.
14

15 25. Respondent Kristi Noem is the Secretary of the Department of Homeland
16 Security (DHS) and has authority over the actions of all other DHS Respondents in this
17 case, as well as all operations of DHS. Respondent Noem is a legal custodian of
18 Petitioner and is charged with faithfully administering the immigration laws of the
19 United States. Respondent Noem is sued in her official capacity.
20
21

22 26. Respondent Pamela Bondi is the Attorney General of the United States, and
23 as such has authority over the Department of Justice and is charged with faithfully
24 administering the immigration laws of the United States. Respondent Bondi is sued in
25 her official capacity.
26

27
28 that case, however, so the other respondents are named herein to ensure effective relief
and continued jurisdiction in this case.

1 27. Respondent U.S. Immigration Customs Enforcement is the federal agency
2 responsible for custody decisions relating to non-citizens charged with being removable
3 from the United States, including the arrest, detention, and custody status of non-
4 citizens.

5
6 28. Respondent U.S. Department of Homeland Security is the federal agency
7 that has authority over the actions of ICE and all other DHS Respondents.

8
9 29. Petitioner's removability is currently the subject of an administrative
10 proceeding before the Executive Office for Immigration Review.

11 **STATEMENT OF FACTS**

12 30. Petitioner Lissa Mel Hatanaka ("Ms. Hatanaka") is currently detained at
13 Eloy Detention Center in Eloy, Arizona. She is thirty-six years old. *See* Declaration of
14 Ami Hutchinson (hereinafter "Hutchinson Decl.") at Exhibit ("Exh.") A, Declaration of
15 Ms. Hatanaka (hereinafter "Hatanaka Decl.") at ¶ 1.

16
17 31. Following a difficult childhood in Uzbekistan, Ms. Hatanaka and her
18 family migrated to Israel when she was ten years old. Hatanaka Decl. at ¶ 4. There, she
19 was ridiculed for her appearance and how she spoke. *Id.* ¶ 7. After her parents' second
20 divorce, Ms. Hatanaka was raised by her single mother, who worked multiple jobs but
21 nonetheless struggled to make ends meet. *Id.* ¶ 7. Like both of her parents, Ms. Hatanaka
22 was an accomplished runner. *Id.* ¶ 8.

23
24 32. Following her mandatory two-year military service requirement, Ms.
25 Hatanaka enrolled at the Mahon Avni Institute of Art in Tel Aviv, where she hoped to
26 hone her skills as an artist. *Id.* ¶ 11. She withdrew from school, however, after an
27
28

1 unplanned pregnancy. *Id.* Despite the baby’s father’s demands, Ms. Hatanaka refused to
2 terminate the pregnancy and vowed to raise her daughter alone. *Id.* ¶ 12. She therefore
3 made finding a stable job her top priority. *Id.* ¶ 13.

4 33. After months of searching, Ms. Hatanaka was hired by Yukom
5 Communications (“Yukom”), an Israel-based business that provided sales and
6 marketing services, including “retention services,” for two internet-based businesses
7 with the brand names BinaryBook and BigOption. Ms. Hatanaka was later transferred
8 to Numaris Communication (“Numaris”), an affiliate organization. *Id.* ¶¶ 15-17.

11 34. Ms. Hatanaka’s role at both Yukom and Numaris was that of “sales
12 representative.” Her primary function was to place calls to current and prospective
13 customers to induce them to make investments in the binary options trading business. *Id.*
14 ¶ 19. At the time, the binary options industry was legal (and flourishing) in Israel. Looking
15 back, however, Ms. Hatanaka readily admits that the services provided by Yukom and
16 Numaris were fraudulent and caused financial harm to vulnerable people. *Id.* ¶¶ 20, 34.

19 35. In 2015, Ms. Hatanaka began a romantic relationship with the office
20 manager at Numaris, resulting in resentment among her coworkers. *Id.* ¶ 21. At home, her
21 boyfriend was both physically and verbally abusive. *Id.* ¶ 22.

23 36. In 2016, after eighteen months of employment with Yukom and Numaris,
24 Ms. Hatanaka resigned from her position and, using her savings, moved out of her
25 boyfriend’s home while he was away. *Id.* ¶ 24. A few months later, she found new
26 employment with a legitimate company; she believed this difficult chapter in her life was
27 over. *Id.* ¶¶ 25, 27.

1 37. In September of 2018, Ms. Hatanaka traveled to the United States for
2 vacation, leaving her young daughter in the care of her mother in Israel. *Id.* ¶ 26. At the
3 time, Ms. Hatanaka was aware that top Yukom executives were being investigated but
4 had been reassured that she had nothing to worry about because she was a “nobody.” *Id.*
5 ¶ 27. For this same reason, Ms. Hatanaka did not hesitate to speak candidly when, the day
6 after her arrival in the United States, two FBI agents questioned her for about two hours
7 regarding her employment with Yukom and Numaris. *Id.* ¶ 29.

8
9
10 38. On September 17, 2018, Ms. Hatanaka was arrested as she was boarding her
11 flight in Los Angeles to return to Israel. *Id.* ¶ 31. To her surprise, Ms. Hatanaka had been
12 charged, in the U.S. District Court for the District of Maryland, with one count of
13 Conspiracy to Commit Wire Fraud. *Id.* ¶ 32.

14
15 39. Ms. Hatanaka was transferred to Chesapeake Detention Facility in
16 Maryland, where she remained until October 25, 2018, when she was released on a
17 secured bond with pretrial conditions of supervision. *Id.* ¶ 33.

