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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, et al.,

,

Respondents.

Case No. 25-cv-02448-JAT-
ESW

**PETITIONER'S REPLY TO
RESPONDENT'S
RESPONSE TO PETITION
FOR WRIT OF HABEAS
CORPUS**

REPLY TO RESPONDENT'S RESPONSE TO PETITION FOR WRIT OF
HABEAS CORPUS

INTRODUCTION

Petitioner, Lissa Mel Hatanaka (“Ms. Hatanaka”) hereby replies to Respondents’ Response to Petition for Writ of Habeas Corpus. *See* Doc. 1 (Habeas), Doc. 19 (Response). As explained herein, the Respondents’ arguments lack merit. Ms. Hatanaka is detained under 8 U.S.C. § 1226(c) because she remains in removal proceedings pursuant to 8 U.S.C. § 1229a and does not have an executable final order of removal. Further, even assuming arguendo that Ms. Hatanaka is detained under 8 U.S.C. § 1231(a)(6), relief is warranted where Respondents cannot execute the administrative order of removal and where Ms. Hatanaka was re-detained without cause despite having complied with an order of supervision for several years.

Ms. Hatanaka has now been detained for over 115 days.

STATEMENT OF FACTS

Petitioner Lissa Mel Hatanaka (“Ms. Hatanaka”) incorporates by reference the facts as set forth in the Petition for Writ of Habeas Corpus. *See* Doc. 1.

Correcting the Factual Errors Made by Respondents

Respondents’ statement of facts (Doc. 19 at 1-3) contains multiple errors that warrant correction.

First, Respondents, through Deportation Officer Sergio Cabrera, claim that “[o]n November 19, 2019, Petitioner was encountered by ICE, Enforcement and Removal Operations (ERO) in Boston at a Federal Correctional Institution in Danbury, Connecticut after serving out her sentence of incarceration.” (Doc. 19 at 2, referencing Doc. 9, Exh. A ¶8). Respondents further state that Ms. Hatanaka was simultaneously

1 taken into ICE custody “where she remained until May 8, 2020, when she was released
2 on an Order of Release on Recognizance.” (*Id.* ¶9). This is inaccurate, as Ms. Hatanaka
3 remained in federal custody at FCI Danbury until May 8, 2020. *See* Exhibit A,
4 Declaration of Ami Hutchinson (hereinafter “Hutchinson Decl.”), at Attachment A
5 (release paperwork from FCI Danbury). Although DHS did encounter Ms. Hatanaka
6 upon her release (in May 2020), she was immediately released on an Order of Release on
7 Recognizance. *Id.* at Att. C. DHS declined to initiate proceedings under 8 U.S.C. §
8 1228(b) and instead served Ms. Hatanaka with a Notice to Appear that was never filed.
9 *See id.* at Att. B *see also* Doc. 9, Exh. A at ¶11.

12 Second, Respondents state that Ms. Hatanaka did not appear for a reasonable fear
13 interview (“RFI”) on July 5, 2021. Doc. 19 at 13; Doc. 9, Exh. A at ¶15. Ms. Hatanaka
14 has no recollection of an interview being scheduled for that date. She does, however,
15 recall later appearing for an RFI on or about May 25, 2022. *See* Hutchinson Decl. at Att.
16 E (notice of interview). At that interview, Ms. Hatanaka’s attorney failed to appear, and
17 USCIS stated the interview would be rescheduled. As Officer Cabrera concedes,
18 however, it never was. Doc. 9, Exh. A at ¶15.

21 Third, Respondents claim that Immigration and Customs Enforcement (“ICE”)
22 took Ms. Hatanaka into custody “after USCIS denied adjustment of status in connection
23 with [her] Form I-130, Petition for Alien Relative.” This is also inaccurate, as both Form
24 I-485 (Application for Adjustment of Status) and Form I-130 (Petition for Alien Relative)
25 remain pending. Hutchinson Decl. at Att. F (USCIS case status as of July 24, 2025). In
26 fact, just weeks ago USCIS scheduled Ms. Hatanaka for another interview (in Los
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1 Angeles) on October 1, 2025. *Id.* at Att. G (Notice of Action).

