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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

N.A.¹,

Petitioner-Plaintiff,

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,

Respondents-Defendants.

Case No.: 25-CV-2384-RSH-BLM

Hon. Judge Robert S. Huie

**PETITIONER'S TRAVERSE IN
SUPPORT OF HER PETITION
FOR WRIT OF HABEAS CORPUS**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

Hearing Date: October 9, 2025

Hearing Time: 9:30 a.m.

Courtroom Number: 3B

¹ Petitioner will move this Court for leave to proceed under a pseudonym (using the initials N.A.).

ARGUMENT

I. Respondent's Unlawfully Detained Ms. N.A. in violation of the Fifth Amendment Procedural Due Process Requirements.

Respondents spend much of their response discussing jurisdictional arguments which are inapposite and inapplicable. ECF No. 4, at 2-17. The heart of their opposition alleges that Ms. N.A. lacks any due process rights under the Fifth Amendment of the U.S. Constitution. *Id.* at 18 (arguing that “[s]ince the statutory authority Petitioner is detained under does not afford her a right to a determination by this Court as to whether her release is warranted, nor a right to a bond hearing before an immigration judge, the Court should reject her claim that her detention violates the Fifth Amendment’s Due Process Clause and deny her requested relief.”). Not so.

Immigration detention is civil in nature and “...nonpunitive in purpose and effect[.]” *Zadvydas v. Davis*, 533 U.S. 678, 690. Petitioner is entitled to due process before deprivation of her liberty interest. Indeed, even where release is based on a mistake of law or fact, courts have required due process before deprivation of liberty. See *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (affirming issuance of the writ of habeas corpus in the criminal context and estopping the government from arguing ineligibility for parole after a mistaken release because it would be “inconsistent with fundamental principles of liberty and justice.”)

As such, courts analyze procedural due process claims in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. See *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

A. Ms. N.A. has a liberty interest under the Due Process Clause that mandates release from unlawful custody and a hearing before any re-arrest.

Ms. N.A.'s liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). After Respondents released Ms. N.A. into the United States, Ms. N.A. retained a weighty liberty interest under the Due Process Clause of the Fifth Amendment in not being incarcerated. See *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Zinerman v. Burch*, 494 U.S. 113, 127 (1990); *Padilla v. U.S. Immigr. & Customs Enft*, 704 F. Supp. 3d 1163, 1175 (W.D. Wash. 2023).

At stake for Ms. N.A. is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior release 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." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See also *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."). Meanwhile, Respondents have not alleged any criminal history or articulated circumstance that outweighs Ms. N.A.'s constitutionally-protected liberty interest. See *Espinoza v. Kaiser*, No. 1:25-CV-

01101 JLT SKO, 2025 WL 2675785, at *6 (E.D. Cal. Sept. 18, 2025) (“To be released on conditional parole, there must be a finding that the immigrant does not pose a risk of flight or danger to the community.”).

Here, Ms. N.A. has a profound liberty interest, which must be weighed heavily in determining what process she is owed under the Constitution. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

B. Ms. N.A. was not given any procedural due process prior to being deprived of her liberty interest.

“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 [Petitioner’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 burdens that the additional or substitute procedural requirements would entail.” *Mathews*, 424 at 335.

The *Mathews v. Eldridge* factors all favor Ms. N.A. The government’s interest in keeping Ms. N.A. in detention without a due process hearing is low, and

1 when weighed against Ms. N.A.'s significant private interest in her liberty, the
2 scale tips sharply in favor of releasing Ms. N.A. from custody. *See Pinchi v. Noem*,
3 No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025)
4 (noting a "significant" liberty interest held by a noncitizen after release on
5 recognizance). Moreover, as immigration detention is civil, it can have no punitive
6 purpose. The government's only interests in holding an individual in immigration
7 detention can be to prevent danger to the community or to ensure a noncitizen's
8 appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. The
9 government cannot plausibly assert that it had a sudden interest in detaining Ms.
10 N.A. at her July 14, 2025, court hearing. The Form I-213 arrest report is devoid of
11 any mention of danger or flight risk, and a border official previously determined
12 she was not a danger or flight risk and released her into the U.S. *See* ECF 4-1, at 3-
13 5 (Form I-213), 11 (Order of Release on Recognizance). As such, Ms. N.A. is
14 entitled to the remedy she requests, namely release from custody.