18
19 40. For the next ten months, Ms. Hatanaka resided in California and successfully
20 complied with the terms and conditions of her release, including house arrest and GPS
21 tracking. Ms. Hatanaka was only permitted to leave the apartment to go to yoga and
22 synagogue. *Id.* ¶ 38. Her daughter, meanwhile, remained in Israel and turned 4 years old.

23
24 41. During her period of pretrial release, Ms. Hatanaka returned to Maryland
25 multiple times to meet with her attorneys and attend hearings. She never attempted to flee
26 the country.

27
28 42. On January 29, 2019, Ms. Hatanaka pleaded guilty to a one-count

Information, which charged her with conspiracy to commit wire fraud in violation of 18 U.S.C. § 371. Hutchinson Decl. at Exh. B (Judgment).

43. Following multiple postponements to fulfill the terms of her cooperation plea, Ms. Hatanaka was sentenced on August 29, 2018, to a term of 12 months and 1 day, with supervised release for a term of 2 years, and restitution in the amount of \$288,024.00. *Id.*³.

44. Although her incarceration was difficult, Ms. Hatanaka made the best of her situation. Hatanaka Decl. at ¶ 41. She taught yoga, led meditation, and painted murals with uplifting messages on the walls of FTC-Danbury. *Id.* ¶ 42. She also spent time writing, knitting, and working in the kitchen. *Id.*

45. During her incarceration, a tumor in Ms. Hatanaka's thyroid grew, but she could not be treated due to restrictions caused by COVID-19. *Id.* ¶ 43. Consequently, Ms. Hatanaka's request for Compassionate Release was granted and she was released two weeks early on May 8, 2020. Hutchinson Decl. at ¶ 8; Hatanaka Decl. at ¶ 45.

46. As of the day of her release, ICE was aware of Ms. Hatanaka's conviction and, therefore, aware that she was amenable to an administrative order of removal and mandatory detention. Hutchinson Decl. at Exh. C. Rather than detain Ms. Hatanaka,

³ Given her position, length of employment, and other factors, Ms. Hatanaka's order of restitution was substantially smaller than that of the defendants in related cases. *See, e.g., Federal Court Orders International Enterprise to Pay Over \$451 Million for Global Binary Options Fraud*, Commodity Futures Trading Commission (Jan. 29, 2025), <https://www.cftc.gov/PressRoom/PressReleases/9040-25>. *See also United States v. Elbaz*, No. 18-cr-00157 (D. Md.), and *United States v. Yakov Cohen*, No. 19 cr 77-1 PX (D. Md.).

1 however, ICE put her on an Order of Supervision and issued paperwork indicating that
2 she had been placed into removal proceedings. *Id.*

3 47. Ms. Hatanaka returned to California, where she successfully completed her
4 probation. Hutchinson Decl. ¶ 10; Hatanaka Decl. ¶¶ 47-48.

5 48. In California, Ms. Hatanaka met with an immigration attorney and applied
6 for asylum. Hatanaka Decl. at ¶ 47. She married her first husband on June 25, 2021, and
7 ultimately submitted an I-360 Self-Petition under the Violence Against Women Act,
8 which was based on abuse she suffered during that marriage. *Id.* ¶ 52. Ms. Hatanaka
9 filed for divorce in January 2022. *Id.*

10 49. On May 17, 2021, after completing her probation, Ms. Hatanaka was
11 arrested by ICE but ultimately released, placed on a second Order of Supervision, and
12 enrolled in the Alternatives to Detention program. Hutchinson Decl. at Exh. D. ICE also
13 apparently issued an administrative order of removal and referred Ms. Hatanaka's case
14 to USCIS for a reasonable fear interview. *Id.*; Hatanaka Decl. ¶ 48. Despite being subject
15 to mandatory detention, Ms. Hatanaka was not detained.

16 50. Over the next year, Ms. Hatanaka attended ICE check-ins on May 24, 2021;
17 June 30, 2021; November 9, 2021; and May 9, 2022. Hutchinson Decl. at Exh. E.

18 51. Although an interview was scheduled, Ms. Hatanaka recalls that her
19 attorney failed to show, and USCIS said they would reschedule. Hatanaka Decl. at ¶ 48.

20 52. During her final check-in, ICE removed Ms. Hatanaka's GPS monitor and
21 told her she did not need to report anymore. *Id.* ¶ 49. Ms. Hatanaka had no further contact
22 with ICE until May 15, 2025. *Id.*

1 53. In the summer of 2022, Ms. Hatanaka met her current husband, Tetsuo
2 Bobby Hatanaka (“Mr. Hatanaka”), who was born in the United States. *Id.* ¶ 53. They
3 married on March 27, 2023. *Id.* ¶ 54.

4 54. Following their marriage, Mr. Hatanaka filed an I-130 Petition on behalf of
5 his wife, and Ms. Hatanaka submitted an application for adjustment of status. *Id.* ¶ 67. Ms.
6 Hatanaka did not try to hide her criminal history. *Id.* ¶ 68.

7 55. Since her release from prison on May 8, 2020, Ms. Hatanaka has proven
8 herself to be a talented entrepreneur and a beloved member of her community in Los
9 Angeles and beyond.

10 56. Since 2020, she has taught yoga and volunteered at Nine Treasures Yoga
11 Studio, which she considers to be her spiritual home. *Id.* ¶ 57.