2 Fourth, Respondents state that “ICE moved to dismiss the [Notice to Appear]
3 when it realized Petitioner was already subject to an administrative removal order issued
4 on May 17, 2021.” Doc. 19 at 3, n.2. This, too, misstates the argument put forth by DHS.
5 During Ms. Hatanaka’s first and only hearing before the Immigration Judge (“IJ”), the
6 Department of Homeland Security stated that it sought dismissal so that the agency could
7 *issue* an administrative order, not *enforce* one. Exh. A at ¶13. When counsel for Petitioner
8 later requested that DHS refer Ms. Hatanaka’s case to U.S. Citizenship and Immigration
9 Services for reasonable fear proceedings, the agency implied that it could not as long as
10 Ms. Hatanaka’s case remained pending with the Executive Office for Immigration
11 Review (“EOIR”). Hutchinson Decl. at Att. H (email from DHS counsel on June 16,
12 2025). USCIS further confirmed that no referral had been made. *Id.*

13 More recently, on September 5, 2025, USCIS attempted to conduct a Reasonable
14 Fear Interview, which Ms. Hatanaka refused to participate in without counsel. *Id.* at ¶15.
15 That day, counsel contacted the Asylum Office (which handles both Credible and
16 Reasonable Fear Interviews) to state that Ms. Hatanaka is presently in removal
17 proceedings pursuant to INA § 240, 8 U.S.C. § 1229a, and that her appeal remains
18 pending with the BIA. *Id.* In response, USCIS stated it will close the reasonable fear
19 proceedings. *Id.* at Att. I.

20 **LEGAL STANDARD**

21 This Court is authorized to grant writs of habeas corpus to individuals like Ms.
22 Hatanaka if their custody is a “violation of the Constitution or laws or treaties of the
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1 United States[.]” 28 U.S.C. § 2241(c)(3). In this case, Ms. Hatanaka’s arrest and detention
2 violate the Due Process Clause of the Fifth Amendment to the U.S. Constitution, which
3 prohibits the federal government from depriving any person of “life, liberty, or property,
4 without due process of law[.]” U.S. Const. Amend. V. This right extends to “all ‘persons’
5 within the United States, including [non-citizens], whether their presence here is lawful,
6 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

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9 Procedural due process “imposes constraints on governmental decisions which
10 deprive individuals of ‘liberty’ or ‘property’ interests. *Mathews v. Eldridge*, 424 U.S.
11 319, 332 (1976). The most fundamental requirement is “the opportunity to be heard ‘at a
12 meaningful time and in a meaningful manner.’” *Id.* at 333 (quoting *Armstrong v. Manzo*,
13 380 U.S. 545, 552(1965)).

15 To determine whether Ms. Hatanaka’s has received adequate due process
16 “generally requires consideration of three distinct factors: First, the private interest that
17 will be affected by the official action; second, the risk of an erroneous deprivation of such
18 interest through the procedures used, and the probable value, if any, of additional or
19 substitute procedural safeguards; and finally, the Government’s interest, including the
20 function involved and the fiscal and administrative burdens that the additional or
21 substitute procedural requirement would entail.” *E.A. T.-B. v. Wamsley*, No. C25-1192-
22 KKE, 2025 WL 2402130, at *3 (W.D. Wash. Aug. 19, 2025) (citing *Mathews*, 424 U.S.
23 at 335).

27 Presently, Ms. Hatanaka does not repeat the arguments put forth in her petition
28 (Doc. 1). Instead, she responds solely to the arguments made by Respondents in their

1 Response (Doc. 19).

2 **ARGUMENT**

3 As demonstrated in Petitioner's Petition (Doc. 1) and Motion for Temporary
4 Restraining Order (Doc. 3), Ms. Hatanaka is detained pursuant to 8 U.S.C. § 1226(c)
5 because she was placed into removal proceedings under 8 U.S.C. § 1229a and because
6 she does not have a final, executable order of removal. Respondents disagree but offer
7 no evidence or arguments beyond what was stated in their opposition to the TRO. (Doc.
8 9).
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11 To summarize, Respondents claim—albeit incorrectly—that Ms. Hatanaka was
12 arrested because her application for adjustment of status was denied by USCIS, and that
13 DHS subsequently sought dismissal of the Notice to Appear because it realized Ms.
14 Hatanaka already had an administrative order of removal. Thus, Respondents argue that
15 Ms. Hatanaka is currently detained under 8 U.S.C. § 1231(a)(6) even though she remains
16 in 1229a proceedings.
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19 As demonstrated herein, DHS's position does not square with the text of the INA
20 or its implementing regulations. Moreover, even if Ms. Hatanaka is detained pursuant to
21 8 U.S.C. § 1231(a)(6), she is still entitled to relief where Respondents re-detained her
22 without valid justification *years* after the alleged order became final and *years* after DHS
23 opted to release her on an order of supervision—during which time Ms. Hatanaka built a
24 life for herself and for her U.S. citizen husband.
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27 Thus, as set forth in Petitioner's petition, Ms. Hatanaka has a substantial liberty
28 interest in her freedom from government custody, and due process requires that she be

1 released unless and until a neutral adjudicator determines that she is a danger or a flight
2 risk.