15 In short, the government's interest in detaining Ms. N.A. is extremely low at
16 best. That ICE may have a new policy to make a minimum number of arrests each
17 day under the new administration, if applied here, does not constitute a valid
18 increase in the government's interest in detaining her. Moreover, the "fiscal and
19 administrative burdens" that release from custody would provide are nil. The same
20 goes with respect to providing Ms. N.A. with a bond hearing. *See Mathews*, 424
21 U.S. at 334-35. In the alternative to immediate release, Ms. N.A. seeks a
22 meaningful bond hearing – this is not a unique or expensive form of process, but
23 rather a bond hearing before a neutral arbiter.²

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26 ² Moreover, release from custody is far less costly for the government than keeping
27 Petitioner detained. As the Ninth Circuit noted in 2017, "[t]he costs to the public of
28 immigration detention are 'staggering': \$158 each day per detainee, amounting to a

II. Ms. N.A. is detained under 8 U.S.C. § 1226 and not 8 U.S.C. § 1225.

Respondents erroneously contend that Ms. N.A. is lawfully detained under 8 U.S.C. § 1225(b)(1). Not so. Respondents released Ms. N.A. pursuant to Immigration and Nationality Act (“INA”) section 236 as stated on Respondents’ Order of Release on Recognizance dated October 29, 2024. See ECF No. 4-1, at 11 (stating release under INA section 236). Since then, Ms. N.A. dutifully attended all immigration court proceedings, including the July 14, 2025, hearing where Respondents detained her. ECF No. 1, at 2, ¶ 4.

Ms. N.A.’s INA section 240 proceedings were not dismissed until on or about July 29, 2025. ECF No. 1, ¶ 78. Thus, at the time of her courtroom arrest by Respondents, Respondents had no legal basis for detaining Ms. N.A. under 8 U.S.C. § 1225. *See Sayed Naser Noor v. Christopher LaRose, et al.*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *14 (S.D. Cal. Oct. 1, 2025) (explaining that a petitioner is no longer an “arriving” noncitizen after release by Respondents, including when a courtroom arrest occurs while INA section 240 proceedings remaining ongoing).

Further, Respondents contend they served Ms. N.A. with a warrant and have filed it in this action. *See* ECF No. 4-1, at 13. Yet warrants are only issued if the noncitizen is detained under 8 U.S.C. § 1226, not 8 U.S.C. § 1225. Section 1226(a) provides “[o]n a warrant issued by the Attorney General, an [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added). Indeed, the first page of the warrant Respondents’ rely upon starts with citing to INA section 236. ECF No. 4-1, at 13. *Id.* The statute also provides for release from

total daily cost of \$6.5 million.” *Hernandez v. Session*, 872 F.3d 976, 996 (9th Cir. 2017).

1 custody on bond or conditional parole. 8 U.S.C. § 1226(a)(2). The existence of a
2 warrant here belies Respondents' contention that Ms. N.A. is mandatorily detained
3 under 8 U.S.C. § 1225 as the warrant itself is authorized under INA section 236.