12 57. In 2021, Ms. Hatanaka obtained a certificate in phlebotomy from the Promed
13 Career Institute. Hutchinson Decl. at ¶ 23; *id.* at Exh. L (Letter of Support, Certificate).
14 She has also worked as a medical assistant for Transformation Healing Universe, a holistic
15 healing center where Ms. Hatanaka helps others heal from trauma and emotional pain.
16 Hatanaka Decl. at ¶ 66.

17 58. Ms. Hatanaka has also devoted substantial time and energy to creating and
18 sharing a love and appreciation for art. In 2023, she opened an art gallery in Santa
19 Monica called The Messengers Art Gallery (“Messengers”). *Id.* ¶ 58.

20 59. Messengers was a contemporary art gallery that showcased the work of
21 over 20 artists per month. *Id.* It is also where Ms. Hatanaka taught art classes to women
22 and children, particularly those who had been impacted by domestic violence. *Id.* ¶ 61.

1 60. Ms. Hatanaka ran the gallery until early 2025, when she was forced to close
2 due to the fires in Los Angeles and the terms of her lease. *Id.* ¶ 60. While it was open,
3 however, Messengers catapulted Ms. Hatanaka to the top of L.A.'s art scene. Hutchinson
4 Decl. at ¶ 22, Exh. G.

6 61. In addition to sharing the work of others, Ms. Hatanaka creates art. Over
7 the past several years, her work has been featured in galleries across the United States,
8 including Las Vegas, Dallas, Miami, and New York City. Hatanaka Decl. at ¶ 59.

10 62. Ms. Hatanaka has also proven herself to have great business acumen,
11 having started two online businesses: Lorenmarie and Phoenix Aurea Inc. *Id.* ¶ 62.
12 Through each company, Ms. Hatanaka endeavors to spread positivity through art and
13 fashion. *Id.*

15 63. At the time of her arrest, Ms. Hatanaka was working on a new application
16 called "Art Angels," which she hopes will bridge the gap between artists and galleries.
17 *Id.* ¶ 64.

19 64. On May 15, 2025, Ms. Hatanaka and her husband were interviewed at
20 USCIS in Los Angeles in connection with Ms. Hatanaka's application for adjustment of
21 status. *Id.* ¶ 70. It was there that Ms. Hatanaka was arrested by two masked officers, held
22 incommunicado for nearly 24 hours, and ultimately transferred to Eloy Detention Center
23 in Eloy, Arizona. *Id.* ¶¶ 70-72.

25 65. DHS initiated removal proceedings under 8 U.S.C. § 1229a when it filed a
26 Notice to Appear on May 27, 2025. Hutchinson Decl. at Exh. H.

28 66. On June 11, 2025, DHS filed a Motion to Dismiss the NTA as

1 “improvidently issued.” *Id.* at Exh. I. That motion was not accepted by the Immigration
2 Court until the following morning, shortly before Ms. Hatanaka’s hearing. *Id.* at ¶ 28.

3 67. Without hearing arguments or considering any evidence, the Immigration
4 Judge granted DHS’s motion. *Id.* at Exh. J.

5 68. On July 11, 2025, Ms. Hatanaka filed an appeal with the Board of
6 Immigration Appeals, which remains pending. *Id.* ¶ 30; Exh. K.

7 69. As of July 11, 2025, Ms. Hatanaka has been held in immigration detention
8 without a constitutionally compliant bond hearing for 57 days.
9

10 11 12 LEGAL FRAMEWORK

13 **Detention, Re-Detention, and Removal Authority**

14 70. Section 236 of the Immigration and Nationality Act (“INA”), 8 U.S.C. §
15 1226, “provides the general process for arresting and detaining aliens who are present
16 in the United States and eligible for removal.” *Rodriguez Diaz v. Garland*, 53 F.4th
17 1189, 1196 (9th Cir. 2022).
18

19 71. It is well-established that “[d]etention during removal proceedings is a
20 constitutionally permissible part of [the removal] process.” *Demore*, 538 U.S. at 531.
21

22 72. However, detention, including that of a non-citizen, violates due process if
23 there are not “adequate procedural protections” or “special justification[s]” sufficient to
24 outweigh one’s “ ‘constitutionally protected interest in avoiding physical restraint.’ ” *Id.*
25 at 690 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)); *Demore*, 538 U.S. at
26 516–17.
27
28

1 73. Section 1226(a) establishes the “default rule,” *id.*, setting forth various
2 procedures through which individuals *may* be detained pending a decision on whether
3 they are to be removed. 8 U.S.C. § 1226(a).

4 74. The INA further designates certain non-citizens to “mandatory” detention
5 under 8 U.S.C. § 1226(c) (“The Attorney General shall take into custody any alien who
6 [falls into one of several categories] when the alien is released, without regard to whether
7 the alien is released on parole, supervised release, or probation”). One of the
8 categories of non-citizens who “must” be detained are those who are deportable for
9 having been convicted of an aggravated felony offense covered in 8 U.S.C. §
10 1227(a)(2)(A)(iii). *See* 8 U.S.C. § 1226(c)(1)(B). The Attorney General may not release
11 a non-citizen detained under section 1226(c) pending the outcome of their deportation
12 proceedings unless release is necessary for witness protection, which is not at issue in
13 this case. *See id.* § 1226(c)(2).

14 75. The Supreme Court has held that § 1226(c)’s mandatory detention
15 provision applies even where the individual is not arrested and detained immediately
16 following their release from criminal custody. *Nielson v. Preap*, 586 U.S. ___, 139 S.Ct.
17 954, 959 (2019).