3 **I. MS. HATANAKA IS DETAINED UNDER SECTION 1226 AND REMAINS IN SECTION**
4 **1229A PROCEEDINGS. SHE DOES NOT HAVE AN EXECUTABLE FINAL ORDER OF**
5 **REMOVAL.**

6 **A. Ms. Hatanaka is Not Detained Pursuant to 8 U.S.C. § 1231(a)(6).**

7 Ms. Hatanaka was arrested by Respondent ICE on May 15, 2025. Subsequently,
8 Respondent DHS issued a Notice to Appear charging Ms. Hatanaka with removability
9 under 8 U.S.C. § 1227(a)(2)(A)(iii). Based on these facts alone, ICE arrested and detained
10 Ms. Hatanaka for the purpose of placing her into full removal proceedings and not, as
11 Respondents now suggest, because they believed she had a final order of removal. *See*
12 Doc. 9 at Exhibit A (claiming that ICE detained Ms. Hatanaka because her application
13 for adjustment of status was denied). Section 1226 applies to noncitizens “who have been
14 admitted to the United States but are deportable and subject to removal proceedings under
15 § 1229a.” *Hernandez Nieves v. Kaiser, et al.*, No. 25-cv-06921-LB, 2025 WL 2533110,
16 at *3 (N.D. Cal. Sept. 3, 2025). Thus, Ms. Hatanaka is detained pursuant to 8 U.S.C. §
17 1226(c).
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21 Based on the foregoing, Ms. Hatanaka was detained *so that* Respondent DHS
22 could initiate removal proceedings under 8 U.S.C. § 1229a. That the government later
23 realized she was amenable to removal under 8 U.S.C. § 1228(b) does not convert her
24 detention authority in the absence of a final order of removal.
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B. Ms. Hatanaka is in Section 1229a Removal Proceedings and Does Not Have a Final Order of Removal.

Where, as here, DHS chooses to place an individual into section 240 (8 U.S.C. § 1229a) proceedings instead of pursuing an administrative removal, “the government vest[s] [the noncitizen] with the rights that Congress guaranteed non-citizens in those proceedings.” *Mata Velasquez v. Kurzdorfer et al.*, No. 25-CV-493-LJV, 2025 WL 1953796, at *9 (W.D.N.Y. July 16, 2025) (concluding that DHS cannot initiate the expedited removal process while section 240 proceedings are pending). Prior to the commencement of removal proceedings, the Department of Homeland Security may unilaterally cancel a notice to appear for specified reasons. 8 C.F.R. §§ 235.6(a), 239.1(a), 239.2(a). Once proceedings have begun before an IJ, however, the government may move for dismissal only in the manner provided by 8 C.F.R. § 239.2. This is so because, once a notice to appear is filed with the Immigration Court, jurisdiction over the individual’s immigration case vests with the IJ, and it is the IJ’s duty to adjudicate the case. 8 U.S.C.S. § 1229a(a)(3), (c)(1)(A); 8 C.F.R. §§ 1003.14(a), 1240.1(a)(1)(i), 1240.11.

The rights provided in section 1229a proceedings include appealing IJ decisions to the BIA. *See* 8 C.F.R. § 1003.38(a). Here, Ms. Hatanaka chose to invoke that right. Pursuant to 8 C.F.R. § 1241.1(a), a decision made by an immigration judge at the conclusion of proceedings under INA § 240 (8 U.S.C. § 1229a) becomes final “upon dismissal of an appeal by the Board of Immigration Appeals.” Ms. Hatanaka’s appeal remains pending. Thus, the IJ’s decision granting the Department of Homeland Security’s motion to dismiss the NTA as “improvidently issued” and terminate removal

1 proceedings, is not final. Consequently, Ms. Hatanaka remains in section 1229a
2 proceedings. *Cf. Mata Velasquez*, 2025 WL 1953796, at *9 (“Mata Velasquez’s right to
3 have his appeal heard by the BIA prohibits the initiation of expedited removal
4 proceedings—and therefore mandatory detention under 8 U.S.C. § 1225(b)(1)—before
5 his section 240 proceedings have been allowed to run their procedural course.”).