4 Respondents also rely on *Matter of Q. Li*, 29 I & N Dec. 66, 68 (BIA 2025)
5 to argue Ms. N.A. should be detained under 8 U.S.C. §1225(b)(2)(A). In that case,
6 the BIA held that "...an applicant for admission who is arrested and detained
7 without a warrant while arriving in the United States, whether or not at a port of
8 entry, and subsequently placed in removal proceedings is detained under section
9 235(b) of the INA, 8 U.S.C. § 1225(b)..." *Matter of Q. Li*, 29 I & N Dec. 66, 69
10 (BIA 2025). During the courthouse arrest on July 15, 2025, Ms. N.A. was not
11 "arriving"—she was attending her immigration court hearing regarding her asylum
12 application.³ See *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL
13 2716910, at *5-*6 (E.D. Cal. Sept. 23, 2025) (discussing the plain meaning of
14 "seeking admission"); ECF No. 4-1, at 13 (warrant dated July 14, 2025, with a
15 certificate of service not dated or signed by an interpreter); see also *Jimenez v. FCI*
16 *Berlin*, No. 25-cv-326-LM-AJ, 2025 LX 360066, at *14 (D.N.H. Sep. 8, 2025)
17 (distinguishing *Matter of Q. Li* and explaining that a post-hoc arrest on a warrant
18 does not support confinement under 8 U.S.C. 1225).

19 **III. Respondents violated the APA in detaining Ms. N.A.**

20 Ms. N.A. did not receive notice in advance of the revocation of her release
21 on recognizance despite the fact that she was not found to be a danger. "Even if
22 Petitioner was not granted humanitarian parole, courts have found—and this Court
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24 ³ Further, this Court is not bound by the BIA's interpretations of 8 U.S.C. §§ 1225
25 and 1226, and is not bound by *Matter of Q. Li*, 29 I & N Dec. 66, 69 (BIA 2025) or
26 *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). See *Quirino*
27 *Guerrero Lepe v. Tonya Andrews, et al.*, No. 1:25-cv-01163-KES-SKO (HC), *4,
28 n.5 (E.D. Cal. Sept. 23, 2025) (citing *Loper Bright Enters. v. Raimondo*, 603 U.S.
369, 394, 413 (2024)).

1 agrees in finding—that revocation of that parole similarly requires an
2 individualized determination.” *Sayed Naser Noori v. LaRose, et al.*, No. 25-CV-
3 1824-GPC-MSB, 2025 WL 2800149, at *13 (S.D. Cal. Oct. 1, 2025). Respondents
4 must provide reasoning prior to arbitrary and capricious detention in contravention
5 of a prior decision to release a noncitizen. *Id.*

6 **IV. Ms. N.A. is neither an applicant for admission nor an arriving**
7 **noncitizen.**

8 Ms. N.A. is also not subject to mandatory detention because she is neither an
9 applicant for admission nor is she arriving in the U.S. per 8 U.S.C. § 1225(b)(1).
10 Rather, Ms. N.A. is a noncitizen who was released into the U.S. and who has been
11 living within the U.S. As explained in *Matter of M-S-*, 8 U.S.C. § 1225 and 8
12 U.S.C. § 1226 each cover distinct, nonoverlapping classes of aliens. 27 I&N Dec.
13 at 516. Section 1225(b)(2)(A) provides that applicants for admission who are
14 determined to not be clearly and beyond a doubt entitled to be admitted shall be
15 detained for a proceeding under 8 U.S.C. § 1229a.

16 **V. Ms. N.A. sought asylum which is not an application for admission.**

17 The BIA has held that those seeking asylum are not applicants for
18 admission. In *Matter of V-X-*, 26 I&N Dec. 147, 150-52 (BIA 2013), the BIA relied
19 on the INA’s definition of “admission”—section 101(a)(13)(A) of the INA, 8
20 U.S.C. § 1101(a)(13)(A) (“[T]he terms ‘admission’ and ‘admitted’ mean . . . the
21 lawful entry of the [noncitizen] into the United States after inspection and
22 authorization by an immigration officer.”)—and concluded that a grant of asylum
23 is not an admission at all. The BIA’s holding also means that the adjudication of an
24 asylum application is not an “inspection.” *See Matter of V-X-*, 26 I&N Dec. at 151
25 n.3 (“...8 CFR § 1208.14(c) contemplates that an inspection for inadmissibility
26 will occur only ‘[i]f the asylum officer does *not* grant asylum.’”). If an asylum
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1 seeker was not admitted, then that asylum seeker was not inspected. And if a grant
2 of asylum is not an admission, and if the adjudication is not even an inspection, it
3 necessarily follows that one applying for asylum does not make an application for
4 admission at the port of entry or, later, when prosecuting that application.