18 76. In *Preap*, the Supreme Court rejected a facial challenge to § 1226(c), but
19 expressly stated that its decision “on the meaning of the statutory provision does not
20 foreclose as-applied challenges—that is, constitutional challenges to applications of the
21 statute[.]” *Id.*; *see also Demore*, 538 U.S. at 532, (Kennedy, J., concurring) (“[S]ince the
22 Due Process Clause prohibits arbitrary deprivations of liberty, a lawful permanent
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1 resident alien such as respondent could be entitled to an individualized determination as
2 to his risk of flight and dangerousness if the continued detention became unreasonable
3 or unjustified.”).

4 77. In the present case, Ms. Hatanaka challenges the constitutionality of her
5 arrest and detention without a bond hearing. Specifically, she argues that 8 U.S.C. §
6 1226(c), as applied to her specific factual circumstances, is unconstitutional where
7 Respondents were aware that she was eligible for detention and removal when she was
8 released from criminal custody, but did not detain her for a period of five years, during
9 which time she was “law-abiding and by all measures built a new life.” *Perera v.*
10 *Jennings*, 598 F.Supp.3d 736, 744 (2022).

11 78. The INA also distinguishes between removal proceedings under Section
12 240, 8 U.S.C. § 1229a, and expedited removal proceedings under Sections 235 and 238.
13 *See* 8 U.S.C. §§ 1225, 1228.

14 79. Section 240 (8 U.S.C. § 1229a) proceedings are initiated when DHS files a
15 Notice to Appear charging the noncitizen with inadmissibility under 8 U.S.C. § 1182 or
16 deportability under 8 U.S.C. § 1227. *See* 8 C.F.R. § 1003.14.

17 80. In some cases, once the Notice to Appear is filed, the immigration judge
18 may, upon the government’s request, terminate the case and, “upon such termination,
19 the [government] may commence administrative proceedings under section 238 [8
20 U.S.C. § 1228] of the Act.” 8 C.F.R. § 238.1(e).

21 81. The noncitizen may, however, appeal the immigration judge’s decision to
22 terminate proceedings. That decision does not become final until the appeal concludes.

1 See 8 C.F.R. § 1241.1.

2 82. Further, under 8 U.S.C. § 1228(b), the Attorney General *may*, upon
3 determining that a noncitizen who has been convicted of an aggravated felony under 8
4 U.S.C. § 1227(a)(2)(A)(iii) was not lawfully admitted for permanent residence at the
5 time at which proceedings commenced, issue an administrative order of removal. The
6 regulations governing section 1228(b) proceedings are found at 8 C.F.R. § 238.1.
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8 83. Issuance of an administrative removal order under § 1228(b) is
9 discretionary; the government may instead initiate removal proceedings under 8 U.S.C.
10 § 1229a through the issuance of a Notice to Appear.
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12 84. Individuals subject to administrative orders under § 1228(b) are not eligible
13 for any relief from removal that the Attorney General may grant in the exercise of
14 discretion. 8 U.S.C. § 1228(b)(5). However, noncitizens who express a fear of removal
15 are entitled to a reasonable fear determination in accordance with 8 C.F.R. § 208.31. *See*
16 8 C.F.R. § 238.1(f)(3).
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18 85. Once ICE decides to grant conditional parole, a parolee has a due process
19 interest in her continued liberty. *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972)
20 (discussed *infra*). Consequently, and notwithstanding the breadth of the statutory
21 language granting ICE the power to revoke a noncitizen's bond (or parole), the Board
22 of Immigration Appeals ("BIA") has recognized an implicit limitation on ICE's
23 authority to re-arrest noncitizens. *Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981).
24 There, the BIA held that "where a previous bond determination has been made by an
25 immigration judge, no change should be made by [the DHS] absent a change of
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1 circumstance.” *Id.* In practice, DHS “requires a showing of changed circumstances both
2 where the prior bond determination was made by an immigration judge and where the
3 previous release decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d at 1197
4 (emphasis added). The Ninth Circuit has also assumed that, under *Matter of Sugay*, ICE
5 has no authority to re-detain an individual absent changed circumstances. *Panosyan v.*
6 *Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent changed circumstances
7 ... ICE cannot redetain Panosyan.”).

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10 86. ICE has further limited its authority as described in *Sugay*, and “generally
11 only re-arrests [noncitizens] pursuant to § 1226(b) after a *material* change in
12 circumstances.” *Saravia*, 280 F. Supp. 3d at 1197, *aff’d sub nom. Saravia for A.H.*, 905
13 F.3d 1137 (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus,
14 under BIA case law and stated ICE practice, ICE may re-arrest a noncitizen who had
15 been previously released on bond only after a material change in circumstances. *See*
16 *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

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19 87. Notably, it is unclear whether the above authority even applies to Ms.
20 Hatanaka, who was released pursuant to an Order of Supervision that later expired..
21 Even still, it must be recognized that ICE’s power to re-arrest a noncitizen who is at
22 liberty following a release is also constrained by the demands of due process. *See*
23 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“[T]he government’s
24 discretion to incarcerate non-citizens is always constrained by the requirements of due
25 process”). In this case, the guidance provided by *Matter of Sugay*—that ICE should not
26 re-arrest a noncitizen absent changed circumstances, assuming applicability—is
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1 insufficient to protect Ms. Hatanaka's weighty interest in her freedom from detention.