7 Further, even assuming that Ms. Hatanaka’s May 2021 administrative removal
8 order is valid, it cannot be executed – nor a new order issued – while section 240
9 proceedings remain pending. Ms. Hatanaka’s right to have her appeal heard by the BIA
10 prohibits DHS from initiating proceedings under 8 U.S.C. § 1228 or executing any prior
11 orders of removal. *See* 8 C.F.R. § 1003.6 (providing that removal is stayed during the
12 pendency of a timely filed BIA appeal). To permit otherwise would be an abuse of
13 process. *See Valdez v. Joyce*, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (“ICE
14 cannot manipulate the removal proceedings in its favor by substituting expedited
15 proceedings for immigration proceedings already in progress before the immigration
16 court.”). *See also* Hutchinson Decl. at Att. H (email from DHS).

20 **II. Even Assuming Ms. Hatanaka is Detained Under 8 U.S.C. § 1231(a)(6), Ms.**
21 **Hatanaka is Entitled to Relief.**

22 Assuming arguendo that Respondents are correct and Ms. Hatanaka is detained
23 under section 1231(a)(6), relief is nonetheless warranted. By statute, individuals with
24 final orders of removal “shall” be detained during the 90-day “removal period” beginning
25 the date the order of removal becomes administratively final. *See* 8 U.S.C. § 1231(a)(2);
26 8 C.F.R. § 1241.1 (describing the various circumstances under which an order of removal
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1 becomes final). As the Supreme Court recently clarified, final removal orders are the
2 DHS-issued reinstatement orders under 8 U.S.C. § 1231(a)(5) or the DHS-issued
3 administrative removal orders under 8 U.S.C. § 1228(b), even if the individual is in
4 reasonable fear or withholding-only proceedings. *Riley v. Bondi*, 606 U.S. ___, 2025 WL
5 1758502 (June 26, 2025).
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7 In this case, DHS chose not to detain Ms. Hatanaka either during removal period
8 or indeed at any time during the *four years* between when it was issued on May 17, 2021,
9 and the date of her arrest on May 15, 2025. Moreover, the Order of Supervision issued
10 on May 17, 2021, required Ms. Hatanaka to, among other things, periodically report in
11 person to ICE as well as enroll in the Alternatives to Detention (“ATD”) program. Exh.
12 A at Att. D. Ms. Hatanaka not only complied with those requirements, but built a life for
13 herself in Los Angeles, married a U.S. citizen, and showcased her talents in art galleries
14 across the United States.
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18 There is no doubt that Ms. Hatanaka’s liberty interest is profound. *See Foucha v.*
19 *Louisiana*, 504 U.S. 71, 80 (1992)(stating that “[f]reedom from bodily restraint has always
20 been at the core of the liberty protected by the Due Process Clause from arbitrary
21 governmental action.”); *see also Zadvydas*, 533 U.S. at 696(finding that a non-citizen has
22 a liberty interest “strong enough” to challenge “indefinite and potentially permanent”
23 immigration detention). In exercising its discretion in 2021, Respondents created “an
24 implicit promise,” upon which Ms. Hatanaka may rely, that her liberty “will be revoked
25 only if [she] fails to live up to the ... conditions [of release].” *Morrissey v. Brewer*, 408
26 U.S. 471, 482 (1972).
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1 “Thus, even when ICE has the initial discretion to detain or release a noncitizen
 2 pending removal proceedings, after that individual is released from custody she has a
 3 protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, No. 5:25-CV-
 4 05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025). This is especially so
 5 where, as here, Respondents cannot effectuate any removal order while Ms. Hatanaka’s
 6 appeal is pending before the BIA. Similarly, Ms. Hatanaka cannot be removed prior to
 7 completion of her reasonable fear proceedings, yet she cannot participate in a reasonable
 8 fear interview while she is in section 1229a proceedings. Thus, Respondents cannot
 9 suggest that there is a significant likelihood of Ms. Hatanaka’s removal in the reasonably
 10 foreseeable future. See 8 C.F.R. § 241.4. Further, given her substantial compliance with
 11 immigration authorities and her lack of criminal history since her release from federal
 12 custody in May 2020, Respondents cannot argue that Ms. Hatanaka’s continued detention
 13 is necessary or appropriate under the circumstances.

18 CONCLUSION

19 For these reasons, Respondents’ arguments fail, and the Court should grant Ms.
 20 Hatanaka’s petition.
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 23 Dated: September 8, 2025

Respectfully submitted,

s/ Ami Hutchinson

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 Attorney for Petitioner