5 **VI. Respondents' Mootness Argument Lacks Merit.**

6 Respondents allege that Ms. N.A. cannot establish jurisdiction because
7 "Petitioner is no longer in expedited removal, and she is applying for asylum
8 before an immigration judge." ECF No. 4, at 7. Their argument mischaracterizes
9 the thrust of her Petition. *See* ECF No. 1, at 5, ¶ 13 (claiming that "Ms. N.A.'s
10 arrest and inability to contest her arbitrary detention violate her statutory and
11 constitutional rights, including Due Process protections under the U.S.
12 Constitution."). Ms. N.A.'s causes of action do not challenge the expedited
13 removal process but rather challenge her ongoing detention in Respondents'
14 custody. ECF No. 1, at 19-32; *see also* ECF No. 4-1, at 3 (Respondents concede
15 that Ms. N.A. "...remains detained in Otay Mesa Detention Facility...").

16 Ms. N.A.'s challenge to unlawful detention is a live case or controversy.
17 ECF No. 4-1, at 13. Her ongoing detention is not merely a matter of conjecture
18 regarding potential future unlawful conduct. *See Sayed Naser Noor v. Christopher*
19 *LaRose, et al.*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *5 (S.D. Cal.
20 Oct. 1, 2025) ("As Petitioner is still detained and contests the lawfulness of the
21 expedited removal proceedings that led to his detainment, the petition's causes of
22 action are not moot."). As such, Respondents' mootness arguments lack merit.

23 **VII. Respondents' Jurisdictional Arguments Under 8 U.S.C. § 1252 Fail.**

24 As discussed herein, Ms. N.A. is challenging her unlawful detention without
25 due process regardless of the Attorney General's statutory authority "commence
26 proceedings, adjudicate cases, or execute removal orders" 8 U.S.C. § 1252(g).
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1 Notably, “a decision to detain Petitioner does not fall within the three discrete
2 actions identified in § 1252(g) and, thus, would not deprive the Court's
3 jurisdiction.” *Sayed Naser Noor v. Christopher LaRose, et al.*, No. 25-CV-1824-
4 GPC-MSB, 2025 WL 2800149, at *7 (S.D. Cal. Oct. 1, 2025).

5 Similarly, 8 U.S.C. § 1252(b)(9) does not limit this Court’s jurisdiction.
6 *Flores-Miramontes v. I.N.S.*, 212 F.3d 1133, 1139 (9th Cir. 2000) (explaining that
7 8 U.S.C. § 1252(b)(9) “does not affect petitions for habeas corpus.”); *Sayed Naser*
8 *Noor v. Christopher LaRose, et al.*, No. 25-CV-1824-GPC-MSB, 2025 WL
9 2800149, at *7 (S.D. Cal. Oct. 1, 2025) (citing *Jennings v. Rodriguez*, 583 U.S.
10 281, 293 (2018)). Like the petitioner in *Sayed Naser Noori*, Ms. N.A does not
11 challenge Respondents’ decision to initiate expedited removal, and thus 8 U.S.C. §
12 1252(a)(2)(A) and 8 U.S.C. § 1252(e) do not preclude this Court’s jurisdiction over
13 Ms. N.A. habeas petition. *Id.* at *8 (S.D. Cal. Oct. 1, 2025).

14 CONCLUSION

15 For the foregoing reasons, the Court should find that the continued detention
16 of Ms. N.A. is unlawful and order Ms. N.A.’s release from Respondents’ custody.

17 Dated: October 3, 2025

Respectfully Submitted,

18 /s/ Mihret Getabicha

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