2 88. Federal district courts in the Ninth Circuit and elsewhere have repeatedly
3 recognized that the demands of due process and the limitations on DHS's authority to
4 revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of*
5 *Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Ms.
6 Hatanaka, *before* ICE re-detains her. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D.
7 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v.*
8 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
9 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal.
10 Mar. 1, 2021); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D.
11 Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D.
12 Cal. June 14, 2025); ECF No. 9, *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-
13 RFL (N.D. Cal. June 30, 2025).

14 89. As for the process due to noncitizen following their redetention by ICE, the
15 Eastern District of California's recent decision in *Doe v. Becerra*, No. 2:25-CV-00647-
16 DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal. Mar. 3, 2025), is illustrative. In this case,
17 Mr. Doe, a noncitizen from India, had been re-detained by ICE at a standard check-in
18 more than five years after his release on a bond. *Id.* at *1. Notably, Mr. Doe had been
19 arrested following his release on bond with charges dismissed after he successfully
20 completed a diversion program, and he was the subject of an INTERPOL Red Notice.
21 *Id.* at *5. Mr. Doe challenged his mandatory detention, arguing that his re-detention
22 without review by a neutral adjudicator violated his due process rights. *Id.* at *1. In
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1 granting a preliminary injunction, the Court held that even with the new facts, Mr. Doe
2 had established a strong likelihood of success in showing that he had an interest in his
3 continued liberty and that mandatory detention, in that case, under 8 U.S.C.
4 1225(b)(1)(B)(ii) would violate this due process rights unless he was afforded adequate
5 process. *Id.* at *5. The Court further held that, after applying the three-factor test in
6 *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Doe was entitled to a hearing before
7 an IJ to determine whether his detention is warranted. *Id.* at *6, *8. At this hearing, the
8 government bore the burden of establishing, by clear and convincing evidence, whether
9 Mr. Doe posed a danger or a flight risk.

12 **Ms. Hatanaka Has a Protected Liberty Interest in Her Conditional Release**

13
14 90. Ms. Hatanaka's liberty from immigration custody is protected by the Due
15 Process Clause: "Freedom from imprisonment—from government custody, detention,
16 or other forms of physical restraint—lies at the heart of the liberty that [the Due Process]
17 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

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19 91. For at least three years preceding her re-detention on May 15, 2025, Ms.
20 Hatanaka exercised that freedom under the ICE's 2022 decision to remove her GPS
21 monitor and discontinue check-ins. Even prior to the removal of the GPS tracker, Ms.
22 Hatanaka retained a weighty liberty interest under the Due Process Clause of the Fifth
23 Amendment in avoiding re-incarceration after ICE issued its first Order of Supervision
24 on May 8, 2020. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v.*
25 *Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483.

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28 92. In *Morrissey*, the Supreme Court examined the "nature of the interest" that

1 a parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that,
2 “subject to the conditions of his parole, [a parolee] can be gainfully employed and is free
3 to be with family and friends and to form the other enduring attachments of normal life.”
4 *Id.* at 482. The Court further noted that “the parolee has relied on at least an implicit
5 promise that parole will be revoked only if he fails to live up to the parole conditions.”
6 *Id.* The Court explained that “the liberty of a parolee, although indeterminate, includes
7 many of the core values of unqualified liberty and its termination inflicts a grievous loss
8 on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable
9 and must be seen as within the protection of the [Fifth] Amendment.” *Morrissey*, 408
10 U.S. at 482.

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14 93. This basic principle—that individuals have a liberty interest in their
15 conditional release—has been reinforced by both the Supreme Court and the circuit
16 courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that
17 individuals placed in a pre-parole program created to reduce prison overcrowding have
18 a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411
19 U.S. at 781-82 (holding that individuals released on felony probation have a protected
20 liberty interest requiring pre-deprivation process). As the First Circuit has explained,
21 when analyzing the issue of whether a specific conditional release rises to the level of a
22 protected liberty interest, “[c]ourts have resolved the issue by comparing the specific
23 conditional release in the case before them with the liberty interest in parole as
24 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir.
25 2010) (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of*
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1 *Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical
2 confinement—even if that freedom is lawfully revocable—has a liberty interest that
3 entitles him to constitutional due process before he is re-incarcerated”) (citing *Young*,
4 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

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6 94. In fact, it is well-established that an individual maintains a protectable
7 liberty interest even where the individual obtains liberty through a mistake of law or
8 fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868,
9 873 (9th Cir. 1982) (noting that due process considerations support the notion that an
10 inmate released on parole by mistake, because he was serving a sentence that did not
11 carry a possibility of parole, could not be re-incarcerated because the mistaken release
12 was not his fault, and he had appropriately adjusted to society, so it “would be
13 inconsistent with fundamental principles of liberty and justice” to return him to prison)
14 (internal quotation marks and citation omitted).

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17 95. Here, when this Court ““compar[es] the specific conditional release in
18 [Petitioner’s case], with the liberty interest in parole as characterized by *Morrissey*,”
19 they are strikingly similar. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*,
20 Ms. Hatanaka’s release “enables [her] to do a wide range of things open to persons”
21 who have never been in custody or convicted of any crime, including to live at home,
22 work, and “be with family and friends and to form the other enduring attachments of
23 normal life.” *Morrissey*, 408 U.S. at 482. Noncitizens released on a bond have a similar
24 liberty interest. *See Doe*, 2025 WL 691664, at *5 (“Petitioner, having been released at a
25 bond hearing over five years ago, has a similar liberty interest.”); *Diaz*, 2025 WL
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1 1676854, at *2 (“Courts have previously found that individuals released from
2 immigration custody on bond have a protectable liberty interest in remaining out of
3 custody on bond.”); *see also Jorge M.F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL
4 783561, at *3 (N.D. Cal. March 1, 2021) (holding that a Mexican citizen with pending
5 removal proceedings who had been released on bond had “a substantial private interest
6 in remaining on bond”); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal.
7 2019).

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10 96. Since her release in May 2020, Ms. Hatanaka has lived in California, where
11 her contributions to the art world are widely acclaimed. Hutchinson Decl. at Exh. G. She
12 successfully completed her federal probation in 2021 and, following a brief arrest by
13 ICE, was on an Order of Supervision and attending appointments with ICE through at
14 least May of 2022. Hatanaka Decl. at ¶¶ 46-49. She has applied for several forms of
15 relief with USCIS and faithfully provided all required information and attended
16 biometrics appointments as necessary. In 2024, she was granted work authorization. She
17 has consistently taught, volunteered, furthered her education, and created art, all with
18 the goal and purpose of inspiring and uplifting others. *Id.* ¶¶ 57-66. She is married to a
19 U.S. citizen and prima facie eligible for adjustment of status in conjunction with a
20 waiver. Hutchinson Decl. at ¶ 20. In short, while she was released, Ms. Hatanaka was
21 able to participate in the “attachments of normal life,” *Morrissey*, 408 U.S. at 482, and
22 as such, she has a protected liberty interest and her continued detention without adequate
23 process violates her due process rights.
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Ms. Hatanaka's Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Bond or Parole

97. Ms. Hatanaka asserts that, here, (1) where her detention is civil, (2) she has diligently complied with ICE's reporting requirements on a regular basis, and was in fact dismissed from her Order of Supervision, (3) has an appeal pending before the Board of Immigration Appeals, (4) there have been no material changes in circumstances, (5) and ICE has not provided any evidence that would support Ms. Hatanaka's re-detention, due process mandates that she was required to receive notice and a hearing before a neutral adjudicator prior to any re-arrest or revocation of a bond.

98. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Ms. Hatanaka's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process she is owed to ensure that ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative

1 burdens that the additional or substitute procedural requirements would entail.”
2 *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

3 99. The Supreme Court “usually has held that the Constitution requires some
4 kind of a hearing *before* the State deprives a person of liberty or property.” *Zinermon v.*
5 *Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where
6 post-deprivation remedies are “the only remedies the State could be expected to provide”
7 can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494
8 U.S. at 985. Moreover, only where “one of the variables in the *Mathews* equation—the
9 value of predeprivation safeguards—is negligible in preventing the kind of deprivation
10 at issue” such that “the State cannot be required constitutionally to do the impossible by
11 providing predeprivation process,” can the government avoid providing pre-deprivation
12 process. *Id.*

13 100. Because, in this case, the provision of a pre-deprivation hearing was both
14 possible and valuable in preventing an erroneous deprivation of liberty, ICE was
15 required to provide Ms. Hatanaka with notice and a hearing *prior* to any re-incarceration.
16 *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S.
17 at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
18 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
19 commitment proceedings may not constitutionally be held in jail pending the
20 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the
21 balance weighs heavily in favor of [Ms. Hatanaka’s] liberty” and required a pre-
22 deprivation hearing before a neutral adjudicator, which ICE failed to provide.

Ms. Hatanaka's Private Interest in Her Liberty is Profound

101. Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Ms. Hatanaka, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction. Parolees and probationers have a diminished liberty interest given their underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Ms. Hatanaka retains a truly weighty liberty interest.

102. What is at stake in this case for Ms. Hatanaka is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond or parole decision and be able to take away her physical freedom, i.e., her “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted). “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause.”

1 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at 690
2 (“Freedom from imprisonment—from government custody, detention, or other forms of
3 physical restraint—lies at the heart of the liberty that [the Due Process] Clause
4 protects.”); *Cooper v. Oklahoma*, 517 U.S. 348 (1996); *see also Doe*, 2025 WL 691664,
5 at *5 (“It cannot be gainsaid that Petitioner has a substantial private interest in
6 maintaining his out-of-custody status.”).

8 103. Thus, it is clear there is a profound private interest at stake in this case,
9 which must be weighed heavily when determining what process Ms. Hatanaka is owed
10 under the Constitution. *See Mathews*, 424 U.S. at 334-35.

12 **The Government’s Interest in Keeping Ms. Hatanaka in Detention Without a**
13 **Hearing is Low, and the Burden on the Government to Release Her from Custody**
14 **Unless and Until She is Provided a Hearing is Minimal**

15 104. The government’s interest in keeping Ms. Hatanaka in detention without a
16 due process hearing is low, and when weighed against Ms. Hatanaka’s significant
17 private interest in her liberty, the scale tips sharply in favor of releasing her from custody
18 unless and until the government demonstrates by clear and convincing evidence that she
19 is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews*
20 test favors Ms. Hatanaka when the Court considers that the process she seeks—release
21 from custody pending notice and a hearing regarding whether she should be re-detained
22 or a new bond amount should be set—is a standard course of action for the government.
23 In the alternative, providing Ms. Hatanaka with a hearing before this Court (or a neutral
24 decisionmaker) to determine whether there is clear and convincing evidence that she is
25 a flight risk or danger to the community would impose only a *de minimis* burden on the
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1 government, because the government routinely provides this sort of hearing to detained
2 individuals like Ms. Hatanaka.

3 105. Immigration detention is civil and can have no punitive purpose. The
4 government's only interest in holding an individual in immigration detention can be to
5 prevent danger to the community or to ensure a noncitizen's appearance at immigration
6 proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot
7 plausibly assert that it had a sudden interest in detaining Ms. Hatanaka in May 2025,
8 during her adjustment of status interview, when it has been aware of her conviction for
9 over five years.

12 106. As to flight risk, Ms. Hatanaka has repeatedly proven herself to be anything
13 but. In 2018 and 2019, while on pretrial release, she returned to Maryland for hearings,
14 to meet with her attorneys, to fulfill her obligations under the cooperation plea, and for
15 sentencing. After her release from FTC-Danbury, she successfully completed probation
16 and was put on an Order of Supervision by ICE. Ms. Hatanaka attended her check-ins
17 faithfully and wore a GPS monitor, which ICE eventually removed. Even after her Order
18 of Supervision, Ms. Hatanaka submitted several applications with USCIS, each of which
19 contained her correct address and contact information. Moreover, she was frequently
20 featured in articles about her art and The Messengers gallery, and she was active on
21 social media. Ms. Hatanaka was not hiding; she was in plain sight.

25 107. The government's interest in detaining Ms. Hatanaka at this time is
26 therefore low. That ICE has new policies under the new administration does not
27 constitute a material change in circumstances in her case or increase the government's
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1 interest in detaining her. Moreover, the “fiscal and administrative burdens” that release
2 from custody, unless and until a pre-deprivation bond hearing is provided, would impose
3 are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Ms. Hatanaka does not
4 seek a unique or expensive form of process, but rather her release from custody until a
5 routine hearing regarding whether her detention is justified.
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7 108. In the alternative, providing Ms. Hatanaka with an immediate hearing
8 before this Court (or a neutral decisionmaker) regarding bond is a similarly routine
9 procedure that the government provides to those in immigration jails on a daily basis.
10 *See Doe* at *6 (“The effort and cost required to provide Petitioner with procedural
11 safeguards is minimal and indeed was previously provided in his case.”). At that hearing,
12 the Court would have the opportunity to determine whether Ms. Hatanaka is a danger or
13 flight risk, and what bond, if any, is sufficient to mitigate those risks.
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16 109. Release from custody until ICE (1) moves for a bond re-determination
17 before an Immigration Judge and (2) demonstrates by clear and convincing evidence
18 that Ms. Hatanaka is a flight risk or danger to the community is far *less* costly and
19 burdensome for the government than keeping her detained. As the Ninth Circuit noted
20 in 2017, which remains true today, “[t]he costs to the public of immigration detention
21 are ‘staggering’: \$158 each day per detainee, amounting to a total daily cost of \$6.5
22 million.” *Hernandez*, 872 F.3d at 996. If, in the alternative, the Court chooses to order a
23 hearing for Ms. Hatanaka at which the government bears the burden of justifying her
24 continued detention, the government would bear no additional cost if the hearing is
25 scheduled within fourteen days, rather than allowing Ms. Hatanaka to sit in detention
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1 for weeks or months awaiting a decision in her appeal.

2 **Without Release from Custody until the Government Provides a Due Process**
3 **Hearing, the Risk of an Erroneous Deprivation of Liberty is High, and Process in**
4 **the Form of a Constitutionally Compliant Hearing Where ICE Carries the Burden**
5 **Would Decrease That Risk**

6 110. Releasing Ms. Hatanaka from custody until she is provided a pre-
7 deprivation hearing would decrease the risk of her being erroneously deprived of her
8 liberty. Before Ms. Hatanaka can be lawfully detained, she must be provided with a
9 hearing before a neutral adjudicator at which the government is held to show that there
10 has been sufficiently changed circumstances such that ICE's May 8, 2020, or May 17,
11 2021, determinations should be altered or revoked because clear and convincing
12 evidence exists to establish that Ms. Hatanaka is a danger to the community or a flight
13 risk. *See e.g. Diaz*, 2025 WL 1676854, at *3 (finding that "the three factors relevant to
14 the due process inquiry set out in *Mathews*...support requiring a pre-detention hearing
15 for [Mr. Diaz as he] has a substantial private interest in remaining out of custody on
16 bond, which enables him to do a wide range of things open to persons who are free from
17 custody, such as working, living at home, and being with family and friends ... to form
18 the enduring attachments of normal life"). Ms. Hatanaka has already been erroneously
19 deprived of her liberty, and the risk that she will continue to be deprived is high if ICE
20 is permitted to keep her detention after making a unilateral decision to re-detain her. Ms.
21 Hatanaka was previously granted release via parole; no statutory mechanism provides
22 her any process before a neutral adjudicator following her re-detention. As a result,
23 under current procedures, the validity or necessity of Ms. Hatanaka's re-detention would
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1 evade any review by the IJ or any other neutral arbiter.

2 111. By contrast, the procedure Ms. Hatanaka seeks—release from custody and
3 reinstatement of her prior parole until she is provided a hearing in front of a neutral
4 adjudicator at which the government proves by clear and convincing evidence that
5 circumstances have changed to justify her re-detention, *see Doe*, 2025 WL 691664, *8—
6 is much more likely to produce accurate determinations regarding factual disputes, such
7 as whether a certain circumstance constitutes a “changed circumstance.” *See*
8 *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate
9 judgments depending on credibility of witnesses and assessment of conditions not
10 subject to measurement” are at issue, the “risk of error is considerable when just
11 determinations are made after hearing only one side”); *see also Doe*, 2025 WL 691664,
12 *1. “A neutral judge is one of the most basic due process protections. *Castro-Cortez v.*
13 *INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on other grounds by Fernandez-*
14 *Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an
15 erroneous deprivation of liberty under *Mathews* can be decreased where a neutral
16 decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v.*
17 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

23 112. Due process also requires consideration of alternatives to detention and
24 ability to pay at any custody redetermination hearing that may occur. *See e.g.,*
25 *Hernandez v. Sessions*, 872 F.3d 976, 997 (9th Cir. 2017) (“Plaintiffs are likely to
26 succeed on their challenge under the Due Process Clause to the government's policy of
27 allowing ICE and IJs to set immigration bond amounts without considering the
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1 detainees' financial circumstances or alternative conditions of release."); *Walter A.T. v.*
 2 *Facility Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL 1744133, at *10 (E.D.
 3 Cal. June 24, 2025). The primary purpose of immigration detention is to ensure a
 4 noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
 5 Detention is not reasonably related to this purpose if there are alternatives to detention
 6 that could mitigate risk of flight. *See Bell*, 441 U.S. at 538. Accordingly, alternatives to
 7 detention and ability to pay must be considered in determining whether Ms. Hatanaka
 8 re-incarceration is warranted.

11 113. Lastly, due process also requires that at any hearing ICE provide Ms.
 12 Hatanaka with details regarding the date, time, place, and substance of any conduct being
 13 used by ICE justify her re-detention. *See c.f. Trump v. J. G. G.*, 145 S. Ct. 1003, 1006
 14 (2025) (Noncitizens are "entitled to notice and opportunity to be heard appropriate to
 15 the nature of the case").

18 **FIRST CAUSE OF ACTION**

19 **Due Process**

20 **U.S. Const. Amend. V**

21 114. Ms. Hatanaka re-alleges and incorporates herein by reference, as is set forth
 22 fully herein, the allegations set forth above.

23 115. The Due Process Clause of the Fifth Amendment forbids the government
 24 from depriving any "person" of liberty "without due process of law." U.S. Const. amend.
 25 V.
 26

27 116. Ms. Hatanaka had a vested liberty interest in her conditional release. Due
 28 Process does not permit the government to strip her of that liberty without a hearing

1 before this Court. *See Morrissey*, 408 U.S. at 487-488.

2 117. For these reasons, Ms. Hatanaka's re-arrest without a hearing violated the
3 Constitution. The only remedy of this violation is her immediate release from
4 immigration detention until DHS proves to this Court or, in the alternative, a neutral
5 adjudicator, by clear and convincing evidence, and taking into consideration alternatives
6 to detention and ability to pay a bond, that she is a present danger to the community or
7 an unmitigable flight risk, such that her re-incarceration is warranted. Further, to comply
8 with due process, the government must provide Ms. Hatanaka with details regarding the
9 date, time, place, and substance of any conduct being used to justify her re-detention.
10
11

12 **PRAYER FOR RELIEF**

13
14 WHEREFORE, Ms. Hatanaka prays that this Court grant the following relief:

- 15 (1) Assume jurisdiction over this matter;
- 16 (2) Enjoin Respondents from transferring Ms. Hatanaka outside the jurisdiction of the
17 District of Arizona pending the resolution of this case;⁴
- 18 (3) Issue an Order to Show Cause ordering Respondents to show cause why this
19 Petition should not be granted within three days;
- 20 (4) Declare that Ms. Hatanaka's detention violates the Due Process Clause of the Fifth
21 Amendment;
- 22 (5) Order the immediate release of Ms. Hatanaka from DHS custody until DHS
23 proves to a neutral adjudicator by clear and convincing evidence that she is a
24 present danger or an unmitigable flight risk after taking into consideration
25 alternatives to detention and her ability to pay a bond, such that her re-
26 incarceration is warranted. During any custody redetermination hearing, DHS
must provide Ms. Hatanaka with details regarding the date, time, place, and
substance of any conduct being used by ICE to justify her re-detention;

27
28 ⁴ Motion for Preliminary Injunction and/or Temporary Restraining Order
forthcoming.

- (6) In the alternative, conduct an immediate bond hearing before this Court where DHS bears the burden of justifying Ms. Hatanaka's continued detention by clear and convincing evidence, after taking into consideration alternatives to detention and her ability to pay a bond, such that her re-incarceration is warranted. During any custody redetermination hearing, DHS must provide Ms. Hatanaka with details regarding the date, time, place, and substance of any conduct being used by ICE to justify her re-detention;
- (7) In the alternative, order an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Ms. Hatanaka's continued detention by clear and convincing evidence that she is a present danger or an unmitigable flight risk after taking into consideration alternatives to detention and her ability to pay a bond, such that her re-incarceration is warranted. During any custody redetermination hearing, DHS must provide Ms. Hatanaka with details regarding the date, time, place, and substance of any conduct being used by ICE to justify her re-detention;
- (8) Award reasonable costs and attorney fees; and
- (9) Grant such further relief as the Court deems just and proper.

Dated: July 13, 2025

Respectfully submitted,

s/ Ami Hutchinson

Ami Hutchinson

Matthew H. Green

Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Lissa Mel Hatanaka, and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 13th day of July, 2025.

s/Ami Hutchinson
Signature